

## SCRUTINY OF BILLS ALERT DIGEST

**NO. 1 OF 1989**

**8 MARCH 1989**

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:

Affirmative Action (Equal Employment Opportunity for Women)  
Amendment Bill 1989

Audit Amendment Bill 1989\*

Customs Tariff (Coal Export Duty) Amendment Bill 1989

Customs Tariff (Uranium Concentrate Export Duty) Amendment  
Bill 1989

Export Inspection (Quantity Charge) Amendment Bill 1989

General Insurance Supervisory Levy Bill 1989\*

Geneva Conventions Amendment Bill 1989\*

Income Tax Assessment (Housing Loan Interest) Amendment  
Bill 1989

Income Tax Assessment (Savings Accounts Interest) Amendment  
Bill 1989

Insurance Legislation Amendment Bill 1989\*

Insurance Supervisory Levies Collection Bill 1989

Life Insurance Supervisory Levy Bill 1989\*

Ministers of State Amendment Bill 1989

States Grants (Non-Government Business Colleges) Bill 1989\*

States Grants (Technical and Further Education Assistance)  
Bill 1989\*

Student Assistance Amendment Bill 1989\*

\* 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.

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**AFFIRMATIVE ACTION (EQUAL EMPLOYMENT OPPORTUNITY FOR WOMEN)  
AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister for Industrial Relations.

The bill proposes to amend the Affirmative Action (Equal Employment Opportunity for Women) Act 1986 in two ways:

- . to streamline reporting arrangements for higher education institutions; and
- . to reflect the circumstances of institutions planning or undergoing amalgamations.

The Committee has no comments on this 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 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister for Employment and Education Services.

The Bill will amend the Audit Act 1901. The principal amendments are intended to improve the administrative procedures followed by departments, make arrangements for signing audit reports, enhance the Auditor-General's powers to undertake audits and to indemnify the Auditor-General and his or her staff.

The Bill also will enable the Minister for Finance to direct that moneys appropriated to one Parliamentary Department should on the transfer of functions be transferred to the department gaining those functions. The Minister may give directions which apply retrospectively or reduce amounts previously transferred.

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

**Proposed new subsection 2(3) - Commencement**

Subclause 2(3) of the Bill would insert a commencement date for proclamation of new paragraph 17() and subsection 18(2). Subclause 17(3) allows the Australian Capital Territory to appoint its own auditor upon self-government taking effect. Subsection 18(2) relates to the incorporation of a body corporate for the purposes of the Audit Act 1901 which is incorporated for a public purposes in the A.C.T. or an external Territory other than Norfolk Island.

The subsections are to come into effect on a day to be fixed by Proclamation or the first day after the end of 12 months from the date of Royal Assent.

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 there is a 12 month limit on the 'date of proclamation' but it appears that 12 months is an inappropriate limit on the exercise of the discretion to proclaim the commencement.

Proposed new subclause 2(3) is drawn to Senators' attention as it may be considered to breach principle 1(a)(iv) of the terms of reference and may constitute an invalid delegation of legislative powers.

**Proposed new subclauses 34(1), 34(5)(a) and (6), 70BB(6), (7) and (8) - Inappropriate delegation of legislative power**

The proposed new subsections are introduced by clauses 6(1), 14(5)(a) and (b), 21(6), (7) and (8) respectively and give the Auditor-General unfettered discretion to authorise 'a person' to carry out various functions under the relevant legislative provision. The Committee noted similar concerns in Alert Digest No. 18 of 1988 relating to subclause 45(11) of the Australian National University Bill 1988.

The Committee maintains that such powers should be delegated by reference to a particular office, a specified class of people or officers of a designated level of seniority.

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

**Clause 37(1A) - Discretion to transfer monies**

The Committee draws attention to proposed new subsection 37(1A) which allows the Minister for Finance to give a retrospective direction transferring funds between Departments when

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Departmental functions have changed. The Committee notes that the Explanatory Memorandum states that the amendment is for administrative convenience, but the Committee is of the view that any legislation which has retrospective effect should be brought to the attention of Senators'.

Proposed subclause 35(1B) allows the Minister power to 'amend a direction given under subsection 1A'. The Committee is of the view that as it is amounts that are being transferred between Departments that have had functions changed that the power should be limited to the Minister amending 'amounts' only.

The clause is drawn to Senators' attention as it may breach principle 1(a)(iv) of the Committee's terms of reference and inappropriately delegate legislative power.

#### **Clause 21 - Discretion to dispense with an audit**

The proposed new section 70BB(2)(b) gives the Auditor-General a discretion to dispense with the need to continually audit a body or person where the Auditor-General is of the opinion that it is cost effective to do so.

Proposed new subsection 70BB(3) and (4) gives the Auditor-General power not to report minor irregularities and also to dispense with certain detailed inspections. The Committee in the Thirteenth Report of 1988 noted similar provisions in subclauses 214(2) and (3) of the Aboriginal and Torres Strait Islander Commission Bill 1988.

It is the firm view of the Committee that the attention of Senators' should be drawn to any alteration of a requirement to notify Parliament placed upon the Auditor-General by Statute.

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 Committee's terms of reference and constitute an inappropriate delegation of legislative power.

**Clause 24 - Guidelines to Minister**

Clause 24 introduces section 73 of the Act which permits a Minister to issue guidelines to officers or any other persons on any matters within the responsibility of that Minister, provided that such matters can be subject to Regulations.

The Committee notes that the Explanatory Memorandum states that 'the clause is to give direct legal backing in the regulations to guidelines given by Ministers'.

The Committee is of the view that such guidelines should be required to be tabled before the Parliament.

The clause is drawn to Senators' attention as it may possibly breach principle 1(a)(iv) of the Committee's terms of reference and inappropriately delegate legislative power.

**CUSTOMS TARIFF (COAL EXPORT DUTY) AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 1 March 1989 by the Minister for Science, Customs and Small Business.

The Bill will amend the Customs Tariff (Coal Export Duty) Act 1975 to continue an exemption from liability to pay customs duty already conferred on certain coal, where that exempt coal is blended with other coal.

The Committee has no comments on this Bill.

**CUSTOMS TARIFF (URANIUM CONCENTRATE EXPORT DUTY) AMENDMENT BILL  
1989**

This Bill was introduced into the House of Representatives on 1 March 1989 by the Minister for Science, Customs and Small Business.

The Bill proposes amendments to the Customs Tariff (Uranium Concentrate Export Duty) Act 1980 to increase the duty on exported uranium concentrate mined in the Alligator Rivers region.

The Committee has no comments on this Bill.

**EXPORT INSPECTION (QUANTITY CHARGE) AMENDMENT BILL, 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister for Industrial Relations.

The Bill will amend the Export Inspection (Quantity Charge) Act 1985 to revise the maximum levels of charge which can be set by the regulations for several prescribed commodities and exclude certain other commodities from any imposition of a quantity charge. The amendments will allow appropriate levels of charge to be set for effective recovery of cost for export inspection of dairy produce and grain.

The Committee has no comments on this Bill.

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

**GENERAL INSURANCE SUPERVISORY LEVY BILL 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister Assisting the Treasurer.

The Bill contains provisions for the imposition of an annual supervisory levy on general insurers and Lloyd's to recover the cost of their supervision under the Insurance Act 1973 by the Insurance and Superannuation Commission.

The Committee has no comments on this Bill. However it is pleased to note the redraft of this Bill in view of the Committee's comments in its Fifteenth 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.

**GENEVA CONVENTIONS AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister for Employment and Education Services.

The Bill will amend the Geneva Conventions Act 1957 to enable Australian ratification of Protocol I. Protocol (concerned with the Protection of Victims of International Armed Conflicts and was concluded at Geneva on 10 June 1977). Australia will also ratify Protocol II which is concerned with the protection of victims of non-international armed conflicts.

The Committee brings to Senators' attention the Schedule to this Bill which has a significant human rights impact that is directly relevant to the Committee's terms of reference.

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

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**INCOME TAX ASSESSMENT (HOUSING LOAN INTEREST) AMENDMENT BILL  
1989**

This Bill was introduced into the Senate as a Private Senator's Bill on 2 March 1989 by Senator Haines.

The Bill proposes amendments to the Income Tax Assessment Act 1936 to provide tax relief on home loan repayments for those living in their mortgaged home.

The Committee has no comments on this Bill.

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

**INCOME TAX ASSESSMENT (SAVINGS ACCOUNTS INTEREST) AMENDMENT  
BILL 1989**

This Bill was introduced into the Senate as a Private Senator's Bill on 2 March 1989 by Senator Haines.

The Bill proposes amendments to the Income Tax Assessment Act 1936 with the aim of achieving the following:

- . encourage savings;
- . offer small investors a secure investment with a good return; and
- . assist those saving for their own home.

The Committee has no comments on this Bill.

**INSURANCE LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister Assisting the Treasurer.

The Bill contains provisions for amendment of the Insurance Act 1973, the Insurance (Agents and Brokers) Act 1984 and the Life Insurance Act 1945 to overcome certain deficiencies in the existing legislation so as to maintain effective supervision by the Insurance and Superannuation Commission over the general insurance and life insurance industries and insurance intermediaries.

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

**Clause 4 - 'Henry VIII' clause**

The Committee notes that clause 4 will insert a definition of debenture into subsection 3(1) of the Insurance Act. The clause allows the definition to be removed but not expanded by operation of regulation.

The clause is draw to Senators' attention as it may breach principle 1(a)(iv) of the Committee's 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.

**INSURANCE SUPERVISORY LEVIES COLLECTION BILL 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister Assisting the Treasurer.

The Bill contains provisions for the collection of the collection of the annual supervisory levies imposed on general insurers, Lloyd's and life insurers by the General Insurance Supervisory Levy Bill 1989 and the Life Insurance Supervisory Levy Bill 1989.

An annual supervisory levy will be payable by all authorised general insurers, Lloyd's and registered life insurers required to lodge accounts under the Insurance Act 1973 and the Life Insurance Act 1945.

The levy will be payable from the day after its announcement in the 1988-89 Budget, that is, from 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.

**LIFE INSURANCE SUPERVISORY LEVY BILL 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister Assisting the Treasurer.

The Bill contains provisions for the imposition of an annual supervisory levy on life insurers to recover the costs of their supervision under the Life Insurance Act 1945 by the Insurance and Superannuation Commission.

The Committee has no comments on this Bill. However it is pleased to note the redraft of this Bill in view of the Committee's comments in its Fifteenth 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.

**MINISTERS OF STATE AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister for Administrative Services.

The Bill will amend the Ministers of State Act 1952 to provide for an increase in ministerial salaries.

The Committee has no comments on this Bill.

**STATES GRANTS (NON-GOVERNMENT BUSINESS COLLEGES) BILL 1989**

This Bill was introduced into the House of Representatives on 1 March 1989 by the Minister for Employment, Education and Training.

The Bill will make provision for grants of financial assistance to the States for non-government business colleges in 1989.

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

**Clauses 6(1) 7(1) and 9(1) and 10(4) respectively**

The Committee repeats its concerns expressed in Report No. 17 of 1988 relating to clauses 15 and 16 of the Higher Education Funding Bill 1988.

The Committee notes that the only control the Parliament has over the operation of clauses which set the grant to be distributed to states by ministerial determination is by disallowance.

The clauses are drawn to Senators' attention as they may breach principle 1(a)(iv) of the Committee's terms of reference and constitute an inappropriate delegation of legislative power.

**STATES GRANTS (TECHNICAL AND FURTHER EDUCATION ASSISTANCE) BILL  
1989**

This Bill was introduced into the House of Representatives on 1 March 1989 by the Minister for Employment, Education and Training.

The Bill will make provision for grants of financial assistance to the States and the Northern Territory for technical and further education for 1989.

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

**Clauses 6(1) 7(1) and 9(1) and 10(4) respectively**

The Committee repeats its concerns expressed in Report No. 17 of 1988 relating to clauses 15 and 16 of the Higher Education Funding Bill 1988.

The Committee notes that the only control the Parliament has over the operation of clauses which set the grant to be distributed to states by ministerial determination is by disallowance.

The clauses are drawn to Senators' attention as they may breach principle 1(a)(iv) of the Committee's 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.

**STUDENT ASSISTANCE AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 2 March 1989 by the Minister for Employment, Education and Training.

The Bill will amend the Student Assistance Act 1973. The amendments are largely administrative, for example, one will replace the expressions 'advanced education institution' and 'university' with references to 'higher education institution'. The Bill will also repeal the requirement that Departmental assessors be appointed by the Minister and will modify the appeal procedure. It also will amend the principal Act's recovery and waiver/write off provisions and provide for regulations to be redrafted in a simpler manner.

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

**Subclause 2(2)(1)(a) - Commencement**

This clause which introduces a commencement date in Section 2 of the Act allows the Minister a discretion as to the commencement date of all the preliminary clauses of the Bill. Subclause 2(3) limits this period to 1 January 1990. The Committee notes that a period is needed to allow time for the drafting of amendments to the regulations but is of the view that the time period could be shortened.

The clause is brought to Senators' attention as it may breach principle 1(a)(iv) of the Committee's terms of reference and inappropriately delegate legislative power.

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**Clause 8 - 'Henry VIII' clause**

This clause introduces intended paragraph 10(1)(a) and allows the whole scheme of Austudy entitlements to be the subject of regulations. The Committee accepts that the scheme has adopted this format used since 1973 but is concerned at the continuation of this format. It is the view of the Committee that a 'Henry VIII' clause should always be brought to the attention of Senators, as they may breach principle 1(a)(iv) of the Committee's terms of reference and constitute an inappropriate delegation of legislative power.

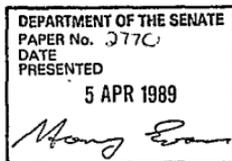
**Paragraph 17(1)(b) - Waiver of right to documents by student**

This paragraph introducing section 17(1)(b) allows an applicant to waive the right to receive copies of documents relevant to the hearing against a decision relating to entitlements at least 14 days before the hearing of a review in order 'to streamline the review process'.

The Committee finds difficulty with a provision that allows a person to waive a right they may not be fully aware of in order to gain a quicker review. It is also of concern to the Committee that students adopting the waiver may do so to the disadvantage of students who do not take such an approach.

The paragraph is brought to Senators' attention as it may breach principle 1(a)(i) of the Committee's 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.



## SCRUTINY OF BILLS ALERT DIGEST

NO. 2 OF 1989

5 APRIL 1989

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 -

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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:

- \* Primary Industries and Energy Legislation Amendment Bill  
(No. 2) 1989  
  
Qantas Airways Limited (Loan Guarantee) Bill 1989
- \* Trade Practices (International Liner Cargo Shipping)  
Amendments Bill 1989
- \* Transport and Communications Legislation Amendment Bill  
1989
- \* The Committee has commented on these Bills.

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PRIMARY INDUSTRIES AND ENERGY LEGISLATION  
AMENDMENT BILL (NO. 2) 1989

This Bill was introduced into the House of Representatives on 8 March 1989 by the Minister for Primary Industries and Energy.

This Bill is an omnibus Bill administered within the Primary Industries and Energy portfolio. It proposes to amend 10 acts and repeal 13.

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

Petroleum and (Submerged Lands) Act 1967

'Henry VIII' clauses

Schedule one of the Act incorporates many changes to various Sections that will permit a fee to be set by Regulation without an upper limit being provided in the Act. The provisions are set out in paragraph 33 of the Explanatory Memorandum.

The same approach is being adopted with respect to other Acts to be amended by the Bill.

1. Petroleum (Submerged Lands) (Exploration Permit Fees) Act 1967
2. Petroleum (Submerged Lands) (Pipeline Licence Fees) Act 1967
3. Petroleum (Submerged Lands) (Production Licence Fees) Act 1967
4. Petroleum (Submerged Lands) (Registration Fees) Act 1967
5. Petroleum (Submerged Lands) (Retention Lease Fees) Act 1985

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

The Registration Fees Act has only the minimum fees included in the amendment as ad valorem fees based on a percentage of the transaction value remain in the Act.

The Minister's Second Reading speech states the changes are to allow for the timely adjustment of fees to more closely reflect actual administrative cost. The Act does not set maximum fees nor does it establish a criterion to ensure that increases in fees reflect actual administrative cost.

The Committee views such amendments as undesirable and is of the view that it should be possible for the Department to set a maximum amount of fees to reflect administrative costs and thereby remove the need to amend the fees by regulation.

Senators' attention is drawn to the clause(s) as they are considered to breach principle 1(a)(v) of the Committee's terms of reference and insufficiently subject the exercise of legislative power to Parliamentary scrutiny.

**QANTAS AIRWAYS LIMITED (LOAN) GUARANTEE BILL 1989.**

This Bill was introduced into the House of Representatives on 8 March 1989 by the Minister for Transport and Communications.

This Bill proposes to authorise the Treasurer (on behalf of the Commonwealth) to guarantee the repayment of loans and interest on funds raised by Qantas to purchase three Boeing 747-400 aircraft and associated spare parts and equipment. The guarantee of borrowings is limited to \$US385 million, representing 85 per cent of the total project cost for the aircraft.

The Committee has no comment on this Bill.

**TRADE PRACTICES (INTERNATIONAL LINER CARGO SHIPPING) AMENDMENT  
BILL 1989**

This Bill was introduced into the House of Representatives on 8 March 1989 by the Minister for Transport and Communications.

This Bill proposes to repeal and replace Part X of the Trade Practices Act 1974 to effect major changes to the regulatory system governing international liner cargo shipping, as announced by the Government in November 1987.

**Clause 10:05 - Onus of Proof**

The Committee notes that sub-clause 10:05(2) requires an ocean carrier allegedly discriminating between shippers requiring similar outwards liner cargo shipping services on a particular trade route to prove certain defences. Whilst the sections are not specifically criminal in nature they do provide for the imposition of a money penalty payable to the Commonwealth.

The Committee brings the clause to the attention of Senators as any section which establishes an offence and requires the proving of a particular defence may be in breach of principal

(1)(a)(i) of the Committee's terms of reference and trespass unduly on personal rights and liberties.

**Clauses 10:44, 10:54 and 10:61**

The Committee notes the width of the discretion given the Minister in taking action against ocean carriers. The Committee notes that the Minister's powers are limited by the provisions of the Act, and that there is a right of review available under the Administrative Division (Judicial Review) Act 1977.

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

**Clause 10:90 - Level of Fees to be amended by Regulation.**

The Committee notes that Clause 10.90 allows the level of fees to be charged pursuant to Part X of this Bill to be set by regulation with no upper limit to the amount. The Committee is concerned at the proliferation of such legislative provisions and urges that an upper monetary limit should be provided in all clauses of this type.

This clause is brought to Senators' attention as it may breach principal (1)(a)(v) of the terms of reference and insufficiently subject the exercise of legislative power to parliamentary scrutiny.

TRANSPORT AND COMMUNICATIONS LEGISLATION AMENDMENT BILL 1989

This Bill was introduced into the House of Representatives on 8 March 1989 by the Minister for Land Transport and Shipping Support.

This Bill proposes to make amendments essentially of a technical nature to the following five Acts:

- . Air Navigation (Charges) Act 1952;
- . Airports (Surface Traffic) Act 1960;
- . Australian Centennial Roads Development Act 1988;
- . Broadcasting Act 1942;
- . Telecommunications Act 1975

The Committee notes with pleasure the changes to the Australian Centennial Roads Development Act which was mentioned by the Committee in the Seventeenth Report of 1981.

Part VII Telecommunications Act

The Committee notes changes to Part 7 of the Act to validate a number of zonal and telex changes made by Telecom since 21 May 1980 without appropriate by-laws.

The Minister states that the errors "generally reflect inadequate administrative controls and inappropriate reporting procedures within Telecom's organisation". It is noted by the Committee that the Minister has taken action to ensure that simplified administrative arrangements will be introduced to prevent the problem arising in the future.

The Committee is concerned at any retrospectivity in legislation but notes that the amendments honour an undertaking made by the Minister to the Regulations and Ordinances Committee in November 1988. The Committee draws the matter 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.

DEPARTMENT OF THE SENATE  
PAPER No. 3872  
DATE  
PRESENTED  
12 APR 1989  
*Mary Egan*

**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 3 OF 1989**



**12 APRIL 1989**

ISSN 0729-6852

## SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

### MEMBERS OF THE COMMITTEE

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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:

Appropriation (Parliamentary Departments) Bill (No.2)  
1988-89

Appropriation Bill (No.3) 1988-89

Appropriation Bill (No.4) 1988-89

\* Bounty (Ships) Bill 1989

\* Defence Service Homes Amendment Bill 1989

Migration Amendment Bill 1989

\* Migration Legislation Amendment Bill 1989

\* Snowy Mountains Engineering Corporation (Conversion into  
Public Company) Bill 1989

\* 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.

**APPROPRIATION (PARLIAMENTARY DEPARTMENTS BILL (NO.2) 1988-89**

This Bill was introduced into the House of Representatives on 8 March 1989 by the Minister for Employment and Education Services.

This Bill proposes to appropriate \$5.7 million from the Consolidated Revenue Fund, additional to the sums appropriated by the Appropriation (Parliamentary Departments) Act 1988-89 to meet recurrent expenditures of the parliamentary departments.

The Committee has no comments on this Bill.

**APPROPRIATION BILL (NO.3) 1988-89**

This Bill was introduced into the House of Representatives on 8 March 1989 by the Minister for Employment and Education Services.

This Bill proposes to appropriate \$609.9 million from the Consolidated Revenue Fund, additional to the sums appropriated by the Appropriation Act (No.1) 1988-89, to meet commitments approved by the Government since the Budget, as well as on-going requirements.

The Committee has no comments on this Bill.

APPROPRIATION BILL (NO.4) 1988-89

This Bill was introduced into the House of Representatives on 8 March 1989 by the Minister for Employment and Education Services.

This Bill proposes to appropriate \$68.4 million from the Consolidated Revenue Fund, additional to the sums appropriated by the Appropriation Act (No.2) 1988-89. The appropriations will meet capital works and services, payments to or from the States and the Northern Territory, advances, loans and other service commitments which have occurred since the 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.

## BOUNTY (SHIPS) BILL 1989

This Bill was introduced into the House of Representatives on 5 April 1989 by the Minister for Science, Customs and Small Business.

This Bill proposes to provide bounty for the construction or modification of bountiable vessels in Australia which are completed between 1 July 1989 to 30 June 1995. The present assistance rates (a cash limited bounty assistance scheme) will be phased down until June 1995.

### Clause 23(5) - Self-incrimination

This clause empowers an authorised officer to require certain persons to appear before him to answer questions and produce documents relating to the construction/modification of a bountiable ship, with the power to withhold bounty until the requirements of the clause are met.

Sub-clause 23(5) provides that a person is not excused from answering questions and producing documents on the ground of that person being liable to incriminate themselves or being liable to a penalty.

The Committee notes the limitations on the use of the answers and documents contained in sub-clause 23(5), and is aware that such clauses are usual in Bounty legislation.

The Committee is of the view that this clause may be reasonable in the circumstances of the Bill, but notes that such clauses 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.

**DEFENCE SERVICE HOMES AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 5 April 1989 by the Minister for Veterans' Affairs.

This Bill proposes to amend section 19 of the Defence Service Homes Act 1918 to clarify certain provisions concerning assistance to entitled persons for the acquisition of a home. The Bill further proposes to make a minor technical amendment concerning the preparation of Annual Reports.

**Clause 2 - Retrospectivity**

The Committee notes that this clause provides for or deems the Bill to have commenced retrospectively on 17 December 1988.

As the Bill is intended to clarify the drafting of the 1988 Amendment Act and does not presage any substantial changes the Committee does not regard the clause as necessarily breaching any of the principles of the Committee's terms of reference.

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

**MIGRATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 5 April 1989 by the Minister for Immigration, Local Government and Ethnic Affairs.

This Bill proposes to give effect to elements of the Master Plan for Passenger Processing as they relate to the Migration Amendment Act (No.2) 1988. Section 6AA of the Act is intended to allow all visas to operate as an entry permit. Proclamation of the 1988 Act was not to be given until computer/support systems for such visas were in place; however some overseas posts are not yet equipped. This Bill proposes to amend section 6AA so that it can be proclaimed and therefore enable the computer technology already installed to be utilised.

The Committee has no comments on this 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 LEGISLATION AMENDMENT BILL, 1989**

This Bill was introduced into the House of Representatives on 5 April 1989 by the Minister for Immigration, Local Government and Ethnic Affairs.

This Bill proposes to give legislative effect to the Report of the Committee to Advise on Australia's Immigration Policies. In broad terms, the Bill proposes to:

- . revise the approach to immigration decision-making,
- . introduce a two-tier review system, with an appeal process available through the Immigration Review Tribunal,
- . establish mechanisms to ensure planned immigration program intakes are not exceeded,
- . transfer the cost of detention and deportation to the offender, and
- . make commercial immigration advisers accountable to their clients.

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

**Clauses 11A(9)(10) and (11) - and paragraph 27(1)(C)**

The above clauses when read in conjunction with proposed new subsection 6(2) can result in a person becoming an illegal entrant to Australia without knowledge that certain relevant documents were false.

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

These provisions together with paragraph 27(1)(C) create an offence of strict liability which is not dependent on the alleged offender's lack of knowledge or intent to commit the offence.

As the offence does not depend on the alleged offender's guilty knowledge the Committee considers that the provisions may be in breach of paragraph 1(a)(i) of the Committee's terms of reference and unduly trespass on personal rights and liberties.

**Proposed subsection 11D(1), 11P(1) and 112J(11)**

The above provisions relate to the basis of granting visas and entry permits, and allow the substantial operation of these subsections to be determined by regulation.

The Committee draws these provisions to Senators' attention as it may be in breach of principle 1(a)(iv) of the terms of reference as an inappropriate delegation of legislative power.

**Proposed subsections 11G and 11R(1) - Unfettered Discretion**

These proposed subsections give the Secretary of the Department an unfettered discretion to cancel a visa or temporary entry permit which is not subject to the review procedure in the Bill (see proposed new para 64B(i)(b)) and is not mentioned in the Explanatory Memorandum. The Committee welcomes any comment the Minister may wish to make with respect to the proposed subsection.

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

**Proposed subsections 11N(1) and 11Y(1) - Gazette notification of cut-off points**

These proposed subsections allow the Minister to set certain cut-off points by Gazette notice. The Gazette notices are relevant to the number and classes of visas and entry permits to be granted. The Committee is of the view that the details of the relevant cut-off points should be required to be tabled before the Parliament.

**Sub-section 21D(14) - Search Warrants**

The proposed section permits an officer to obtain a search warrant by application to an authorised officer as defined in subsection 5(1). The application for a search warrant does not involve an application to a judge or magistrate and is raised by the Committee as a possible breach of principle 1(a)(iii) and make such rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

**Subsection 26A(5) - Reversal of Onus of Proof**

Whilst this proposed subsection reverses the normal criminal onus of proof it is sufficiently analogous to the common law defences of mistake of fact or particularly within the defendant's knowledge, and hence does not in the Committee's opinion breach the Committee's terms of the reference.

**Proposed subsection 27(2A)**

This subsection appears to reverse the onus of proof in a criminal prosecution in respect of offences of entering or remaining in Australia.

The proposed subsection is brought to the Senators' attention as it may possibly breach principle 1(a)(i) of the terms of reference and unduly trespass upon individual rights and liberties.

**Section 46 - Strict Liability Offence**

The proposed section appears to create offences of strict liability relating to making false or misleading statements in the matter of making decisions. The offences appear to relate to matters not dependent on the alleged offender's knowledge or intention as required for criminal matters. The matter is brought to Senators' attention as possibly breaching principle 1(a)(i) of the terms of reference and unduly trespassing an individual's rights and liberties.

**Section 53A - Exemptions**

Proposed Section 53A would allow the Minister to grant exemptions from the operation of subsection 6(1) and section 26A. Subsection 6(i) relates to illegal entrants and section 26A concerns the carriage of persons to Australia without documentation. The exemptions should in the Committee's view be made public in the Gazette.

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

## Sections 61 and 62

The proposed new sections appear to allow certain kinds of decisions that are subject to review to be determined by regulations and not subject to the provisions of the Bill. It is the view of the Committee that decisions subject to such review should be a matter of public record and the Committee seeks the Minister's comments on this point.

## Part III - Immigration Review Panel

The Committee is concerned that Part III of the Act proposes a Immigration Review Panel as the body to review decisions made under the Act. The panel is to be set up in place of the Administrative Appeal Tribunal (AAT). The Committee seeks a response by the Minister as to why it is necessary to establish the Immigration Review Panel, when the AAT is already available as a suitable forum for the review of administrative decisions.

## Section 66DA - Delegations

The Committee has on numerous occasions pointed out that delegations to a "person" as such are inappropriate. The terms of paragraph 206 of the Explanatory Memorandum do not elucidate the reasons for the provision and accordingly it is brought to Senators' notice as it may breach of principle 1(a)(iv) of the terms of reference 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.

**SNOWY MOUNTAINS ENGINEERING CORPORATION (CONVERSION INTO PUBLIC COMPANY) BILL 1989**

This Bill was introduced into the House of Representatives on 5 April 1989 by the Minister for Science, Customs and Small Business.

This Bill proposes to amend the Snowy Mountains Engineering Corporation Act 1970 to establish the Snowy Mountains Engineering Corporation as a company, incorporated under the Companies Act 1981. The public company will be called the Snowy Mountains Engineering Corporation Limited.

**Sub-Clause 14(2) - Annual Report**

This clause would among other things repeal Section 49 of the Principle Act which by the application of Division 2 Part XI of the Audit Act 1901 requires the corporation's annual report to be tabled in Parliament.

Although the corporation created by this Bill is required to file annual reports pursuant to Companies Legislation it is not required to table annual reports before Parliament.

The Committee has remarked on similar provisions in various Bills - ANL (Conversion into Public Company Bill) 1988 in the 18th Report of 1988. It is the view of the Committee that the Minister should be required by legislation to table annual reports before Parliament.

The Committee draws sub-clause 14(2) to the Senators' attention as it considers the tabling of annual reports as the minimum level of accountability for 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.

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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.

# SCRUTINY OF BILLS ALERT DIGEST

DEPARTMENT OF THE SENATE
PAPER No. 2977
DATE PRESENTED
3 MAY 1989
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NO. 4 OF 1989

3 MAY 1989

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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:

- \* Arts, Territories and Environment Legislation Amendment Bill 1989
- \* Australian Postal Corporation Bill 1989
- \* Australian Telecommunications Corporation Bill 1989  
Companies (Acquisition of Shares - Fees: Taxation Component) Bill 1989  
Companies (Fees: Taxation Component) Bill 1989  
Constitution Alteration (Electors' Initiative) Bill 1989
- \* Co-operative Scheme Legislation Amendment Bill 1989  
Futures Industry (Fees: Taxation Component) Bill 1989  
Legislative Initiative Bill 1989
- \* Limitation of Liability for Maritime Claims Bill 1989  
Sales Tax (Exemptions and Classifications) Amendment Bill 1989  
Securities Industry (Fees: Taxation Component) Bill 1989  
Social Security and Veterans' Affairs Legislation Amendment Bill 1989  
Taxation Laws Amendment (Rates and Rebates) Bill 1989
- \* Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Bill 1989
- \* Telecommunications (Application Fees) Bill 1989
- \* Telecommunications Bill 1989  
Wheat Industry Fund Levy Bill 1989
- \* Wheat Industry Fund Levy Collection Bill 1989
- \* Wheat Marketing Bill 1989  
Wheat Tax (Permit) Collection Amendment Bill 1989  
Wheat (Termination of Permit Tax) Bill 1989

Wheat (Termination of Tax) Bill (No. 1) 1989

Wheat (Termination of Tax) Bill (No. 2) 1989

\* 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.

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

**ARTS, TERRITORIES AND ENVIRONMENT LEGISLATION AMENDMENT BILL  
1989**

This Bill was introduced into the Senate on 12 April 1989 by the Minister for Arts, Sport, the Environment, Tourism and Territories.

This portfolio legislation proposes to amend 14 Acts and one Ordinance falling under the responsibility of the Arts, Sport, the Environment, Tourism and Territories.

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

**Subclause 2(2) - Retrospectivity**

The Committee notes the effect of subclause 2(2), is that some of the provisions of the Bill would have retrospective effect. As the retrospectivity is to correct drafting errors the Committee does not regard the subclause as breaching any of the Committee's principles.

**Clause 12 - Retrospectivity**

This clause inserts proposed new subsection 28(3) of the Australian Capital Territory (Electoral) Act 1988 and allows the Governor-General to make Regulations that would allow persons who did not vote in ACT elections to dispose of the matter by paying a twenty dollar fine.

Subclause 12(3) makes it clear that such regulations may apply to the first ACT election.

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 the proposed subsection may have a retrospective effect but does allow ACT electors to pay a twenty dollar fine, rather than face prosecution and a penalty of up to fifty dollars. As the provision can be regarded as less onerous than the current provisions, the Committee does not regard the matter as breaching any of the Committee's principles.

**Clause 17 - Proposed new subsection 15AC(9) of the Cocos (Keeling) Islands Act 1955.**

Proposed new section 15AC allows the Supreme Court of the Cocos (Keeling) Islands to sit on the Australian mainland to hear trials on indictment.

The effect of proposed new subsection 9 is to allow for witness expenses and allowances to be paid to a witness as if the witness had appeared in a trial held in the Territory.

If a witness is required to travel to a trial held on the Australian mainland then the costs of travel borne by the witness may be high. The Committee seeks an explanation from the Minister as to the statutory basis by which a witness is able to recover the costs of attending a trial.

**Proposed new section 37A - Environment Protection (Sea Dumping) Act 1981**

The proposed section would abolish the current one year time limit for the bringing of a prosecution 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.

Paragraph 21(1)(c) of the Crimes Act 1914 provides:

"21(1) a prosecution in respect of an offence against any law of the Commonwealth may be commenced as follows -

(c) where the punishment provided in respect of the offence is a pecuniary penalty and no term of imprisonment is mentioned - at any time within one year after the commission of the offence."

The Committee also notes the provisions of subsection 21(3) of the Crimes Act.

"Where by any law of the Commonwealth any longer time than the time provided by this section is provided for the commencement of a prosecution in respect of an offence against that law, a prosecution in respect of the offence may be commenced at any time within that longer time."

Advice has been supplied to the Committee by the Attorney-General's Department that a similar provision exists in Section 29 of the Protection of the Sea (Prevention of Pollution from Ships) Act 1983, and that the provision is necessary in terms of subsection 21(3) of the Crimes Act as a one year prosecution period can easily be avoided by persons and organisations who allegedly contravene the provisions of the Act.

In view of the advice received by the Committee from the Attorney-General's Department, the Committee accepts the rationale for the new provisions. The Committee has noted that the Explanatory Memorandum does not explain the background to the changes to the time limit for prosecutions.

The new provisions provide for a prosecution to be commenced when the alleged offence occurred, more than one year ago, whereas at present, the time limit is one year. It is the view of the Committee that the proposed subsection may act retrospectively.

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

**AUSTRALIAN POSTAL CORPORATION BILL 1989**

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Transport and Communications.

This Bill proposes to:

- . remake the Postal Services Act 1975 as the Australian Postal Corporation Act 1989;
- . redefine the objectives, functions and powers of the Corporation;
- . provide for the implementation of accountability measures, including the preparation of financial targets and corporate plans; and
- . provide for the financial restructuring of the Corporation by providing capital, providing for dividend payments and the application of income tax and State and local Government taxes and charges.

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

**Paragraph 30(1)(g) - Changes to Reserved Services**

The paragraph allows the content of reserved services to be altered by Regulation. No reason is provided for the paragraph within the Explanatory Memorandum, and it does not appear that these are any demonstrable reasons for requiring a rapid change in the law. The regulations are subject to Parliamentary disallowance but regulations made under the paragraph would not be subject to amendment only allowance or disallowance.

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 paragraph 30(1)(g) to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

**Subclause 34(1) - Alteration of Existing Legal Rights**

This subclause would make Australia Post immune from legal action where under common law it may be considered a bailee of articles entrusted to it, and hence liable for damage resulting from negligence. The subclause would render Australia Post immune from action even when its employees deliberately destroy postal articles.

Subclause 34(1) is drawn to the attention of the Senators in that, by removing rights of persons to institute certain forms of legal action against Australia Post, it constitutes a breach of principle 1(a)(i) of the Committee's principles and may trespass unduly on personal rights and liberties.

**Subclause 59(9) - Self-incrimination**

This subclause follows subclause 59(6) which requires a person to give information in their possession or to which the person has access under the proposed legislation. Subclause(9) states "A person is not excused from giving information under a requirement under subsection (6) on the ground that the information may tend to incriminate the person ....." with the proviso that the information is not admissible in criminal proceedings other than pursuant to this section.

It is also noted by the Committee that protection does not accrue to derivative information and can be compared with subclause 15(2) of the Wheat Industry Fund Levy Collection Bill 1989 which does protect against the derivative use of information and is acceptable to 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.

The Committee draws subclause 59(9) to the attention of Senators in that by removing the privilege against self-incrimination, 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.

AUSTRALIAN TELECOMMUNICATIONS CORPORATION BILL 1989

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Transport and Communications.

This Bill proposes to:

- . remake the Telecommunications Act 1975 as The Australian Telecommunications Corporation Act 1989;
- . redefine the objectives, functions and powers of the Corporation;
- . provide for the implementation of accountability measures, including the preparation of financial targets and corporate plans; and
- . provide for the financial restructuring of the Corporation by providing capital, providing for dividend payments and the application of income tax and State and local government taxes and charges.

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

Clause 30 - Indemnity

This clause is in the same terms as subclause 34(1) of the Australian Postal Corporation Bill 1989, and would remove legal liability from Telecom at common law in a manner that would seriously infringe the rights of citizens.

Clause 30 is drawn to the attention of Senators in that it may constitute a breach of principle 1(a)(i) of the Committee's principles and trespass unduly on personal rights and liberties.

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

**Subclause 55(9) - Self-incrimination**

This subclause is in the same terms as subclause 59(9) of the Australian Postal Corporation Bill 1989 in that the clause abrogates the normal protection against self-incrimination. The subclause gives no protection to information obtained indirectly as a result of information required to be provided under the clause.

As the clause would abrogate a person's protection against self incrimination, the Committee draws the clause to the attention of Senators under principle 1(a)(i) of its principles in that it may be considered to trespass unduly on personal rights and liberties.

**Clauses 87, 88 and 90 - Infringement of private rights of property.**

These clauses appear to permit infringement of private rights of property with respect to Telecom being allowed to enter land with respect to inspecting land, and installing and repairing facilities.

The Committee notes that clause 92 allows for compensation for damage done by Telecom and the Committee is prepared to accept the provisions of clauses 87, 88 and 90 on that basis.

COMPANIES (ACQUISITION OF SHARES - FEES: TAXATION COMPONENT) BILL  
1989

This Bill was introduced into the House of Representatives on 12 April 1989 by the Attorney-General.

This Bill proposes to ensure that there is power to impose fees under the Companies (Acquisition of Shares-Fees) Act 1980 that might contain an element of taxation.

The Committee has no comments on this Bill.

**COMPANIES (FEES: TAXATION COMPONENT) BILL 1989**

This Bill was introduced into the House of Representatives on 12 April 1989 by the Attorney-General.

This Bill proposes to ensure that there is power to impose fees under the Companies (Fees) Act 1981 that might contain an element of taxation.

The Committee has no comments on this Bill.

CONSTITUTION ALTERATION (ELECTORS' INITIATIVE) BILL 1989

This Bill was introduced into the Senate as a Private Senator's Bill on 12 April 1989 by Senator Macklin.

This Bill proposes to provide a constitutional initiative which would allow for at least five per cent of voters who voted (formally) at the last federal election to petition for a national referendum on a proposal to alter the Constitution.

The Committee has no comments on this Bill.

CO-OPERATIVE SCHEME LEGISLATION AMENDMENT BILL 1989

This Bill was introduced into the House of Representatives on 12 April 1989 by the Attorney-General.

This Bill proposes to amend existing co-operative scheme legislation, in accordance with decisions by the Ministerial Council for Companies and Securities. The Bill will, in addition to altering the A.C.T. law, have the effect of automatically amending the corresponding legislation of the States and the Northern Territory.

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

General Comment.

The Committee is of the view that the timing of the Bill is worthy of note. The Corporations Bill has been passed by the House of Representatives and considered by a Senate Select Committee. It is suggested at paragraph 5 of the Explanatory Memorandum that the Bill may be subject to further amendment by the incorporation of the share buy-back provisions within this Bill.

The whole of the Bill can be seen as an inappropriate delegation of legislative power, since (as the Committee has observed when amendments to companies legislation have previously been introduced) the Bill has been approved by the Ministerial Council. Parliament now has the option of approving the Bill as it stands or, if any changes are proposed, delaying passage of the Bill until the Ministerial Council also approves the changes.

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

Subclauses 2(2) and (3) - Proclamation of Parts 4 and 9

These subclauses allow for the commencement of Parts 4 and 9 of the Bill on proclamation. The Explanatory Memorandum gives the reason for subclause (2) being in that form, but does not give any reasons for leaving the timing of the commencement of Part 9 of the Bill, at the unfettered discretion of the Minister.

The Committee is of the view that the reason should be set out.

Proposed section 133BG and proposed subsections 133QC(6) and 133SB(5) of the Companies Act 1981

Proposed Section 133BG places on a director the onus of proving a lack of knowledge of a proposed or actual take-over of a company, by creating a presumption that a director was aware of the proposed or actual take-over bid.

Proposed subsection 133QC(6) of the Companies Act 1981 places on directors, the onus of justifying their opinion that at the time of making the solvency declaration they had reasonable grounds to do so. If a director cannot justify the opinion they become personally liable to the creditors of a company which becomes insolvent.

Proposed subsection 133SB(5) of the same Act casts on a person the onus of establishing that the person was not aware of matters of which the person's agent or employee was aware, for the purpose of avoiding the application of Section 130 of the Act to the buy-back scheme.

The Committee requests an explanation from the Minister of the new provisions in terms of their effect upon the rights of directors, and persons affected by the actions of directors.

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

Subsections 133SD(4) and 133SE(2) - Reversal of onus of proof.

These proposed subsections have the effect of reversing the onus of proof in criminal proceedings relating to compliance certificates in buy-back schemes.

The proposed subsections require a defendant to prove a reasonable belief of compliance with Section 129, which in itself is based to some extent on the purpose or intention behind a transaction. The proposed subsections appear to create strict liability offences and exculpate those who do not have guilty intent.

The Committee seeks an explanation from the Minister of the consequences of the matters raised by the Committee, in respect of their effect upon corporations allegedly contravening the provisions and officers of those corporations.

Infringements on the Rights of Securities Dealers

Division 2 of Part IV of the Securities Industries Act 1980 and Subdivision B of Division 1 of Part IV of the Futures Industries Act 1986.

The Committee notes that these provisions appear to infringe the rights of securities dealers. However as the provisions provide the client of an unlicensed dealer, with the same remedies as the common law provides for one who has entered into a contract by reason of another's misrepresentation, the Committee regards the provisions are acceptable.

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

**Proposed Section 60C of the Securities Industry Act and  
Proposed Section 78C of the Futures Industry Act.**

The Committee regards these provisions as reversing the onus of proof but the sections are sufficiently analogous to the common law defence of mistake of fact to be acceptable to the Committee.

**Proposed Section 61C of the Securities Industries Act -  
Liability of Principal.**

This section would expose a principal to greater liability for the acts of an agent than applies at common law. At common law a principal is only liable for the acts of an agent if the principal in some way held out or represented the agent as having authority.

Under the proposed section the principal's liability appear to depend (to some extent) on the way in which the agent acts, and the way in which the client may reasonably infer from the agent's acts that the latter is an agent and not a principal.

The same matters also apply to proposed section 79C of the Future Industries Act

The Committee seeks an explanation from the Minister as to the reasons for increasing the liability of a principal to greater than that applying under the common law.

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

Proposed Section 62A and 62B of the Securities Industry Act  
Proposed Sections 80A and 80B of the Futures Industry Act -  
Revocation of a persons licence without the person having the  
chance to be heard.

These proposed sections permit the National Companies and  
Securities Commission to revoke a person's licence without the  
person having the opportunity to be heard.

The Committee accepts that most of the reasons which are the  
basis of such revocation are not open to any doubt. The  
Committee is of the view that the matters subject to  
paragraphs 62A(b) and (c) of the Securities Industry Act  
contain room for valid differences of opinion as to whether  
they do or do not apply to a particular person, particularly  
relating to the physical or mental capacity of a person to  
manage their own affairs.

Similar considerations apply to Sections 80A and 80B of the  
Futures Industry Act.

The matters are brought to the attention of Senators in that  
they may breach principle 1(a)(iii) and make such rights,  
liberties and/or obligations unduly dependent upon  
non-reviewable decisions.

Proposed Section 68D of the Securities Industry Act - Reversal  
of onus of proof.

This section reverses the onus of proof in criminal matters  
relating to breaches of subsection 68D(2) of the Act.

Subsection (1) is analogous to the common law defence of  
mistake of fact, but subsection (2) requires matters to be  
proved that are not peculiarly within the knowledge of the  
defendant.

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

The subsection is apparently aimed at allowing a defence to succeed only when the defendant proves that they had no ability to prevent the contravention of proposed subsection 68C(2).

The Committee requests that the Minister explain the background to the proposed new section.

**Proposed New Section 91 of the Securities Industry Act - Reversal of the onus of proof.**

This section would reverse the onus of proof in defences to prosecutions under proposed Securities Industry Act sections 89, 90 or 90A.

The Committee notes that subsection (1) is analogous to the common law defence of mistake of fact. However subsection (2) casts on the defendant the onus of proving either

- (a) that agents for employees of the person were unaware of facts - a matter not peculiarly within the knowledge of the defendant; or
- (b) that those agents or employees were aware of those facts but did not divulge them to the defendant, again, not necessarily a matter peculiarly within the knowledge of the defendant.

The Committee is of the opinion that the section seems to have reversed the onus of proof upon defendants and seeks a clarification from the Minister.

#### **Numbering of Bill**

The Committee notes that the numbering of the Bill may make it difficult to follow for and the Committee seeks the co-operation of the Minister in simplifying the numbering of the Bill as soon as an opportunity is available to do so.

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

FUTURES INDUSTRY (FEES: TAXATION COMPONENT) BILL 1989

This Bill was introduced into the House of Representatives on 12 April 1989 by the Attorney-General.

This Bill proposes to ensure that there is power to impose fees under the Futures Industry (Fees) Act 1986 that might contain an element of taxation.

The Committee has no comments on this Bill.

LEGISLATIVE INITIATIVE BILL 1989

This Bill was introduced into the Senate as a Private Senator's Bill on 12 April 1989 by Senator Macklin.

This Bill proposes to provide that, if at least 2.5 per cent of electors who voted (formally) at the last federal election petition for the introduction of a proposed piece of legislation, then a national referendum must be held on the Bill.

The Committee has no comments on this Bill.

**LIMITATION OF LIABILITY FOR MARITIME CLAIMS BILL 1989**

This Bill was introduced into the House of Representatives on 12 April 1989 by the Minister for Land Transport and Shipping Support.

This Bill proposes to enable Australia to become one of 17 parties to the Convention on Limitation of Liability for Maritime Claims. This will greatly increase the amount of compensation available to victims of a maritime accident.

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

Subclause 2(2) - Proclamation date -

The subclause would allow for an 18 month period between Royal Assent and commencement of this measure.

This period exceeds the 6 month period now accepted as reasonable, but the reason for the extended period is adequately explained in the Minister's Second Reading speech.

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 1989**

This Bill was introduced into the House of Representatives on 13 April 1989 as a Private Member's Bill by Mr Prosser.

This Bill proposes to exempt professional fishermen from sales tax on four-wheel drive vehicles and certain motorcycles.

The Committee has no comments on this Bill.

SECURITIES INDUSTRY (FEES: TAXATION COMPONENT) BILL 1989

This Bill was introduced into the House of Representatives on 12 April 1989 by the Attorney-General.

This Bill proposes to ensure that there is power to impose fees under the Securities Industry (Fees) Act 1980 that might contain an element of taxation.

The Committee has no comments on this Bill.

**SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL  
1989**

This Bill was introduced into the House of Representatives on 12 April 1989 by the Minister for Social Security.

This Bill proposes to amend the:

- . Social Security Act 1947,
- . Veterans' Entitlements Act 1986, and
- . Social Security and Veterans' Entitlements (Maintenance  
Income Test) Amendment Bill 1988.

These amendments will give effect to proposals announced by the Treasurer in the 12 April 1989 Economic Statement.

The Committee has no comments on this Bill.

TAXATION LAWS AMENDMENT (RATES AND REBATES) BILL 1989

The Bill was introduced into the House of Representatives on 12 April 1989 by the Minister Assisting the Treasurer.

This Bill proposes to amend the:

- . Income Tax Rates Act 1986,
- . Fringe Benefits Tax Act 1986,
- . Income Tax (Bearer Debentures) Act 1971,
- . Trust Recoupment Tax Act 1985,
- . Trust Recoupment Tax Assessment Act 1985, and
- . Income Tax Assessment Act 1936.

These amendments will give effect to proposals announced by the Treasurer in the 12 April 1989 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.

**TELECOMMUNICATIONS BILL 1989**

The Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Transport and Communications.

This Bill proposes, together with the Telecommunications Corporation Bill 1989, to reform the structure and regulation of the telecommunications industry. The Australian Telecommunications Authority (AUSTEL) will carry out the role of economic and technical regulation of the industry, separate from the operations of the carriers - Telecom, OTC and AUSSAT.

**Clause 4 - Definition of "basic telephone services"**

This clause allows the definition of basic telephone services to be subject to the Regulations. There is no basis in the Explanatory Memorandum of the need for this provision. It appears to the Committee that amendments to the definition could have a substantial effect on Telecom's exclusive rights, see subclause 47(1) for example.

The clause is brought to the attention of Senators in that it may breach principle 1(a)(iv) and inappropriately delegate legislative power.

**Subclause 40(1) - Redefinition of boundaries**

This subclause would allow regulations to redefine the boundaries of the public switched telephone network. There is no explanation for the provision in the Explanatory Memorandum, and a change in the boundaries of the network could markedly affect the rights of Telecom.

The subclause is brought to the attention of Senators in that it may 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.

**Subclause 140(1) - Delegation**

The subclause provides for delegation by AUSTEL to a person, a form of delegation that has always been subject to objection by the Committee. The Committee is prepared to accept the clause in this instance as it relates solely to routine administrative tasks.

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

**TELECOMMUNICATIONS (APPLICATION FEES) BILL 1989**

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Telecommunications and Aviation Support.

This Bill proposes to provide for application fees to be payable in respect of applications for various licences and permits for persons to provide cabling work, the attachment of customer equipment to the public network and the operation of valued added services and private networks, under the proposed Telecommunications Act 1989.

The Committee is pleased to note that although subclause 4(1) permits the amount of fees to be set by regulation, there is an upper limit of \$500 on those fees pursuant to subclause 5(3).

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

TELECOMMUNICATIONS AND POSTAL SERVICES (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1989

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Transport and Communications.

This Bill proposes to repeal the Telecommunications Act 1975 (to be replaced by the Telecommunications Act 1989 and the Australian Telecommunications Corporation Act 1989) and the Postal Services Act 1975 (to be replaced by the Australian Postal Corporation Act 1989). It also proposes to amend other Acts and makes transitional provisions relating to the imposition of income tax and State and Territory taxes and charges, and for other purposes.

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

Proposed new subsection 76 of the Overseas Telecommunications Act 1946 - Immunity

This provision would grant OTC immunity from actions for loss or damage even if caused intentionally.

The provision takes much the same form as subclause 34(1) of the Australian Postal Corporation Bill 1989 and would infringe upon the rights of citizens.

In the Explanatory Memorandum it states that the immunity does not extend to death or personal injury which does limit to an extent, the effect of the infringement on human rights. The reason for the death and personal injury limitations is not explained in the Memorandum.

The provision is drawn to Senators attention 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.

The Committee is also pleased to note the amendments to the Telecommunications (Interception) Act 1979. It is the view of the Committee that the interception of any telecommunication is an infringement of personal rights. The need for such interception is in certain instances accepted by the Committee, and the Committee is pleased to note the consequential amendments to the Act to limit the interception of telecommunications, in accord with the provisions of the proposed changes to the Telecommunications Act 1989.

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

WHEAT INDUSTRY FUND LEVY BILL 1989

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to impose a single ad valorem levy on wheat, for distribution between the Wheat Research Trust Fund and any other industry fund which may be established under the provisions of the Wheat Marketing Bill 1989.

The Committee has no comments on this Bill.

**WHEAT INDUSTRY FUND LEVY COLLECTION BILL 1989**

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to provide the arrangements necessary for collecting the levy imposed by the Wheat Industry Fund Levy Bill 1989.

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

**Subclause 15(2) - Removal of privilege against self incrimination.**

The Committee is always concerned at any attempts in legislation to remove the privilege against self-incrimination, but is pleased to note the subclause provides protection against the derivative use of information gained pursuant to the terms of this provision.

**Clause 17 - Authorised Persons**

This clause gives the Secretary an unfettered discretion as to who is determined to be appointed as an authorised person. The Committee is concerned at the width of the discretion, and the very extensive powers available to such persons pursuant to clauses 11, 12 and 13 of the Bill.

The Committee is strongly of the view that the Bill should provide for appropriate selection criteria or a limitation upon the classes of persons whom the Secretary is able to authorise.

Clause 17 is brought to the notice of Senators in that the width of the power 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.

**WHEAT MARKETING BILL 1989**

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to introduce new marketing arrangements for the wheat industry from 1 July 1989. These new arrangements will result in a deregulated domestic market.

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

**Subclause 2(3) - Proclamation Date**

The Committee notes that certain provisions of the Bill which are to commence on Proclamation have a 12 month period rather than the usual 6 months. The Committee accepts the reasons given in the Explanatory Memorandum for the longer period.

**Clauses 6 and 59 - Functions of Board - Wheat and other grains**

The Committee notes that paragraph 6(1)(h) allows the Board to export grain other than wheat, and trade in that grain pursuant to sub-paragraphs 6(1)(h)(i)(ii) & (iii). However paragraph 6(1)(g) restricts the Board to providing the Minister with advice and making recommendations solely "with respect to matters relating to the marketing of wheat."

Clause 59 relating to quality control states in subclause (1) "The Board may determine quality standards to be observed in relation to wheat or other grain delivered to the Board for sale by the Board."

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

The Board is restricted pursuant to the provisions of paragraph 10(2)(b) to consulting with the Grains Council on "any matter of a general policy nature relating to the marketing of wheat."

The Committee seeks clarification from the Minister, as to what degree the provisions of the Bill are intended to apply to grains other than wheat. In the view of the Committee it would be of assistance to persons using the Bill, if wheat was to be specifically defined in clause 3 of the Bill.

**Subclause 7(5), 88(2) to 88(10) - Inappropriate delegation of Parliamentary power**

These clauses leave to Regulations the determination of which State and Territory Laws are to be rendered ineffective by the Bill.

In the opinion of the Committee persons who have been engaged in the wheat industry for a number of years whilst governed by a State or Territory Enactment may be adversely affected if that enactment were to be rendered ineffective by the making of a regulation. The Committee requests that the Bill be amended to provide for adequate prior notice to be given to any persons so affected.

The Committee is of the view that it may well be more appropriate that legislation which seriously affects the rights of people, and amends State and Territory Enactments should be contained in a Bill rather than regulations. This would in the Committees view would ensure that Parliament is properly able to scrutinise the legislation and amend it where appropriate.

The Committee draws the provisions to the attention of Senators in that they 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.

**Clause 63 - Closure of Pools**

The Committee is concerned that the Bill does not establish criteria for the closure of the operations of a pool, and that subclause (3) enables the Board to attribute to transferred wheat such sale price as the Board thinks appropriate.

The Committee requests that the Minister inform the Committee of the procedure for deciding when a pool is to be closed, and the basis for establishing the sale price of the transferred wheat.

**WHEAT (TERMINATION OF PERMIT TAX) BILL 1989**

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to terminate the tax imposed on permits issued by the Australian Wheat Board for stockfeed wheat sold outside the pooling system.

The Committee has no comments on this Bill.

**WHEAT TAX (PERMIT) COLLECTION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to provide for the finalisation of tax payment arrangements under the current stockfeed wheat permit scheme, in association with the Wheat (Termination of Permit Tax) Bill 1989.

The Committee has no comments on this Bill.

WHEAT (TERMINATION OF TAX) BILL (NO. 1) 1989

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to terminate the current research tax arrangements imposed on wheat delivered to the Australian Wheat Board. A replacement levy will be imposed under provisions of the Wheat Industry Fund Levy Bill 1989.

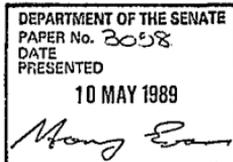
The Committee has no comments on this Bill.

WHEAT (TERMINATION OF TAX) BILL (NO. 2) 1989

This Bill was introduced into the House of Representatives on 13 April 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to terminate the research tax imposed on wheat sold under grower to buyer arrangements.

The Committee has no comments on this Bill.



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 5 OF 1989**

**10 MAY 1989**

**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.

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The Committee has considered the following Bills:

- \* Aboriginal and Torres Strait Islander Commission Bill 1989
  - \* Aboriginal Development Commission Amendment Bill 1989  
Air Navigation Amendment Bill 1989
  - \* Australian Federal Police Legislation Amendment Bill 1989  
Australian National Maritime Museum Bill 1989
  - \* Banking Legislation Amendment Bill 1989
  - \* Customs and Excise Legislation Amendment Bill (No. 3) 1989  
Customs Tariff Amendment Bill (No. 2) 1989
  - \* Defence Legislation Amendment Bill 1989  
Excise Tariff Amendment Bill 1989  
Horticultural Export Charge Amendment Bill 1989  
Horticultural Legislation Amendment Bill 1989  
Horticultural Levy Amendment Bill 1989  
Income Tax Assessment (Tax Agents' Fees) Amendment Bill 1989  
Income Tax Rates Amendment Bill (No. 2) 1989
  - \* Institute of Aboriginal and Torres Strait Islander Studies  
Bill 1989  
Resource Assessment Commission Bill 1989
  - \* Subsidy Legislation Amendment Bill 1989  
Supported Accommodation Assistance Bill 1989
  - \* Taxation Laws Amendment (Superannuation) Bill 1989
  - \* Veterans' Affairs Legislation Amendment Bill 1989
- \* 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.

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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**ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Aboriginal Affairs.

This Bill proposes to establish the Aboriginal and Torres Strait Islander Commission. The Commission will be established as a body corporate with responsibilities across the whole spectrum of Aboriginal and Torres Strait Islander affairs. This Bill replaces the 1988 Bill with the same title and embodies recommendations made by the Senate Select Committee on the Administration of Aboriginal Affairs, the Auditor-General and the Department of Finance.

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

**Clause 8 and Paragraph 7(m) - Conferring of Power.**

Clause 8 of the Bill allows the Prime Minister to confer a departmental function on the Commission by means of a notice placed in the Gazette pursuant to subclause 8(2). Paragraph 7(m) in referring to the functions of the Commission states:

"such other functions as are conferred on the the Commission by the Prime Minister by notices in force under section 8."

It is the opinion of the Committee that the notices should be subject to tabling to enable them to be subject to the scrutiny of Parliament.

**Subclauses 20(1) and (3) - Non-reviewable decisions**

These subclauses allow the Commission to give written notice to a person or body who has received a grant under the Act, that

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 person or body has failed to fulfil a term or condition of the grant.

The decision of the Commission cannot be reviewed as to its merits but only as to its legality. If a decision of this nature were to be made by the Minister the Committee considers that it should be subject to review by the Administrative Appeals Tribunal. The Committee is concerned that there is no appeal on the merits of a decision of the Commission.

The Committee seeks a clarification from the Minister as to the possibility of providing merit review for decisions made by the Commission pursuant to clause 20.

#### Clause 23 - Documents to show authority

This clause requires the Commission to ensure that documents it issues meet certain requirements. The terms of the clause do not indicate the consequences of the Commission failing to comply with those requirements.

The Committee requests that the Minister explain the consequences of the Commission not complying with the terms of the clause.

#### Clause 24 - Guidelines

This clause allows the Commission to formulate written guidelines relating to the making of loans to natural persons, and the giving of guarantees in respect of loans given to natural persons.

Subclause (5) requires the Chief Executive officer to give notice of the making of the guidelines in the Gazette.

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 has usually adopted the view that such guidelines should be tabled before Parliament and seeks the views of the Minister as to why guidelines made pursuant to clause 24 are only required to be published in the Gazette.

**Paragraph 99(a) - Entitlement to vote**

This paragraph lists one of the entitlements to vote in Regional Council Elections - "that the person is an Aboriginal person or Torres Strait Islander."

There is no provision for determining when the entitlement is satisfied, and the Minister on page 6 of the Second Reading Speech suggests that a process for determining entitlement to vote has been arrived at and will presumably be included in the Electoral Rules to be made pursuant to clause 109.

The Committee seeks a clarification of the mechanism by which a person denied eligibility to vote is able to have that decision reviewed.

**Clause 115 - Disclosure of interest**

This clause is in similar terms to clause 101 in the previous Bill and requires a member of a Regional Council to disclose a direct or indirect pecuniary interest in a matter before the Council, and that interest is to be recorded in the Minutes of the Meeting.

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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This provision is compared with:

- (1) Clause 36 - where a member of the Commission is required to disclose any pecuniary interest which is duly recorded in the Minutes. Subclause 36(2) provides that the Commissioner cannot be present, or take part in any decision relating to that matter.
- (2) Subclause 159(1) and (2) are similar provisions relating to disclosure by a Director of the Aboriginal and Torres Strait Islander Commercial Development Board.

The Committee seeks a comment from the Minister on reasons for the difference between the disclosure of interest provisions for members of Regional Councils, compared to those imposed on a Commissioner or a Director of the Board.

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

**ABORIGINAL DEVELOPMENT COMMISSION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Aboriginal Affairs.

This Bill proposes to amend the Principal Act to:

- . enable the Commission to provide information/advice to the Minister, upon request, including information regarding the Commission's expenditure,
- . modify business enterprise provisions so that the Commission will become or continue to be commercially successful,
- . change a number of financial provisions,
- . change staffing arrangements, and
- . provide for the appointment of a General Manager by the Minister, with responsibility for day to day administration of the Commission.

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

**Proposed section 26A - Merit Review**

This proposed section is in similar terms to clause 20 of the ASTIC Bill, in not for providing merit review of a notice by the Commission to a person or body, that a term or condition of a grant has not been fulfilled. As with clause 20 of the ASTIC Bill the Committee seeks the Minister's opinion on the possibility of providing for merit review of the decisions.

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

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**Proposed section 31A - Documents to show legislative authority**

This provision requires the Commission upon approving a grant, loan, acquisition or guarantee to ensure that the documents meet the requirements of:

- (a) the provision of this Part that authorises the making of the loan, grant or acquisition or the giving of the guarantee; and
  
- (b) which of the Commission's objectives, as set out in the corporate plan, will be furthered by the making of the loan, grant or acquisition or the giving of the guarantee.

This provision is in the same terms as clause 23 of the ASTIC Bill, and the Committee requests an explanation from the Minister of the consequences of non-compliance by the Commission with the terms of 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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**AIR NAVIGATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Transport and Communications.

This Bill proposes to amend the Air Navigation Act 1920 to provide the Minister with the power to give a measured response in cases where positive or anti-competitive action is imposed on an Australian carrier, rather than to suspend or cancel the international airline's licence (the action currently available to the Minister). The options now available to the Minister will include powers to selectively vary the number of flights, the type of aircraft and the routes the international airline operates to and from 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.

**AUSTRALIAN FEDERAL POLICE LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Attorney-General.

This Bill proposes to amend the Australian Federal Police Act 1979 and the Superannuation Act 1976. Broadly speaking, these amendments propose to:

- . guard against potential corruption in the Australian Federal Police (AFP);
- . increase the functions of the AFP; and
- . improve the AFP's administration.

The Committee draws the following provisions of the Bill to the attention of the Senate.

**Division 2 of Part VA - Double Jeopardy**

The provisions of this Division when read with proposed section 55 of the Principal Act impose a double penalty on an officer convicted of a corruption offence.

The Committee seeks the views of the Minister with respect to situations where it appears more appropriate to have a discretion in respect of the amount of superannuation 'penalty' imposed.

Proposed Division 2 of Part VA is brought to the attention of the Senate in that it may in 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.

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**Proposed section 49 - Imposition of penalty for discipline offence**

It is the opinion of the Committee that the proposed section may impose a penalty, in respect of employer superannuation contributions that appears unrelated to the seriousness of the discipline offence committed.

Proposed section 49 is brought to the attention of the Senate in that 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.

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**AUSTRALIAN NATIONAL MARITIME MUSEUM BILL 1989**

This Bill was introduced into the Senate on 2 May 1989 by the Minister for the Arts, Sport, the Environment, Tourism and Territories.

This Bill proposes to establish the Australian National Maritime Museum as an independent statutory authority from 1 July 1989. The Museum will exhibit, in co-operation with other public and private institutions, maritime historical material included in the national collection or held by the Museum.

The Committee has no comments on this Bill.

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

**BANKING LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister Assisting the Treasurer.

This Bill Proposes to amend the Banking Act 1959 to:

- . provide the Reserve Bank with formal authority for the prudential supervision of banks,
- . remove the distinction between trading and savings banks,
- . replace the Statutory Reserve Deposit requirement on trading banks with a non-callable deposit requirement on all banks, and
- . make the arrangements for collection and publication of banking statistics more flexible.

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

**Subclause 2(3) - Retrospectivity**

The subclause allows clause 39 to be retrospective to 23 January 1988, but as the provision is to amend a drafting oversight the Committee has no comment on the subclause.

**Proposed subsections 9(4), 66(2) and 67(2)**

The proposed subsections allow the Treasurer to impose conditions on various authorisations, with the discretion being reviewable only on grounds of legality not merits.

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

The authorisations relate to:

Proposed subsection 9(4) - authority to carry on banking business.

Proposed subsection 66(2) - restriction on a non bank assuming a bank related word in relation to banking business.

Proposed subsection 67(2) - restriction on non-establishment or maintenance of representative offices of overseas banks.

The provisions are a redraft of provisions enacted in 1959, well before the establishment of the Committee and the Administrative Appeals Tribunal (AAT), and the Committee is concerned that there is no appeal on the merits of a decision made pursuant to the provision.

The provisions are drawn to the attention of the Senate as they may be in breach of principle 1(a)(iii) and make such rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

Clause 7 - subsection 61(1) and paragraph 8(b)

These provisions reverse normal drafting practice and replace a reference to a specified officer with a reference to "a person" effectively giving the Reserve Bank an unfettered discretion as to the attributes of a person authorised by it.

These provisions are brought to the attention of the Senate in that they may 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.

**CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (No. 3) 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Land Transport and Shipping Support.

This Bill is an omnibus Bill, proposing amendments to the Customs Act 1901, the Excise Act 1901 and the Customs Administration Act 1985. Principally the amendments relate to the Diesel Fuel Rebate Scheme, implementing changes to improve the scheme's administration and correct some anomalies in the coverage of activities eligible for rebate.

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

**Subclause 2(2) - Retrospectivity**

The effect of the subclause is to make much of the operative part of this Bill retrospective to 3 MARCH 1989. The Committee notes that although this is an example of legislation by press release, it has been introduced within 6 months of the date of announcement, and the Committee has no further comment on the subclause.

Proposed subsection 164AA(1A) of the Customs Act 1901 and subsection 78 AB(1A) of the Excise Act 1901

The effect of the proposed subsections is to create strict liability offences in which knowledge or intention are irrelevant and the offender faces an "on the spot fine" of up to \$5000. The Explanatory Memorandum claims the provisions mirror existing offence provisions, and the Committee seeks clarification from the Minister that the provisions are in the same form as existing subsection 164AA(1) of the Customs Act which is in terms of a person acting knowingly or recklessly.

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

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**CUSTOMS TARIFF AMENDMENT BILL (No. 2) 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Land Transport and Shipping Support.

This Bill proposes to enact a range of changes to the Customs Tariff Act 1987, reflecting decisions on the chemicals and plastics industries, post 1988 TCF arrangements and the 1988 May Economic Statement.

General Comment.

Many of the provisions of this Bill are retrospective in effect which is usual for such Bills. The Committee however notes that the amendments to Schedule I are retrospective to 1 January 1988, and is of the view that the matters could possibly have been incorporated in the two amendments to the Principal Act introduced during 1988.

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 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Defence.

Establishments operated within the Office of Defence Production (within the Department of Defence) are being transferred to a government owned company, Australian Defence Industries (ADI) Pty. Ltd. This Bill proposes to amend the Defence Act 1903 to exempt ADI for a transitional period of six years from certain State and Territory laws relating to land usage, dangerous goods or licensing of activities, or which impose taxes, charges or rates. The Bill also proposes to exempt employees of prescribed organisations (such as ADI) from State and Territory firearms licensing laws.

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

**Subclause 2(3) - Retrospectivity**

Although this clause allows for retrospectivity in the amendment to clause 7, the retrospectivity is to correct a drafting error and the Committee has no further comment.

**Paragraph 122A(2)(b) and subsection 122A(3) - Immunities granted by Regulation**

The effect of the proposed provisions of the Defence Act is to allow the immunities to be granted or withheld from Australian Defence Industries Pty. Ltd. to be determined by regulation. In view of the nature and width of the determinations subject to regulation, it is the view of the Committee that they should be incorporated in the Bill. The Committee seeks the Minister's views on this point.

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

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**EXCISE TARIFF AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Land Transport and Shipping Support.

This Bill proposes to amend the Excise Tariff Act 1921 to:

- . enable the customs duty on certain imported goods to be collected at the time of importation,
- . decrease excise duty rates on low-alcohol beer,
- . alter the excise duty on naturally occurring liquefied petroleum gas with effect from 1 October 1988, and
- . impose excise duty on tapped crude petroleum oil, where that petroleum oil is for use otherwise than as refinery feedstock.

The Committee has no comments on this Bill.

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

**HORTICULTURAL EXPORT CHARGE AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to amend the Horticultural Export Charge Act 1987 to increase the maximum rate of charge payable on exports of prescribed horticultural products from 2 per cent to 5 per cent. Funds raised provide for the operation of the Australian Horticultural Corporation and the Horticultural Research and Development Corporation.

The Committee has no comments on this Bill.

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

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HORTICULTURAL LEGISLATION AMENDMENT BILL 1989

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to amend the:

- . Australian Horticultural Corporation Act 1987,
- . Horticultural Export Charge Collection Act 1987,
- . Horticultural Levy Collection Act 1987,
- . Horticultural Research and Development Corporation Act 1987,

to provide additional arrangements under which horticultural industries are able to participate in the Australian Horticultural Corporation and the Horticultural Research and Development Corporation

The Committee has no comments on this Bill.

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

**HORTICULTURAL LEVY AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to amend the Horticultural Levy Act 1987 to increase the maximum rate of levy payable on prescribed classes of horticultural products produced and sold or used in Australia from 2 per cent to 5 per cent. Funds raised provide for the operation of the Australian Horticultural Corporation and the Horticultural Research and Development Corporation.

The Committee has no comments on this Bill.

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

**INCOME TAX ASSESSMENT (TAX AGENTS' FEES) AMENDMENT BILL 1989**

This Bill was introduced into the Senate on 3 May 1989 as a Private Senators Bill by Senator Watson.

This Bill proposes to amend the Income Tax Assessment Act 1936 to permit taxpayers to receive a deduction (in addition to the cost of preparing a tax return) for fees charged by a tax agent for additional information required under the Principal Act and the Fringe Benefits Tax Assessment 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.

**INCOME TAX RATES AMENDMENT BILL (No. 2) 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to amend the Income Tax Rates Act 1986 to declare the rates of tax payable on the various components of taxable income of life assurance companies and registered organisations. This Bill complements the Taxation Laws Amendment (Superannuation) Bill 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.

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**INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES BILL  
1989.**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Aboriginal Affairs.

This Bill proposes to establish the Institute of Aboriginal and Torres Strait Islander Studies to replace the existing Australian Institute (AIAS). The membership of the Institute will be differently structured to that of the AIAS and the Institute's Council will include representation from the Aboriginal and Torres Strait Islander Commission.

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

**Clause 59 - Continuity of Employment**

Clause 59 provides that there is no continuity of employment for persons employed under contracts of employment by the former institute. Clause 60 refers to the position of members of the Public Service employed by the Institute who are consequently unattached officers under the Public Service Act 1922. The Committee seeks clarification from the Minister of the position of persons covered by clauses 59 and 60.

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

**RESOURCE ASSESSMENT COMMISSION BILL 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to establish the Resource Assessment Commission and defines its functions and powers. The Commission will inquire into, and report on, the environmental, cultural, social, industry, economic or other aspects of resources and the considerations of conservation and development 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.

**SUBSIDY LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the Senate on 5 May 1989 by the Minister for Industry, Technology and Commerce.

This Bill proposes to amend the Subsidy (Cultivation Machines and Equipment) Act 1986 and the Subsidy (Grains Harvesters and Equipment) Act 1985. In effect, these amendments will terminate both subsidy schemes from 12 April 1989 to broaden the eligibility for assistance under the Grain Harvester and Equipment Act to include Harvesters and Harvest Equipment held in stock at 12 April 1989.

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

**Subclause 2(2) - Retrospectivity**

The effect of this subclause appears to have a retrospective effect adverse to former recipients of the subsidy. However in view of the nature of the amendments, and the fact that the changes were announced in the April Economic Statement, the Committee has no further comments on the Bill.

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

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**SUPPORTED ACCOMMODATION ASSISTANCE BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Housing and Aged Care.

This Bill proposes to authorise the Commonwealth to enter into a new five-year agreement with each State and the Territories for the provision of services for homeless people in crisis under a new supported accommodation assistance program.

The Committee has no comments on this Bill.

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

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**TAXATION LAWS AMENDMENT (SUPERANNUATION) BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to reduce for recipients of superannuation benefits and related amounts the tax they pay on eligible termination payments, superannuation, pensions or annuities. This Bill complements the Income Tax Rates Amendment Bill (No.2) 1989.

General Comment

Much of the substance of this Bill would have retrospective effect to 1 July 1988 and in the General Outline to the Explanatory Memorandum (pp 1-4) it states that the changes were announced in the May 1988 Economic Statement or various later press releases, between 25 May 1988 and 1 August 1988.

The Committee has always been concerned at "legislation by press release": see in particular paragraphs 2:10 to 2:12 (p11.) of the Committee's Annual Report of 1986-87. Legislation by press release is the practice whereby the Minister announces by way of a press release or press conference, the intention of the Government to change the law with effect from that day and then, often many months later, introduces into the Parliament legislation giving effect to that change back dated to the day of announcement.

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 refers to the Senate the following provisions of the Bill.

1. Superannuation and other retirement benefits
2. Provisions applying to Life Assurance Companies
3. Registration of organisations
4. Gains and losses on disposals of assets.
5. Amendments to the Occupational Superannuation Standards Act 1987.

These provisions of the Bill all come within the terms of the Orders of the Senate relating to Taxation Bills which state:-

**Taxation Bills - Limit on Retrospectivity** - That, where the Government has announced, by press release, its intention to introduce a Bill to amend taxation law, and that Bill has not been introduced into the Parliament or made available by way of publication of a draft Bill within 6 calendar months after the date of that announcement, the Senate shall, subject to any further resolution, amend the Bill to provide that the commencement date of the Bill shall be a date that is no earlier than either the date of introduction of the Bill into the Parliament or the date of publication of the Draft Bill. (Agreed to 8 November 1988, as paragraph (d) of an amendment to the motion for the second reading of the Taxation Laws Amendment Bill (No.3) 1988.) See page 5777 of Senate Notice Paper No. 149 of 4 May 1989.

The Committee has expressed its views on the practice of legislation by press release in paragraph 2:10 of the 1986-87 Annual Report (p. 11):-

"As the Committee has repeatedly stated, the practice of 'legislation by press release' carries with it the assumption that citizens should arrange their affairs in accordance with announcement made by the Executive rather than in accordance with the laws made by Parliament. It treats the passage of the necessary retrospective legislation 'ratifying' the announcement as a pure formality. It places the Parliament in the invidious position of either agreeing to the legislation without

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significant amendment or bearing the odium of overturning the arrangements which many people may have made in reliance on the Ministerial announcement. Moreover, quite apart from the debilitating effect on the practice on the Parliament, it leaves the law in a state of uncertainty."

The provisions are brought to the attention of the Senate in that they 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.

**VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1989**

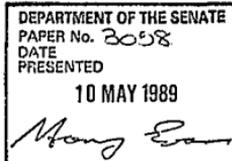
This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Veterans' Affairs.

This Bill proposes to extend repatriation pensions and benefits to Australian Defence Force Personnel who serve with the United Nations Transition Assistance Group Namibia. Other amendments in the Bill include technical and administrative adjustments relating to the portfolio.

**Clauses 7, 13, 14 and 15 - Retrospectivity**

Although the above clauses may act retrospectively - in each instance the retrospectivity is beneficial to persons affected by the Bill and adequately explained in the Explanatory Memorandum. The Committee has no further comment on the Bill.

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



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 5 OF 1989**

**10 MAY 1989**

**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.

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The Committee has considered the following Bills:

- \* Aboriginal and Torres Strait Islander Commission Bill 1989
  - \* Aboriginal Development Commission Amendment Bill 1989  
Air Navigation Amendment Bill 1989
  - \* Australian Federal Police Legislation Amendment Bill 1989  
Australian National Maritime Museum Bill 1989
  - \* Banking Legislation Amendment Bill 1989
  - \* Customs and Excise Legislation Amendment Bill (No. 3) 1989  
Customs Tariff Amendment Bill (No. 2) 1989
  - \* Defence Legislation Amendment Bill 1989  
Excise Tariff Amendment Bill 1989  
Horticultural Export Charge Amendment Bill 1989  
Horticultural Legislation Amendment Bill 1989  
Horticultural Levy Amendment Bill 1989  
Income Tax Assessment (Tax Agents' Fees) Amendment Bill 1989  
Income Tax Rates Amendment Bill (No. 2) 1989
  - \* Institute of Aboriginal and Torres Strait Islander Studies  
Bill 1989  
Resource Assessment Commission Bill 1989
  - \* Subsidy Legislation Amendment Bill 1989  
Supported Accommodation Assistance Bill 1989
  - \* Taxation Laws Amendment (Superannuation) Bill 1989
  - \* Veterans' Affairs Legislation Amendment Bill 1989
- \* 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.

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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**ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Aboriginal Affairs.

This Bill proposes to establish the Aboriginal and Torres Strait Islander Commission. The Commission will be established as a body corporate with responsibilities across the whole spectrum of Aboriginal and Torres Strait Islander affairs. This Bill replaces the 1988 Bill with the same title and embodies recommendations made by the Senate Select Committee on the Administration of Aboriginal Affairs, the Auditor-General and the Department of Finance.

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

**Clause 8 and Paragraph 7(m) - Conferring of Power.**

Clause 8 of the Bill allows the Prime Minister to confer a departmental function on the Commission by means of a notice placed in the Gazette pursuant to subclause 8(2). Paragraph 7(m) in referring to the functions of the Commission states:

"such other functions as are conferred on the the Commission by the Prime Minister by notices in force under section 8."

It is the opinion of the Committee that the notices should be subject to tabling to enable them to be subject to the scrutiny of Parliament.

**Subclauses 20(1) and (3) - Non-reviewable decisions**

These subclauses allow the Commission to give written notice to a person or body who has received a grant under the Act, that

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 person or body has failed to fulfil a term or condition of the grant.

The decision of the Commission cannot be reviewed as to its merits but only as to its legality. If a decision of this nature were to be made by the Minister the Committee considers that it should be subject to review by the Administrative Appeals Tribunal. The Committee is concerned that there is no appeal on the merits of a decision of the Commission.

The Committee seeks a clarification from the Minister as to the possibility of providing merit review for decisions made by the Commission pursuant to clause 20.

#### Clause 23 - Documents to show authority

This clause requires the Commission to ensure that documents it issues meet certain requirements. The terms of the clause do not indicate the consequences of the Commission failing to comply with those requirements.

The Committee requests that the Minister explain the consequences of the Commission not complying with the terms of the clause.

#### Clause 24 - Guidelines

This clause allows the Commission to formulate written guidelines relating to the making of loans to natural persons, and the giving of guarantees in respect of loans given to natural persons.

Subclause (5) requires the Chief Executive officer to give notice of the making of the guidelines in the Gazette.

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 has usually adopted the view that such guidelines should be tabled before Parliament and seeks the views of the Minister as to why guidelines made pursuant to clause 24 are only required to be published in the Gazette.

**Paragraph 99(a) - Entitlement to vote**

This paragraph lists one of the entitlements to vote in Regional Council Elections - "that the person is an Aboriginal person or Torres Strait Islander."

There is no provision for determining when the entitlement is satisfied, and the Minister on page 6 of the Second Reading Speech suggests that a process for determining entitlement to vote has been arrived at and will presumably be included in the Electoral Rules to be made pursuant to clause 109.

The Committee seeks a clarification of the mechanism by which a person denied eligibility to vote is able to have that decision reviewed.

**Clause 115 - Disclosure of interest**

This clause is in similar terms to clause 101 in the previous Bill and requires a member of a Regional Council to disclose a direct or indirect pecuniary interest in a matter before the Council, and that interest is to be recorded in the Minutes of the Meeting.

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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This provision is compared with:

- (1) Clause 36 - where a member of the Commission is required to disclose any pecuniary interest which is duly recorded in the Minutes. Subclause 36(2) provides that the Commissioner cannot be present, or take part in any decision relating to that matter.
  
- (2) Subclause 159(1) and (2) are similar provisions relating to disclosure by a Director of the Aboriginal and Torres Strait Islander Commercial Development Board.

The Committee seeks a comment from the Minister on reasons for the difference between the disclosure of interest provisions for members of Regional Councils, compared to those imposed on a Commissioner or a Director of the Board.

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

**ABORIGINAL DEVELOPMENT COMMISSION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Aboriginal Affairs.

This Bill proposes to amend the Principal Act to:

- . enable the Commission to provide information/advice to the Minister, upon request, including information regarding the Commission's expenditure,
- . modify business enterprise provisions so that the Commission will become or continue to be commercially successful,
- . change a number of financial provisions,
- . change staffing arrangements, and
- . provide for the appointment of a General Manager by the Minister, with responsibility for day to day administration of the Commission.

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

**Proposed section 26A - Merit Review**

This proposed section is in similar terms to clause 20 of the ASTIC Bill, in not for providing merit review of a notice by the Commission to a person or body, that a term or condition of a grant has not been fulfilled. As with clause 20 of the ASTIC Bill the Committee seeks the Minister's opinion on the possibility of providing for merit review of the decisions.

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

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**Proposed section 31A - Documents to show legislative authority**

This provision requires the Commission upon approving a grant, loan, acquisition or guarantee to ensure that the documents meet the requirements of:

- (a) the provision of this Part that authorises the making of the loan, grant or acquisition or the giving of the guarantee; and
  
- (b) which of the Commission's objectives, as set out in the corporate plan, will be furthered by the making of the loan, grant or acquisition or the giving of the guarantee.

This provision is in the same terms as clause 23 of the ASTIC Bill, and the Committee requests an explanation from the Minister of the consequences of non-compliance by the Commission with the terms of 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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**AIR NAVIGATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Transport and Communications.

This Bill proposes to amend the Air Navigation Act 1920 to provide the Minister with the power to give a measured response in cases where positive or anti-competitive action is imposed on an Australian carrier, rather than to suspend or cancel the international airline's licence (the action currently available to the Minister). The options now available to the Minister will include powers to selectively vary the number of flights, the type of aircraft and the routes the international airline operates to and from 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.

**AUSTRALIAN FEDERAL POLICE LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Attorney-General.

This Bill proposes to amend the Australian Federal Police Act 1979 and the Superannuation Act 1976. Broadly speaking, these amendments propose to:

- . guard against potential corruption in the Australian Federal Police (AFP);
- . increase the functions of the AFP; and
- . improve the AFP's administration.

The Committee draws the following provisions of the Bill to the attention of the Senate.

**Division 2 of Part VA - Double Jeopardy**

The provisions of this Division when read with proposed section 55 of the Principal Act impose a double penalty on an officer convicted of a corruption offence.

The Committee seeks the views of the Minister with respect to situations where it appears more appropriate to have a discretion in respect of the amount of superannuation 'penalty' imposed.

Proposed Division 2 of Part VA is brought to the attention of the Senate in that it may in 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.

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**Proposed section 49 - Imposition of penalty for discipline offence**

It is the opinion of the Committee that the proposed section may impose a penalty, in respect of employer superannuation contributions that appears unrelated to the seriousness of the discipline offence committed.

Proposed section 49 is brought to the attention of the Senate in that 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.

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**AUSTRALIAN NATIONAL MARITIME MUSEUM BILL 1989**

This Bill was introduced into the Senate on 2 May 1989 by the Minister for the Arts, Sport, the Environment, Tourism and Territories.

This Bill proposes to establish the Australian National Maritime Museum as an independent statutory authority from 1 July 1989. The Museum will exhibit, in co-operation with other public and private institutions, maritime historical material included in the national collection or held by the Museum.

The Committee has no comments on this Bill.

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

**BANKING LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister Assisting the Treasurer.

This Bill Proposes to amend the Banking Act 1959 to:

- . provide the Reserve Bank with formal authority for the prudential supervision of banks,
- . remove the distinction between trading and savings banks,
- . replace the Statutory Reserve Deposit requirement on trading banks with a non-callable deposit requirement on all banks, and
- . make the arrangements for collection and publication of banking statistics more flexible.

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

**Subclause 2(3) - Retrospectivity**

The subclause allows clause 39 to be retrospective to 23 January 1988, but as the provision is to amend a drafting oversight the Committee has no comment on the subclause.

**Proposed subsections 9(4), 66(2) and 67(2)**

The proposed subsections allow the Treasurer to impose conditions on various authorisations, with the discretion being reviewable only on grounds of legality not merits.

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

The authorisations relate to:

Proposed subsection 9(4) - authority to carry on banking business.

Proposed subsection 66(2) - restriction on a non bank assuming a bank related word in relation to banking business.

Proposed subsection 67(2) - restriction on non-establishment or maintenance of representative offices of overseas banks.

The provisions are a redraft of provisions enacted in 1959, well before the establishment of the Committee and the Administrative Appeals Tribunal (AAT), and the Committee is concerned that there is no appeal on the merits of a decision made pursuant to the provision.

The provisions are drawn to the attention of the Senate as they may be in breach of principle 1(a)(iii) and make such rights, liberties and/or obligations unduly dependent upon non-reviewable decisions.

Clause 7 - subsection 61(1) and paragraph 8(b)

These provisions reverse normal drafting practice and replace a reference to a specified officer with a reference to "a person" effectively giving the Reserve Bank an unfettered discretion as to the attributes of a person authorised by it.

These provisions are brought to the attention of the Senate in that they may 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.

**CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (No. 3) 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Land Transport and Shipping Support.

This Bill is an omnibus Bill, proposing amendments to the Customs Act 1901, the Excise Act 1901 and the Customs Administration Act 1985. Principally the amendments relate to the Diesel Fuel Rebate Scheme, implementing changes to improve the scheme's administration and correct some anomalies in the coverage of activities eligible for rebate.

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

**Subclause 2(2) - Retrospectivity**

The effect of the subclause is to make much of the operative part of this Bill retrospective to 3 MARCH 1989. The Committee notes that although this is an example of legislation by press release, it has been introduced within 6 months of the date of announcement, and the Committee has no further comment on the subclause.

Proposed subsection 164AA(1A) of the Customs Act 1901 and subsection 78 AB(1A) of the Excise Act 1901

The effect of the proposed subsections is to create strict liability offences in which knowledge or intention are irrelevant and the offender faces an "on the spot fine" of up to \$5000. The Explanatory Memorandum claims the provisions mirror existing offence provisions, and the Committee seeks clarification from the Minister that the provisions are in the same form as existing subsection 164AA(1) of the Customs Act which is in terms of a person acting knowingly or recklessly.

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

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**CUSTOMS TARIFF AMENDMENT BILL (No. 2) 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Land Transport and Shipping Support.

This Bill proposes to enact a range of changes to the Customs Tariff Act 1987, reflecting decisions on the chemicals and plastics industries, post 1988 TCF arrangements and the 1988 May Economic Statement.

General Comment.

Many of the provisions of this Bill are retrospective in effect which is usual for such Bills. The Committee however notes that the amendments to Schedule I are retrospective to 1 January 1988, and is of the view that the matters could possibly have been incorporated in the two amendments to the Principal Act introduced during 1988.

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 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Defence.

Establishments operated within the Office of Defence Production (within the Department of Defence) are being transferred to a government owned company, Australian Defence Industries (ADI) Pty. Ltd. This Bill proposes to amend the Defence Act 1903 to exempt ADI for a transitional period of six years from certain State and Territory laws relating to land usage, dangerous goods or licensing of activities, or which impose taxes, charges or rates. The Bill also proposes to exempt employees of prescribed organisations (such as ADI) from State and Territory firearms licensing laws.

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

**Subclause 2(3) - Retrospectivity**

Although this clause allows for retrospectivity in the amendment to clause 7, the retrospectivity is to correct a drafting error and the Committee has no further comment.

**Paragraph 122A(2)(b) and subsection 122A(3) - Immunities granted by Regulation**

The effect of the proposed provisions of the Defence Act is to allow the immunities to be granted or withheld from Australian Defence Industries Pty. Ltd. to be determined by regulation. In view of the nature and width of the determinations subject to regulation, it is the view of the Committee that they should be incorporated in the Bill. The Committee seeks the Minister's views on this point.

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

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**EXCISE TARIFF AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Land Transport and Shipping Support.

This Bill proposes to amend the Excise Tariff Act 1921 to:

- . enable the customs duty on certain imported goods to be collected at the time of importation,
- . decrease excise duty rates on low-alcohol beer,
- . alter the excise duty on naturally occurring liquefied petroleum gas with effect from 1 October 1988, and
- . impose excise duty on tapped crude petroleum oil, where that petroleum oil is for use otherwise than as refinery feedstock.

The Committee has no comments on this Bill.

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

**HORTICULTURAL EXPORT CHARGE AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to amend the Horticultural Export Charge Act 1987 to increase the maximum rate of charge payable on exports of prescribed horticultural products from 2 per cent to 5 per cent. Funds raised provide for the operation of the Australian Horticultural Corporation and the Horticultural Research and Development Corporation.

The Committee has no comments on this Bill.

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

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HORTICULTURAL LEGISLATION AMENDMENT BILL 1989

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to amend the:

- . Australian Horticultural Corporation Act 1987,
- . Horticultural Export Charge Collection Act 1987,
- . Horticultural Levy Collection Act 1987,
- . Horticultural Research and Development Corporation Act 1987,

to provide additional arrangements under which horticultural industries are able to participate in the Australian Horticultural Corporation and the Horticultural Research and Development Corporation

The Committee has no comments on this Bill.

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

**HORTICULTURAL LEVY AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to amend the Horticultural Levy Act 1987 to increase the maximum rate of levy payable on prescribed classes of horticultural products produced and sold or used in Australia from 2 per cent to 5 per cent. Funds raised provide for the operation of the Australian Horticultural Corporation and the Horticultural Research and Development Corporation.

The Committee has no comments on this Bill.

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

**INCOME TAX ASSESSMENT (TAX AGENTS' FEES) AMENDMENT BILL 1989**

This Bill was introduced into the Senate on 3 May 1989 as a Private Senators Bill by Senator Watson.

This Bill proposes to amend the Income Tax Assessment Act 1936 to permit taxpayers to receive a deduction (in addition to the cost of preparing a tax return) for fees charged by a tax agent for additional information required under the Principal Act and the Fringe Benefits Tax Assessment 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.

**INCOME TAX RATES AMENDMENT BILL (No. 2) 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to amend the Income Tax Rates Act 1986 to declare the rates of tax payable on the various components of taxable income of life assurance companies and registered organisations. This Bill complements the Taxation Laws Amendment (Superannuation) Bill 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.

D5\89

**INSTITUTE OF ABORIGINAL AND TORRES STRAIT ISLANDER STUDIES BILL  
1989.**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Aboriginal Affairs.

This Bill proposes to establish the Institute of Aboriginal and Torres Strait Islander Studies to replace the existing Australian Institute (AIAS). The membership of the Institute will be differently structured to that of the AIAS and the Institute's Council will include representation from the Aboriginal and Torres Strait Islander Commission.

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

**Clause 59 - Continuity of Employment**

Clause 59 provides that there is no continuity of employment for persons employed under contracts of employment by the former institute. Clause 60 refers to the position of members of the Public Service employed by the Institute who are consequently unattached officers under the Public Service Act 1922. The Committee seeks clarification from the Minister of the position of persons covered by clauses 59 and 60.

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

**RESOURCE ASSESSMENT COMMISSION BILL 1989**

This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to establish the Resource Assessment Commission and defines its functions and powers. The Commission will inquire into, and report on, the environmental, cultural, social, industry, economic or other aspects of resources and the considerations of conservation and development 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.

**SUBSIDY LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the Senate on 5 May 1989 by the Minister for Industry, Technology and Commerce.

This Bill proposes to amend the Subsidy (Cultivation Machines and Equipment) Act 1986 and the Subsidy (Grains Harvesters and Equipment) Act 1985. In effect, these amendments will terminate both subsidy schemes from 12 April 1989 to broaden the eligibility for assistance under the Grain Harvester and Equipment Act to include Harvesters and Harvest Equipment held in stock at 12 April 1989.

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

**Subclause 2(2) - Retrospectivity**

The effect of this subclause appears to have a retrospective effect adverse to former recipients of the subsidy. However in view of the nature of the amendments, and the fact that the changes were announced in the April Economic Statement, the Committee has no further comments on the Bill.

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

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**SUPPORTED ACCOMMODATION ASSISTANCE BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Housing and Aged Care.

This Bill proposes to authorise the Commonwealth to enter into a new five-year agreement with each State and the Territories for the provision of services for homeless people in crisis under a new supported accommodation assistance program.

The Committee has no comments on this Bill.

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

D5\89

**TAXATION LAWS AMENDMENT (SUPERANNUATION) BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to reduce for recipients of superannuation benefits and related amounts the tax they pay on eligible termination payments, superannuation, pensions or annuities. This Bill complements the Income Tax Rates Amendment Bill (No.2) 1989.

General Comment

Much of the substance of this Bill would have retrospective effect to 1 July 1988 and in the General Outline to the Explanatory Memorandum (pp 1-4) it states that the changes were announced in the May 1988 Economic Statement or various later press releases, between 25 May 1988 and 1 August 1988.

The Committee has always been concerned at "legislation by press release": see in particular paragraphs 2:10 to 2:12 (p11.) of the Committee's Annual Report of 1986-87. Legislation by press release is the practice whereby the Minister announces by way of a press release or press conference, the intention of the Government to change the law with effect from that day and then, often many months later, introduces into the Parliament legislation giving effect to that change back dated to the day of announcement.

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 refers to the Senate the following provisions of the Bill.

1. Superannuation and other retirement benefits
2. Provisions applying to Life Assurance Companies
3. Registration of organisations
4. Gains and losses on disposals of assets.
5. Amendments to the Occupational Superannuation Standards Act 1987.

These provisions of the Bill all come within the terms of the Orders of the Senate relating to Taxation Bills which state:-

**Taxation Bills - Limit on Retrospectivity** - That, where the Government has announced, by press release, its intention to introduce a Bill to amend taxation law, and that Bill has not been introduced into the Parliament or made available by way of publication of a draft Bill within 6 calendar months after the date of that announcement, the Senate shall, subject to any further resolution, amend the Bill to provide that the commencement date of the Bill shall be a date that is no earlier than either the date of introduction of the Bill into the Parliament or the date of publication of the Draft Bill. (Agreed to 8 November 1988, as paragraph (d) of an amendment to the motion for the second reading of the Taxation Laws Amendment Bill (No.3) 1988.) See page 5777 of Senate Notice Paper No. 149 of 4 May 1989.

The Committee has expressed its views on the practice of legislation by press release in paragraph 2:10 of the 1986-87 Annual Report (p. 11):-

"As the Committee has repeatedly stated, the practice of 'legislation by press release' carries with it the assumption that citizens should arrange their affairs in accordance with announcement made by the Executive rather than in accordance with the laws made by Parliament. It treats the passage of the necessary retrospective legislation 'ratifying' the announcement as a pure formality. It places the Parliament in the invidious position of either agreeing to the legislation without

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significant amendment or bearing the odium of overturning the arrangements which many people may have made in reliance on the Ministerial announcement. Moreover, quite apart from the debilitating effect on the practice on the Parliament, it leaves the law in a state of uncertainty."

The provisions are brought to the attention of the Senate in that they 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.

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**VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1989**

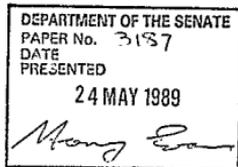
This Bill was introduced into the House of Representatives on 3 May 1989 by the Minister for Veterans' Affairs.

This Bill proposes to extend repatriation pensions and benefits to Australian Defence Force Personnel who serve with the United Nations Transition Assistance Group Namibia. Other amendments in the Bill include technical and administrative adjustments relating to the portfolio.

**Clauses 7, 13, 14 and 15 - Retrospectivity**

Although the above clauses may act retrospectively - in each instance the retrospectivity is beneficial to persons affected by the Bill and adequately explained in the Explanatory Memorandum. The Committee has no further comment on the Bill.

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



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 6 OF 1989**

**24 MAY 1989**

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.

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The Committee has considered the following Bills:

- \* Aboriginal and Torres Strait Islander Commission Bill 1989
  - \* Community Services and Health Legislation Amendment Bill 1989  
Constitution Alteration (Disqualification of Members and Candidates) 1989
  - \* Crimes Legislation Amendment Bill 1989  
Higher Education Funding Amendment Bill 1989  
Income Tax (Arrangements with the States) Repeal Bill 1989  
Income Tax (International Agreements) Amendment Bill 1989
  - \* Industry, Technology and Commerce Legislation Amendment Bill 1989
  - \* Sales Tax (Exemptions and Classifications) Amendment Bill 1989 [No.2]
  - \* Sex Discrimination Amendment Bill 1989
  - \* Social Security and Veterans' Affairs Legislation Amendment Bill (No. 2) 1989  
States Grants (Schools Assistance) Amendment Bill 1989  
States Grants (Technical and Further Education Assistance) Amendment Bill 1989
  - \* Taxation Laws Amendment Bill (No. 3) 1989
- \* 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.

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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**ABORIGINAL AND TORRES STRAIT ISLANDER COMMISSION BILL 1989**

This Bill was introduced into the House of Representatives on 4 May 1989 by the Minister for Aboriginal Affairs.

This Bill proposes to establish the Aboriginal and Torres Strait Islander Commission. The Commission will be established as a body corporate with responsibilities across the whole spectrum of Aboriginal and Torres Strait Islander affairs. This Bill replaces the 1988 Bill with the same title and embodies recommendations made by the Senate Select Committee on the Administration of Aboriginal Affairs, the Auditor-General and the Department of Finance.

The Committee commented on the Bill in Alert Digest No.5 of 1989 (10 May 1989). Further matters relevant to the principles of the Committee have since been drawn to the attention of the Committee.

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

**Subclauses 12(3) and (5) - Directions by Minister**

Clause 12 relates to the Commission performing its functions and exercising its powers in accordance with general directions given by the Minister.

Subclause 12(3) states that the Minister is not empowered to give directions relating to the content of advice that may be given by the Commission to a Minister, Department of State or authority of a State or Territory "except for the purpose of protecting the confidentiality of information given to the Commission by the Commonwealth or an authority of the Commonwealth."

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

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Subclause 12(5) states that a direction laid before Parliament by the Minister "shall not disclose any matters known to the Minister to be held sacred by Aboriginal persons or Torres Strait Islanders or by a particular community or group of Aboriginal persons or Torres Strait Islanders."

The Committee fully appreciates the concerns of the Minister in this area, but in order to keep Parliament as fully informed as is reasonable in all the circumstances, feels that the Minister should include a brief statement as to the general nature of any direction relating to sacred matters.

**Subclause 38(1) - Termination of appointment of a Commissioner**

The effect of this subclause is that a Commissioner possibly subject to suspension does not have the opportunity to put their position to the Minister.

The Committee notes that a Commissioner subject to the provision is able to:

- (a) challenge the legality of the Minister's decision to suspend if the Commissioner has not had the opportunity to be heard; and
- (b) the Commissioner can petition Parliament to seek that the suspension be terminated pursuant to subclause 38(3).

It is the opinion of the Committee that a Commissioner should have the right to put a case to the Commissioner prior to being suspended, possibly by the insertion of a "show cause" provision that the Minister require a Commissioner to "show cause" why they should not be suspended.

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

**Subclause 128(2) - Ineligibility to stand for re-election**

The subclause provides that a person whose appointment as a Commissioner representing a zone was terminated for misbehaviour pursuant to clause 38, is ineligible to stand in the next election for zone representation.

This provision could result in a person having their appointment as a counsellor terminated for "misbehaviour" for contravening a Ministerial direction (see subclause 38(7)); when the counsellor may have been acting in response to requests from constituents. The Committee is of the view that in such circumstances it appears inequitable that a person should not be able to be re-elected as a representative of the zone.

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 1989**

This Bill was introduced into the House of Representatives on 10 May 1989 by the Minister for Community Services and Health.

This Bill proposes to amend six Acts to enact a number of changes to improve a range of services provided through the Community Services and Health portfolio. The most significant changes include:

- . the implementation of the first stage of the new general practitioner fees package,
- . new private health insurance arrangements designed to maximise the security and protection of the insured aged, and
- . strengthening the confidentiality provisions of the Australian Institute of Health Act 1987

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

**Retrospectivity - Subclauses 2(2) and 2(3)**

These subclauses would make amendments to part 7 and clause 23 of the Bill retrospective to 1 January 1989 and 15 March 1989 respectively. The changes to part 7 are of an administrative nature, and those to clause 23 correct a drafting error. The Committee has no comment on the subclauses.

**Clause 5 - Directions - Australian Institute of Health**

The clause adds the State Ministers of Health to the chairperson of the Institute, being persons whom the Minister consults prior to the Minister "giving a direction to the Institute with respect to the performance of its functions or the exercise of its powers."

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 is of the view that all such directions should be required to be tabled before the Parliament as a provision of the Act.

**Clause 10 - Vocational registration of general medical practitioners**

This clause introduces proposed section 3F of the Health Insurance Act 1973 whereby the General Manager of the Health Insurance Commission, has a discretion with respect to registering or refusing to register a General Medical Practitioner as vocationally registered.

In view of the major role played in the process by the Royal Australian College of General Practitioners the Committee does not regard it as necessary that the General Manager's discretion should be subject to review by the Administrative Appeals Tribunal (AAT). The Committee regards the review of the legality of the discretion pursuant to the Administrative Decisions (Judicial Review) Act 1977 as sufficient safeguard in the circumstances.

**Clause 11 - Amendment of Schedule by Regulation**

The Committee draws attention to this clause which allows the provisions of the pathology services table in schedule 1A to be amended by Regulation.

Previously the table was amended by Ministerial Determination only after a recommendation was received from the Pathology Services Advisory Committee. As the Royal College of Pathologists has withdrawn its nominees the Committee is now inoperative and there is no mechanism enabling the Minister to effect changes to the table.

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 practice of the Committee is to draw every instance of Bills containing provisions enabling their alteration by Regulation to the attention of the Senate. In this instance the Committee notes there appears to be an appropriate basis for 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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**CONSTITUTION ALTERATION (DISQUALIFICATION OF MEMBERS AND CANDIDATES) 1989**

This measure was introduced into the Senate on 10 May 1989 by Senator McLean as a Private Senator.

This measure proposes to amend section 44(iv) of the Constitution which stipulates that public servants must resign or take unpaid leave of absence from their jobs before they can nominate as a candidate for election to either House of Federal Parliament. This Bill proposes to effect the recommendation of the Senate Standing Committee on Constitutional and Legal Affairs who reported in 1981 that public servants do not have equal rights with other citizens to seek election to Parliament and that a remedy for this discrimination should be sought.

The Committee has no comments on the Measure.

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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**CRIMES LEGISLATION AMENDMENT BILL**

This Bill was introduced into the House of Representatives on 11 May 1989 by the Attorney-General.

This Bill proposes to amend seven Acts concerned with crime, law enforcement and criminal justice administered within the Attorney-General's portfolio. Minor amendments are designed to correct or update existing legislation. Significant amendments relate to computer offences and substantially follow the recommendations of the Committee revising Commonwealth criminal law, chaired by Sir Harry Gibbs.

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

**Retrospectivity - Subclause 2(2)**

By virtue of the provisions of subclause 2(2) the proposed new part VIIC of the Crimes Act 1914 may commence at any time up to 12 months after Royal Assent. This is explained in the Explanatory Memorandum as being necessary to provide time for the Privacy Commissioner to consider applications for exemptions from the spent convictions scheme.

**Subclauses 21(1) and 22(2) - Commencement**

The amendments made by these subclauses would apply to things done and activities carried out before the commencement of the provisions, provided only that the hearing of a prosecution had not commenced before the provisions entered into force.

Clause 21 prescribes the means of calculating the amount of pecuniary penalty to be imposed upon a person, in reference to the value of the benefit they have derived from engaging in dealing with narcotics.

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

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Clause 22 expresses the intention to enable the Court to treat as the "property of the defendant" any property subject to the "effective control" of the defendant. This clause includes within the scope of the penalty, property the defendant has attempted to disguise as the property of another person or company.

The point raised by the Committee is that there appears to be a degree of retrospectivity in the effect of the clause which may encourage prosecutors to delay the commencement of proceedings. The Committee seeks a clarification of this point from the Minister.

#### Subclause 23(2) - Retrospectivity

This subclause appears to give a retrospective effect to the amendments to various subsections referred to therein, and allows the provisions to apply even to orders made before the amendments come into force.

The Committee seeks the Minister's opinion on the apparent retrospective effect of the amendment.

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

D6\89

HIGHER EDUCATION FUNDING AMENDMENT BILL 1989

This Bill was introduced into the House of Representatives on 11 May 1989 by the Minister for Employment and Education Services.

This Bill proposes to provide grants of financial assistance to the States, the Australian Capital Territory, the Northern Territory and higher education institutions for the 1989-91 triennium. The increased finding for higher education institutions amounts to \$46 million dollars.

The Committee has no comments on this Bill.

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

D6\89

**INCOME TAX (ARRANGEMENTS WITH THE STATES) REPEAL BILL 1989**

This Bill was introduced into the House of Representatives on 11 May 1989 by the Treasurer.

This Bill proposes to repeal the Principal Act which was designed to facilitate the introduction by the States of their own personal income tax laws. No State has ever enacted legislation to give effect to this arrangement. As well as the repeal of the Principal Act, this Bill also proposes to make consequential amendments to the Income Tax Assessment Act 1936.

The Committee has no comments on this Bill.

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

D6\89

**INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 10 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to give the force of law in Australia to a comprehensive double taxation agreement between Australia and the People's Republic of China covering various forms of income flows between the two countries. The agreement was signed in Canberra on 17 November 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.

D6\89

**INDUSTRY, TECHNOLOGY AND COMMERCE LEGISLATION AMENDMENT BILL  
1989**

This Bill was introduced into the House of Representatives on 11 May 1989 by the Minister representing the Minister for Industry, Technology and Commerce.

This Bill proposes to amend the:

- . Australian Industry Development Corporation Act 1970, to free the Corporation from bureaucratic procedures while maintaining strategic control;
- . Australian Trade Commission Act 1985, to increase the number of Government members from one to two on the Board of the Commission;
- . National Measurement Act 1960, to include a definition of 'measuring instrument'; and
- . Designs Act 1906, Patents Act 1952 and Trade Marks Act 1955, to enable the Commissioner of Patents and Registrars of Designs and Trade Marks to delegate statutory powers and functions to appropriate levels within their respective offices.

The Committee brings the following clauses of the Bill to the attention of the Senate.

**Subclause 2(2) - Retrospectivity**

The provisions of this clause allows the amendments to be made to clause 16 to be retrospective to 14 December 1988 to correct a drafting oversight. The Committee notes the provision but has no further comment.

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

Proclamation - Schedule 2

The Committee is pleased to note that the schedule repeals a number of enacted but unproclaimed provisions.

Part IIIA - Corporate Plans - Australian Industry Development Corporation Act 1970 (AIDC)

The Committee is of the opinion that the provisions of proposed sections 23F, 23G, and 23H which relate to -

- 23F Corporate plans to be given to Minister.
- 23G Minister may direct certain variations of corporate plan.
- 23H Board to notify Minister of significant affecting events,

should be required to be tabled before Parliament.

Proposed section 37 of the AIDC Act - subclause 17(1) of the Bill - Annual report

The clause proposes to amend section 37 of the AIDC Act listing certain matters to be included in the annual report of the corporations operations for a financial year.

In Scrutiny of Bills Alert Digest No.16 of 1988 and Scrutiny of Bills Report No.2 of 1989 in respect of the Australian Industry Development Corporation Amendment Act 1988, the Committee requested that the Minister arrange to legislate for the tabling of the Annual Report, or arrange for it to be tabled before Parliament.

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 Minister stated in his response of 13 December to the Act that:

"Whilst the Parliament will not automatically receive the subsidiary's annual report there is nothing preventing the responsible Minister from tabling the report in Parliament once it is publicly released. Members of the Parliament cannot expect to receive information on the activities of the subsidiary over and above that available to other shareholders in the company."

The Committee's views on this matter were stated in Scrutiny of Bills Alert Digest No. 1 of 1988 in relation to the Australian Airlines (Conversion in a Public Company Bill) 1988

"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.

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.

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:

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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'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 would 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

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D6\89

Parliament to ensure that the required standards of accountability applicable to Commonwealth bodies are maintained."

The Committee repeats its request that the Minister arrange for the Annual Report to be tabled before Parliament.

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

D6\89

**SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT BILL 1989  
[NO.2]**

This Bill was introduced into the House of Representatives on 10 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to amend the sales tax laws applicable to containers so that only bottles that are for repeated use in marketing alcoholic beverages qualify for exemption from tax on their initial acquisition by a buyer or wholesaler of such beverages. This Bill also proposes to extend parallel treatment to beer kegs.

The Committee brings the following clause to the attention of the Senate.

**Subclause 2(2) - Retrospectivity**

The subclause provides that paragraph 3(a) shall be taken to have commenced on 14 February 1989, which was the day following the announcement of the amendment. The Bill has been introduced within the period of 6 months and the provisions of clause 5 ensure that the retrospectivity will not adversely infringe upon persons or companies affected by the amendments.

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

**SEX DISCRIMINATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 11 May 1989 by the Attorney General.

This Bill proposes to remove section 41 of the Sex Discrimination Act 1984, which will remove most forms of direct discrimination on the grounds of sex and marital status in superannuation practices for new schemes.

**Proposed sections 41A, 41B and 41C - Repeal of section by regulation**

The provisions all apply to new, existing or the repeal of superannuation provisions. Proposed section 41C allows either or both proposed sections 41A and 41B to be repealed by regulation.

Proposed subsection 41C(3) allows for a 12 month period between the making of such regulations and their commencement, and the provision cannot really be said to be included to incorporate a speedy change to the legislation. The Explanatory Memorandum states the regulation will only be made after the Minister has consulted superannuation funds, and that,

"The purpose of these provisions is to provide that, when such a regulation is to be made, superannuation funds, will have a year in which to change their fund rules in order to comply with the Act."

The Committee is of the view that Acts should not be changed by regulation unless the changes are essentially technical or consequential in nature and brings to the attention of the Senate any provisions in a Bill that permits this course to occur.

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

D6\89

**SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION AMENDMENT  
BILL (No. 2) 1989**

This Bill was introduced into the House of Representatives on 10 May 1989 by the Minister for Veterans' Affairs.

This Bill is a portfolio Bill which proposes to amend the Social Security Act 1947, the Veterans' Entitlements Act 1986 and the Health Insurance Act 1973 to refine programs introduced in 1988 and correct minor drafting defects.

The Committee notes that numerous provisions of this Act have retrospective effect. As the retrospectivity in each case is to correct drafting errors or for other technical reasons the Committee has no further comment.

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

D6\89

**STATES GRANTS (SCHOOLS ASSISTANCE) AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 10 May 1989 by the Minister for Employment and Education Services.

This Bill proposes to make adjustments and variations in the price levels of the financial schedules in the Principal Act and provide for the payment of grants to schools in the Australian Capital Territory as a consequence of A.C.T. 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.

D6\89

**STATES GRANTS (TECHNICAL AND FURTHER EDUCATION ASSISTANCE)  
AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 10 May 1989 by the Minister for Employment and Education Services.

This Bill proposes to make provision for supplementation of grants of financial assistance to the States and the Northern Territory for technical and further education for 1989. This Bill also proposes to make provision for the inclusion of the A.C.T. in line with self-government and excludes fees payable by overseas students from the conditions of financial assistance relating to the charging of student 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.

D6\89

**TAXATION LAWS AMENDMENT BILL (NO. 3) 1989**

This Bill was introduced into the House of Representatives on 10 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to amend and repeal three Acts and make consequential amendments to other Acts. The significant amendments relate to the:

- . taxation of traditional securities,
- . capital gains principal residence exemption,
- . maintenance payments,
- . taxation of unmarried mothers,
- . beneficiary rebate,
- . gifts, and
- . access to taxation information.

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

**Clause 4 - Review of Discretion of Tax Commissioner**

Clause 28 introduces proposed Section 3E which gives the Commissioner a wide ranging power to supply information to Law Enforcement Agencies. The Committee notes that Clause 4 means that the Commissioner's discretion to disclose information on tax matters to these agencies is not reviewable as to legality under the Administrative Decisions (Judicial Review Act) 1977.

Clause 26 of the Bill inserts proposed paragraph 3B(1AA)(b) of the Taxation Administration Act 1953 which would inform Parliament on the number of occasions on which such information had been sought and supplied. The Committee is of the view that the Parliamentary oversight provided in clause 26 imposes only an indirect measure of control over how the Commissioner uses the discretion.

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 is concerned that such a major taxation change in legislative procedure relating to the disclosure of information by the Commissioner has been incorporated in a Bill which deals primarily with technical matters. The Committee draws the provisions of clauses 4, 26 and 28 to the attention of the Senate as being matters which should be fully debated by the Senate.

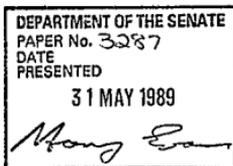
**Clause 22 - Transitional provisions**

Clause 19 modifies certain matters relating to aspects of provisions on capital gain or loss in respect of a taxpayer's home used as a principal residence.

Clause 22 is transitional provision that will apply in respect of amendments proposed by clause 19, and retains entitlement to capital losses incurred in respect of the disposal of an asset where the disposal occurred before 22 November 1988, the date on which the proposals were announced.

The Committee notes that the amendments are within the 6 months specified in Senate Orders and that the amendments are beneficial to taxpayers, accordingly the Committee has no further comment on the clause.

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



## SCRUTINY OF BILLS ALERT DIGEST

NO. 7 OF 1989

31 MAY 1989

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

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#### Extract

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

- (i) trespass unduly on personal rights and liberties;
- (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
- (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable decisions;
- (iv) inappropriately delegate legislative power; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

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The Committee has considered the following Bills:

- Customs Tariff Amendment Bill (No.3) 1989
- \* Dairy Produce Levy (No.1) Amendment Bill 1989
- \* Egg Industry Research (Hen Quota) Levy Amendment Bill 1989
- \* Exotic Animal Disease Control Bill 1989
- \* Income Equalization Deposits Laws Amendment Bill 1989
- \* Law and Justice Legislation Amendment Bill 1989
- \* Laying Chicken Levy Amendment Bill 1989
- \* Live-Stock Slaughter Levy Amendment Bill 1989
- Local Government (Financial Assistance) Amendment Bill 1989
- \* Meat Chicken Levy Amendment Bill 1989
- \* Motor Vehicle Standards Bill 1989
- National Debt Sinking Fund Amendment Bill 1989
- Northern Territory Grant (Electricity) Bill 1989
- \* Pig Slaughter Levy Amendment Bill 1989

- \* 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.

D7\89

CUSTOMS TARIFF AMENDMENT BILL (NO.3) 1989

This Bill was introduced into the House of Representatives on 23 May 1989 by the Minister for the Arts, Tourism and Territories.

This Bill proposes to implement new tariff measures for the sugar industry, operative on and from 1 July 1989.

The changes implement Government decisions taken following a report by the Senate Standing Committee on Industry, Science and Technology. The assistance package includes:

- . the termination of the Sugar Agreement Act 1985,
- . the lifting of the sugar import embargo, and
- . the referral of assistance arrangements for the industry to the Industries Assistance Commission for inquiry and report in 1991.

The Committee has no comments on this Bill.

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

D7\89

DAIRY PRODUCE LEVY (NO.1) AMENDMENT BILL 1989

This Bill was introduced into the House of Representatives on 24 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to complement the Exotic Animal Disease Control Bill 1989 to provide for the dairy industry contribution to the Exotic Animal Disease Preparedness Trust Account. This amendment Bill provides for a new levy component for exotic disease purposes, expected to raise about 12 per cent of the total funds provided by industry in the first year's operation of the Exotic Animal Diseases Preparedness Consultation Council.

The Committee notes that the provisions of the Bill allow the rate of levy to be fixed by Regulation. As there is an upper limit on the amount of levy in the provisions of the Bill the Committee has no further comment.

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

D7\89

**EGG INDUSTRY RESEARCH (HEN QUOTA) LEVY AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 24 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to complement the Exotic Animal Disease Control Bill 1989 to provide for the egg industry contribution to the Exotic Animal Disease Preparedness Trust Account. This amendment Bill provides for a new levy component for exotic disease purposes, expected to raise about two per cent of the total funds provided by industry in the first year's operation of the exotic Animal Diseases Preparedness Consultation Council.

The Committee notes that the provisions of the Bill allow the rate of levy to be fixed by Regulation. As there is an upper limit on the amount of levy in the provisions of the Bill the Committee has no further comment.

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

D7\89

**EXOTIC ANIMAL DISEASE CONTROL BILL 1989**

This Bill was introduced into the House of Representatives on 24 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to establish the Exotic Animal Diseases Preparedness Consultation Council (EADPCC) and provide financial assistance for purposes related to the control and eradication of exotic animal diseases.

The Bill sets out the proposed Council's functions and powers and makes consequential amendments to three Acts.

The Committee draws the attention of the Senate to the following provisions of the Bill.

**Interpretation - paragraph 3(p) - Definition of Exotic Animal Disease**

This paragraph states:

"any other disease that the Minister declares to be an animal disease for the purposes of this definition."

The Committee is concerned that the Minister may make a determination that is not subject to any form of Parliamentary scrutiny of the matters to be included in the definition.

In the view of the Committee such matters should be the subject of a Regulation made pursuant to the Bill, rather than a Ministerial Determination. The Committee seeks the Minister's comments on this matter.

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

**Subclause 7(2) - Minister's directions**

This subclause provides that the Council shall comply "with any directions of the Minister".

The Committee requests that the Minister provide for the directions to be tabled before Parliament.

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

D7\89

**INCOME EQUALIZATION DEPOSITS LAWS AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 23 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to amend the Loan (Income Equalization Deposits) Act 1976 and the Income Tax Assessment Act 1936 to give effect to major changes to the provisions for the making of income equalization deposits by primary producers.

The essential change is that from 1 July 1989 deposits made by primary producers with the Government as cash reserves will be tax deductible in the year of deposit and assessable for income tax purposes in the year the deposit is withdrawn.

The Committee draws the following provisions of the Bill to the attention of the Senate.

**Proposed section 3 - Definition of 'investment component'**

The definition of investment component is proposed section 3 of the Loan (Income Equalisation Deposits) Act 1976 is subject to alteration by regulation. It is the practice of the Committee to bring all such provisions to the attention of the Senate.

The proposed definition may be required to allow rapid change of the definition and the Committee seeks the Ministers views on this point.

**Proposed subsection 19(1) - Review of decision**

This proposed provision provides for an "authorised person" to have a discretion to review whether or not an owner of a deposit

- (a) was not an eligible primary producer when the deposit was accepted, or

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

D7\89

(b) was an eligible primary producer then but ceased to be one and did not again become one within 120 days of so ceasing.

Merits review is provided for decisions of the authorised person in proposed subsections 20C(3) and 22(3) of the Act and review by the Administrative Appeals Tribunal should be available in respect of this provision.

The provision is brought to the attention of the Senate in that it may breach principle 1(a)(iii) and make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

D7\89

**LAW AND JUSTICE LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 25 May 1989 by the Attorney General.

This Bill proposes to amend 13 Acts falling within the responsibility of the Attorney-General's portfolio. Several amendments are of a policy nature and some minor technical amendments are also proposed.

The Committee brings the following provisions of the Bill to the attention of the Senate.

Proposed subsections 85ZKA(3) and 85ZKB(3) of the Crimes Act 1914

The proposed subsections would impose criminal liability upon persons who had a state of mind that was something less than knowledge of the facts.

The Committee notes in paragraph 9 of the Explanatory Memorandum that in respect of new section 85ZKA the offence applies "where the person knows or, having regard to the person's abilities, experience, qualifications and other attributes and the circumstances surrounding the offence, ought reasonably to have known that the equipment has that capability."

Paragraph 11 of the Explanatory Memorandum repeats the same comments in respect of proposed section 85ZKB.

The Committee also noted that paragraph 9 of the Explanatory Memorandum refers to new section "85KA" and paragraph 11 refers to new section "85KB". The Committee notes that the new sections of the Bill are titled 85ZKA and 85ZKB respectively.

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

D7\89

The Committee is concerned that in establishing a criminal offence on the basis of what a person "ought reasonably to have known" the Bill is apparently removing the requirement of "mens rea" in criminal offences.

The Committee seeks the Minister's views on this point.

**Proposed section 7ZD(1) - Evidence Act 1985**

This provision would allow the Attorney-General a discretion relating to the production of documents, and giving of evidence for the purpose of foreign proceedings. The discretion would be reviewable only as to legality.

As proposed subsection 7ZC circumscribes the basis of the use of the discretion by the Attorney-General and, only parties to proceedings outside Australia would be affected by the exercise of the discretion the provision does not infringe the Committee's terms of reference.

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

D7\89

LAYING CHICKEN LEVY AMENDMENT BILL 1989

This Bill was introduced into the House of Representatives on 24 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to complement the Exotic Animal Disease Control Bill 1989 to provide for the egg industry contribution to the Exotic Animal Disease Preparedness Trust Account, in the event that the Egg Industry Research (Hen Quota) Levy Act 1987 was to become inoperative prior to 30 June 1995.

The Committee notes that the provisions of the Bill allow the rate of levy to be fixed by Regulation. As there is an upper limit on the amount of levy in the provisions of the Bill the Committee has no further comment.

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

D7\89

LIVE-STOCK SLAUGHTER LEVY AMENDMENT BILL 1989

This Bill was introduced into the House of Representatives on 24 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to complement the Exotic Animal Disease Control Bill 1989 to provide for the meat and livestock industry contribution to the Exotic Animal Disease Preparedness Trust Account. This amendment Bill provides for a new levy component for exotic disease purposes, expected to raise about 26 per cent of the total funds provided by industry in the first year's operation of the Exotic Animal Diseases Preparedness Consultation Council.

The Committee notes that compared with the other levy amendment Bills commented upon by the Committee in this Digest, this Bill does not provide for an upper limit to the amount of levy.

Clauses 3 to 9 of the Bill provide for amounts of levy to be set by Regulation with no provision in the legislation as to the upper amounts of such levies.

The Committee seeks the Minister's views on this apparent anomaly.

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

D7\89

LOCAL GOVERNMENT (FINANCIAL ASSISTANCE) AMENDMENT BILL 1989

This Bill was introduced into the House of Representatives on 23 May 1989 by the Minister Representing the Minister for Immigration, Local Government and Ethnic Affairs.

This Bill proposes to amend the Local Government (Financial Assistance) Act 1986 to insert a new 'base figure' for 1989-90. This amendment is necessitated by changes agreed at the Premiers' Conference regarding general purpose payments to the States.

This Bill proposes to commit a specific grant of \$671 million, an increase of \$18.5 million on last year's assistance.

The Committee has no comments on this Bill.

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

D7\89

**MEAT CHICKEN LEVY AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 24 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to complement the Exotic Animal Disease Control Bill 1989 to provide for the chicken meat industry contribution to the Exotic Animal Disease Preparedness Trust Account. This amendment Bill provides for a new levy component for exotic disease purposes, expected to raise about six per cent of the total funds provided by industry in the first year's operation of the Exotic Animal Diseases Preparedness Consultation Council.

The Committee notes that the provisions of the Bill allow the rate of levy to be fixed by Regulation. As there is an upper limit on the amount of levy in the provisions of the Bill the Committee has no further comment.

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

**MOTOR VEHICLE STANDARDS BILL 1989**

This Bill was introduced into the House of Representatives on 23 May 1989 by the Minister for Land Transport and Shipping Support.

This Bill proposes to give effect to a recommendation by the Inter-State Commission that there be a common Australia-wide system of vehicle standards. These standards will apply to all motor vehicles (including trailers) and initially will conform to the existing Australian Design Rules. Standards will be made by the Minister by Order, being a disallowable instrument for the purposes of the Acts Interpretation Act 1901.

The Committee brings the following provisions of the Bill to the attention of the Senate.

**Paragraphs 14(2)(b), 15(2)(b) and 16(3)(b) - Ministerial approval**

These provisions allow the Minister to approve the supply of non-standard vehicles, use of non-standard vehicles by manufacturers, and modification of standard vehicles in a way that makes non-standard. Without Ministerial approval these actions would be criminal offences carrying substantial monetary penalties.

The Committee notes there is no parliamentary oversight of the grant of Ministerial approval.

The Committee requests that the Minister provide for an Annual Report of the circumstances in which such approvals have been granted to be tabled before Parliament.

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

**Subclause 24(1) - Setting of Fees by Regulation**

The Committee notes that this subclause allows the amount of fees to be changed to be determined by Regulation with no upper limit specified in the Bill. Subclause 24(4) provides that the level of fees will be no more than will cover the necessary costs, and whilst this provides an indirect upper limit to the level of fees the Committee requests that the Bill be amended to provide an upper limit to the level of fees.

**Subclause 30(5)**

This subclause enables an inspector searching for things specified in a warrant to seize things not specified in the warrant. If the seizure is subject to objection the inspector is required to show from objective facts that the inspector believed on reasonable grounds that the seizure was justified. The requirement is seen by the Committee as an appropriate safeguard on the power.

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

D7\89

**NATIONAL DEBT SINKING FUND AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 24 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to amend the National Debt Sinking Fund Act 1966 to delete reference to the Chief Justice as an ex-officio member of the National Debt Commission. The Chief Justice's membership was based on British precedence.

The Chief Justice believes that the activities of the Commission are not relevant to the responsibilities of the Chief Justice and that his membership as a legal representative is not necessary when legal matters are referred to the Attorney-General's Department.

The Committee has no comments on this Bill.

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

D7\89

**NORTHERN TERRITORY GRANT (ELECTRICITY) BILL 1989**

This Bill was introduced into the House of Representatives on 23 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to provide for the continuation of a grant to the Northern Territory to subsidise its electricity operations in 1989-90. The subsidisation of the Territory's electricity has existed since self-government and provides for an annual indexed payment of \$40 million until 1988-89. The assistance has continued beyond 1988-89 and it will be discontinued in 1993-94.

The Committee has no comments on this Bill.

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

D7\89

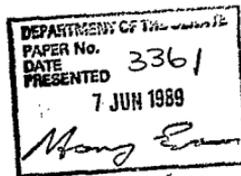
**PIG SLAUGHTER LEVY AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 24 May 1989 by the Minister for Primary Industries and Energy.

This Bill proposes to complement the Exotic Animal Disease Control Bill 1989 to provide for the pig industry contribution to the Exotic Animal Disease Preparedness Trust Account. This Amendment Bill provides for a new levy component for exotic disease purposes, expected to raise about four per cent of the total funds provided by industry in the first year's operation of the Exotic Animal Diseases Preparedness Consultation Council.

The Committee notes that the provision of the Bill allows for the rate of levy to be fixed by Regulation. As there is an upper limit on the amount of levy in the provisions of the Bill, the Committee has no further comment.

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 1989**

**7 JUNE 1989**

**ISSN 0729-6852**

## SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

### MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator J. McGauran  
Senator K. Patterson  
Senator J. 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.

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The Committee has considered the following Bills:

- \* Child Support (Assessment) Bill 1989
- \* Commonwealth and Commonwealth Instrumentalities  
(Application of Laws) Bill 1989
- Nuclear Non-Proliferation (Exports) Bill 1988
- \* Patents Bill 1989
- \* Sales Tax (Exemptions and Classifications) (Computer  
Programs) Amendment Bill 1989
- \* Sales Tax Laws (Computer Programs) Amendment Bill 1989
- \* Taxation Laws Amendment Bill (No.4) 1989
- Wheat Marketing (Renewal of Sunset Clauses) Amendment Bill  
1989.

- \* 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.

D8\89

**CHILD SUPPORT (ASSESSMENT) BILL 1989**

This Bill was introduced into the House of Representatives on 1 June 1989 by the Acting Minister for Social Security.

This Bill proposes to provide for the registration, collection and enforcement of court orders for maintenance by the Child Support Registrar. It proposes to provide administrative assessment of Child Support by the Registrar which would be registrable under the Child Support Act 1988 (to be renamed the Child Support (Registration and Collection) Act 1988).

The Committee brings the following clauses of the Bill to the attention of the Senate.

**Subclause 20(1) - Alteration of Bill by Regulation.**

The provisions of this subclause allow for regulations to specify those classes of children which are not eligible children for the purposes of the Act.

The Committee has a practice of drawing all provisions which allow for the amendment of Bills by Regulation to the attention of the Senate. In this instance the provisions appear to be necessary as the various relevant State and Territory child welfare laws are likely to be subject to amendment which may require prompt action to update references.

**Subclause 100(2) - Imposition of liability.**

This subclause is in the same form as proposed subsections 852KA(3) and 852KB(3) of the Crimes Act 1914 which were commented upon by the Committee in Alert Digest No.7 of 1989 (31 May 1989).

The subclause states:

"(2) In a prosecution of a person for an offence against subsection (1), if having regard to:

- (a) the person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged offence;

the person ought reasonably to have known that the statement to which the prosecution relates was false or misleading in a material particular, the person is taken to have known that the statement was false or misleading in a material particular."

The Committee is concerned that in establishing a criminal offence on the basis of what a person "ought reasonably to have known" the Bill is apparently removing the requirement of "mens rea" in a criminal offence.

The subclause is drawn to the attention of the Senate in that it may trespass unduly on personal rights and liberties.

General Comment.

In paragraph 51(c) on page 19 lines 25-26 of the Bill it states "(with each shared custody of child of the liable parent taken to be half a child)".

The Committee finds the statement that a parent is liable for the custody of "half a child" a totally inappropriate term and requests that it be redrafted.

**COMMONWEALTH AND COMMONWEALTH INSTRUMENTALITIES (APPLICATION OF LAWS) BILL 1989**

This Bill was introduced into the House of Representatives on 31 May 1989 by the Attorney-General.

This Bill proposes to clarify what kinds of State and Territory laws apply to the Commonwealth and Commonwealth instrumentalities. Further, it addresses problems created by longstanding uncertainties as to the extent of the Commonwealth's implied constitutional immunities from State law, and problems arising from section 64 of the Judiciary Act 1903 in light of the High Court's decision in The Commonwealth v Evans Deakin Industries Ltd. (1986).

**Subclause 2(2) - Commencement.**

This subclause provides that clause 9 of the Bill is not to commence until a year after the Bill receives the Royal Assent, which is longer than the 6 month period now accepted as appropriate.

The Explanatory Memorandum indicates that the legislation of all States, the Northern Territory and Norfolk Island, will be required to be reviewed to ascertain to what extent their legislation is to be applicable to Commonwealth Corporations. The Committee regards the period of 12 months to be appropriate in light of this explanation.

**Paragraphs 5(2)(b) and (d) and (3)(a) and (c) and subclause 6(2) - Regulations that determine which State and Territory laws apply to the Commonwealth.**

These provisions allow regulations to determine which State and Territory laws apply to the Commonwealth and in what form. The Minister states in the Second Reading Speech (page 4):

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"The Government believes that the only feasible approach is to specify in an Act some classes of State and Territory legislation (defined to include any relevant continuing Imperial legislation) that should apply to the Commonwealth and its instrumentalities, and to have regulation making powers to deal with other classes of laws and with any special problems - the regulations being subject to Parliamentary scrutiny and disallowance. This provides the necessary flexibility to respond quickly to new State or Territory legislation. The Bill follows this course.

The Committee notes that subclauses 12(2) and (3) require that any regulations that apply, or cease to apply to the Commonwealth cannot have retrospective operation, but operate only from the date of the making of the regulation.

In view of the matters stated by the Minister in the Second Reading speech and the provisions of subclauses 12(2) and (3), the Committee has no further comment on the proposed paragraphs and subclause.

**PATENTS BILL 1989**

This Bill was introduced into the House of Representatives on 1 June 1989 by the Minister for Science, Customs and Small Business.

This Bill proposes to repeal and replace the Patents Act 1952. The Bill improves a variety of administrative matters, implements a number of policy measures, strengthens the standards of patentability for standard patents and is modernised in its language to avoid unnecessary complexity. The Bill also contains amendments to the Patents Act (contained in the Patents Amendment Bill 1989) relating to extensions of patent term.

**General Comment.**

The Committee is pleased to note the intention of the Minister to make the language of the legislation clear to "non-experts." As the Minister says in the first paragraph of his Second Reading Speech.

"..... it brings the language and structure of the Act down to earth, so that mere mortals without law degrees have some chance of understanding what it is all about - at least in general terms"

D8\89

**NUCLEAR NON-PROLIFERATION (EXPORTS) BILL 1988**

This Bill was introduced as a Private Senator's Bill on 1 June 1988 by Senator Sanders.

The Bill is designed to prevent the proliferation of nuclear weapons by regulating the exportation of nuclear material and certain associated items from Australia.

The Bill has not previously been incorporated in a Scrutiny of Bills Digest.

The Committee has no comments on this Bill.

D8\89

**SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) (COMPUTER PROGRAMS)  
AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 31 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to complement the Sales Tax Laws (Computer Programs) Amendment Bill 1989 to partly remove the "aids to manufacture" exemption in relation to goods that exclusively, primarily or principally embody computer programs, except for microchips. This Bill also proposes to allow regulations to be made to remove the remaining exemptions.

**General Comment.**

This Bill is an example of "legislation by press release" as the whole of the Bill is to be taken to have commenced on 23 December 1988.

As the Bill has been introduced within the 6 month period required by the Senate Order and the provisions of the Bill are beneficial to tax payers the Committee has no further comment on the Bill.

D8\89

**SALES TAX LAWS (COMPUTER PROGRAMS) AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 31 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to remove sales tax liability from all computer software, except on firmware (ie, microchips).

**General Comment.**

The Bill is an example of "legislation by press release" as much of the Bill is to be taken to have commenced on 23 December 1988.

As the Bill has been introduced within the 6 months period required by the Senate Order, and the provisions of the Bill are beneficial to taxpayers the Committee has no further comment on the Bill.

D8\89

**TAXATION LAWS AMENDMENT BILL (NO.4) 1989**

This Bill was introduced into the House of Representatives on 31 May 1989 by the Minister Assisting the Treasurer.

This Bill proposes to amend several taxation Acts to:

- . broaden the income tax concession for research and development project expenditure incurred after 20 November 1987;
- . modify imputation provisions relating to 1988-89 assessments received by companies after 18 January 1989 and before 1 July 1989;
- . exempt from tax the pay and allowances earned by Defence Force personnel in Namibia as part of the UN Transitional Assistance Group;
- . enable a taxpayer to elect that the grant of an eligible long term lease or sublease of land will be treated as disposal of underlying freehold or leasehold interest in the land;
- . provide an income tax deduction for expenses incurred by candidates in contesting election for the A.C.T. Legislative Assembly;
- . terminate from 1 July 1991 the deduction for certain subscription monies paid in respect of initial shares in licensed management and investment companies;
- . modify substantiation rules that apply where an employee receives transport allowances under an industrial award;
- . amend employer provisions of the tax file number arrangements;
- . amend the sales tax law to exempt shipping containers of a kind used in containerised cargo transportation systems;
- . enable the Commissioner of Taxation (in certain circumstances) to apply to a court of summary jurisdiction to set aside a conviction or order in relation to a prescribed taxation offence.

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**General Comment.**

Certain parts of this Bill represent examples of "legislation by press release." For example the amendments to the Income Tax Assessment Act 1936 to give effect to the 8 May 1989 Statement on Science and Technology. The statement itself is prospective in effect as are the relevant provisions of the Bill.

The amendments to Part 4 of the Bill (Amendment of the Sales Tax (Exemptions and Classifications) Act 1935 relate to announcements made on 25 January 1989 but the amendments are of beneficial effect to taxpayers.

Subclauses 29(2),(3), and (7) - Retrospectivity.

Subclauses 29(2),(3), and (7) which relate to the application of the amendments have retrospective effect, but the retrospectivity is to clarify the drafting or is beneficial to taxpayers.

The above matters are raised by the Committee consistent with its policy of raising examples of both "legislation by press release" and any provision with retrospective effect. In view of the matters stated in respect of the above provisions the Committee has no further comment.

D8\89

**WHEAT MARKETING (RENEWAL OF SUNSET CLAUSES) AMENDMENT BILL 1989**

This Bill was introduced into the Senate on 31 May 1989 as a Private Senator's Bill by Senator Powell.

This Bill proposes to amend the Wheat Marketing Act 1984 to ensure that the Australian Wheat Board continues to operate.

The Committee has no comments on this Bill.



DEPARTMENT OF THE SENATE PAPER No. 3866 DATE PRESENTED 17 AUG 1989 <i>Mong Ewan</i>
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**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 9 OF 1989**

**16 AUGUST 1989**

**ISSN 0729-6851**

**SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS**

**MEMBERS OF THE COMMITTEE**

**Senator B. Cooney (Chairman)**  
**Senator K. Patterson (Deputy Chair)**  
**Senator M. Beahan**  
**Senator R. Crowley**  
**Senator J. McGauran**  
**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:

- . Child Care (National Children's Services Program)  
Amendment Bill 1989
- \* Family Law Amendment Bill 1989
- . Income Tax Assessment (Savings Account Interest) Amendment  
Bill 1989 [No.2]
- . Income Tax Assessment (Housing Loan Interest) Amendment  
Bill 1989 [No.2]
- . Peace Trust Fund Bill 1989
- \* Privacy Amendment Bill 1989

\*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.

**CHILD CARE (NATIONAL CHILDREN'S SERVICES PROGRAM) AMENDMENT  
BILL 1989**

This bill was introduced into the Senate on 15 June 1989 as a Private Senator's Bill by Senator Dunn.

This bill proposes to amend the Child Care Act 1972 to provide child care through a national child care program. The program proposes to provide services for children under school age (including mixes of centre based and family day care) and older children.

The Committee has no comment on this bill.

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

**FAMILY LAW AMENDMENT BILL 1989**

This bill was introduced into the Senate on 16 June 1989 by the Minister for Justice.

The bill proposes to amend the Family Law Act 1975, principally to provide force to orders and a mechanism to ensure that concerned parties and the courts address the problems of access to ensure all needs of parties in dispute are met in an appropriate way.

The committee draws the following provisions of the bill to the attention of the Senate.

Proposed new subsections 112AP(4) and (5) -  
Limitation of Penalty.

The proposed new subsections of the Principal Act would allow a court to punish a person or corporation for contempt. No maximum limit is set on the fine that may be imposed or the term of imprisonment that may be set. The Explanatory Memorandum states that the provisions repeat existing subsections 108(3) and (4) of the Principal Act.

The Principal Act has contained the provisions since it was first passed in 1975, before the Committee was established. As far as the Committee can ascertain the provisions are unlike any other criminal sanctions.

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

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

**INCOME TAX ASSESSMENT (SAVINGS ACCOUNTS INTEREST) AMENDMENT  
BILL 1989 [No.2]**

This bill was introduced into the Senate on 16 June 1989 as a Private Senator's Bill by Senator Haines.

The bill proposes amendments to the Income Tax Assessment Act 1936 with the aim of achieving the following:

- . encourage savings;
- . offer small investors a secure investment with a good return; and
- . assist those saving for their own home.

The bill is identical to the Bill of the same short title introduced into the Senate by Senator Haines on 1 March 1989. (See Scrutiny of Bills Alert Digest, No.1 of 1989, 8 March 1989).

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 (HOUSING LOAN INTEREST) AMENDMENT BILL  
1989 [No.2]**

This bill was introduced into the Senate on 16 June 1989 as a Private Senator's Bill by Senator Haines.

The bill proposes amendments to the Income Tax Assessment Act 1936 to provide tax relief on home loan repayments for those living in their mortgaged home.

The bill is identical to the bill of the same short title introduced into the Senate by Senator Haines on 2 March 1989. (See Scrutiny of Bills Alert Digest, No.1 of 1989, 8 March 1989).

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

**PEACE TRUST FUND BILL 1989**

This bill was introduced into the Senate on 15 June 1989 as a Private Senator's Bill by Senator Vallentine.

The bill proposes to establish:

- . a right of conscientious objection to the payment of taxes that may be used for military purposes;
- . a Peace Trust Fund into which conscientious objectors can request the payment of 10 per cent of their income tax payments; and
- . a Board of Trustees to administer the Peace Trust Fund.

The Committee has no comment on this bill.

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

**PRIVACY AMENDMENT BILL 1989**

This bill was introduced into the Senate on 16 June 1989 by the Minister for Consumer Affairs.

The bill proposes to amend the Privacy Act 1988 to provide privacy protection for individuals in relation to their consumer credit records. The bill principally adopts the OECD Guidelines on Personal Privacy, which Australia has adhered to.

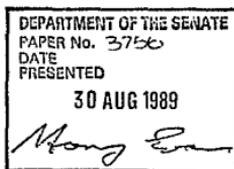
The Committee draws the following provision of the bill to the attention of the Senate.

Proposed subsection 11B(2) - Discretion to exempt a class of credit providers.

This provision would grant to the Governor-General acting on the advice of the Executive Council, the discretion to exempt a class of credit providers from the obligations to be imposed under proposed Part IIIA of the Principal Act.

The provision may also constitute an inappropriate delegation of power as it permits the application of subsection 11B(1) to be changed by regulations. The Committee seeks the Ministers views on both these points.

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 1989**

**30 AUGUST 1989**

**SCRUTINY OF BILLS ALERT DIGEST**

**NO.10 OF 1989**

**30 AUGUST 1989**

**ISSN 0729-6851**

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator K. Patterson (Deputy Chair)  
Senator M. Beahan  
Senator R. Crowley  
Senator J. McGauran  
Senator J.F. Powell

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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:

- \* Abortion Funding Abolition Bill 1989
- \* Australian Federal Police Amendment Bill 1989
- Commonwealth Borrowing Levy Amendment Bill 1989
- Commonwealth Borrowing Levy Collection Amendment Bill 1989
- \* Crimes (Superannuation Benefits) Bill 1989
- Industrial Relations (Directions to Stop Industrial Action) Amendment Bills 1989
- Judicial and Statutory Officers Remuneration Legislation Amendment Bill 1989

\*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.

ABORTION FUNDING ABOLITION BILL 1989

This bill was introduced into the House of Representatives on 17 August 1989 as a Private Member's Bill by Mr. Webster.

The bill proposes to remove the current entitlement to payment of a medical benefit under the Health Insurance Act 1973 in respect of certain medical services which result in an abortion, except where:

- . a procedure, resulting in an abortion, has been carried out to avert the death of the pregnant person, or
- . a procedure, resulting in an abortion, has been carried out to treat a certain pathological condition and the medical practitioner does not know, nor reasonably expect, an abortion would occur.

The Committee draws attention to the following aspect of the bill.

General Comment - Right of Appeal

One effect of this bill would appear to be to grant a medical practitioner the discretion to determine whether or not the performing of an abortion is necessary to save the life of the mother.

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

If a medical practitioner were to exercise that discretion against the giving of a certificate as set out in proposed schedule 1AA, the pregnant person would be denied the right to claim Medicare benefits for the procedure, but there appears to be no means by which the pregnant person could challenge the exercise of the discretion by the medical practitioner.

This aspect of the bill is brought to the attention of the Senate in that it may 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.

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1989

This bill was introduced into the House of Representatives on 17 August 1989 by the Attorney-General.

The bill proposes to facilitate the recovery of Commonwealth funded superannuation benefits already paid to Australian Federal Police (AFP) members convicted of corruption and to enable the Director of Public Prosecutions to obtain restraining orders against property of a member/former member of the AFP where it is likely that the member may be convicted of a corruption offence.

The Committee brings the following provisions of the bill to the attention of the Senate.

Proposed paragraph 42C(1)(b) - Presumption of guilt

Proposed paragraph 42C(1)(b) of the Principal Act may be regarded as creating a presumption of guilt by reason of the fact that a person has absconded after a warrant has been issued for the arrest of that person.

Clause 9 of the bill inserts paragraph 46(2)(b) requiring a court to be satisfied that the person might have been convicted. However, the onus of proof is only to the civil standard of the balance of probabilities rather than the criminal standard of proof beyond reasonable doubt. The only evidence available in the matter would be that of 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 Committee brings the proposed paragraph to the attention of the Senate in that it may trespass unduly on personal rights and liberties.

**Proposed paragraph 49A(1)(b) - Creation of presumption of guilt**

The proposed paragraph of the Principal Act may appear to create a presumption of guilt, in that the Director of Public Prosecutions may apply for a restraining order even though a defendant has merely been charged with an offence.

The Committee notes that such an order is similar to that for which a party to civil proceedings may apply, known as a "Mareva injunction". A Mareva injunction enables a plaintiff to civil proceedings to ensure that, if he or she is successful in those proceedings, the defendant will not, in the meantime, have disposed of assets so as to render execution of any judgement ineffective.

**Proposed subsection 49J(4) - Protection against self-incrimination**

The proposed subsection would abrogate the protection against self-incrimination. Proposed subsection (5) is drafted in a way that is acceptable to the Committee, in preventing information derived directly or indirectly as a result of subsection (4) being used as evidence in subsequent 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.

**COMMONWEALTH BORROWING LEVY AMENDMENT BILL 1989**

This bill was introduced into the House of Representatives on 16 August 1989 by the Minister Assisting the Treasurer.

The bill proposes to provide for the continued collection of the Commonwealth Borrowing Levy from all Commonwealth semi-government authorities and Government-owned companies, other than those engaged in financial intermediation (eg the Commonwealth Bank). The schedule to the Act will be amended to include the Civil Aviation Authority and Aerospace Technologies of Australia as authorities subject to the levy. The ACT Electricity and Water Authority is to be deleted from the schedule. Further the bill proposes minor definitional changes to allow the levy to be applied to future authorities through their enabling legislation, and to the subsidiaries of Commonwealth authorities and companies.

The Committee has no comment on this bill.

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

**COMMONWEALTH BORROWING LEVY COLLECTION AMENDMENT BILL 1989**

This bill was introduced in the House of Representatives on 16 August 1989 by the Minister Assisting the Treasurer.

The bill proposes to ensure that the ACT Electricity and Water Authority will no longer be liable for payments of the Commonwealth Guarantee Charge on outstanding amounts of borrowings undertaken in 1986-87, from the proclamation of ACT self-government on 11 May 1989.

The Committee has no comment on this bill.

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

**CRIMES (SUPERANNUATION BENEFITS) BILL 1989**

This bill was introduced into the House of Representatives on 17 August 1989 by the Attorney-General.

The bill proposes to provide for the restraint of property and the recovery of superannuation benefits which have already been paid to a Commonwealth employee who is convicted of corruption and sentenced to more than 12 months imprisonment. The bill proposes to cover parliamentarians as well as Commonwealth employees and supplements the Australian Federal Police Amendment Bill 1989 which contains similar provisions.

The Committee brings the following provisions of the bill to the attention of the Senate.

**Proposed paragraph 6(1)(b) - Presumption of guilt**

This provision is in the same form as proposed paragraph 42C(1)(b) of the Australian Federal Police Amendment Bill 1989. Paragraph 19(2)(b) of this bill is equivalent to proposed paragraph 46(2)(b) of that bill.

Accordingly the Committee brings the proposed paragraph to the attention of the Senate in that it may 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.

## Part 2 of the Bill

Part 2 of this bill is to the same effect as Division 2 of Part VA of the Australian Federal Police Act 1979 inserted by the Australian Federal Police Legislation Amendment Act 1989.

The Committee reported on the amendments to Division 2 of Part VA of the Australian Federal Police Act 1979 in the Eighth Report of 1989, and noted that the provisions of the Division when read together with section 55 appeared to impose a double penalty on an officer convicted of a corruption offence.

The Committee noted the response of the Minister in the Eighth Report of 1989 and assumes that the Attorney-General would view Part 2 of this bill in the same light as Division 2 of Part VA of the Australian Federal Police Act.

### Proposed paragraph 24(1)(b) - "Mareva Injunction"

The proposed paragraph is to the same effect as proposed paragraph 49A(1)(b) of the Australian Federal Police Amendment Bill and the Committee makes the same comment.

### Subclauses 32(4) and (5) - Abrogation of protection against self-incrimination

Subclauses 32(4) and (5) are to the same effect as proposed subsections 49J(4) and (5) of the Australian Federal Police Amendment Bill and the Committee makes the same comment.

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 (DIRECTIONS TO STOP INDUSTRIAL ACTION)  
AMENDMENT BILL, 1989**

This bill was introduced into the Senate on 16 August 1989 as a Private Senator's Bill by Senator Chaney.

The bill proposes to amend the Industrial Relations Act 1988 to ensure that directions of the Industrial Relations Commission (IRC) to stop industrial action are enforceable. Failure to comply with an injunction enforcing an IRC direction would constitute contempt of court.

The bill is identical to that introduced by Mr Reith in the House of Representatives on 17 August 1989.

The Committee has no comment on this bill.

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

JUDICIAL AND STATUTORY OFFICERS REMUNERATION LEGISLATION  
AMENDMENT BILL 1989

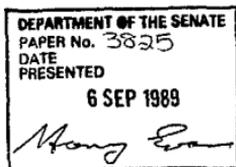
This bill was introduced into the House of Representatives on 17 August 1989 by the Attorney-General.

The bill proposes to:

- . implement the June 1989 recommendation by the Remuneration Tribunal that the remuneration payable to Federal and Australian Capital Territory judges should be increased,
- . implement a government decision (announced on 13 July 1989) that the remuneration of judges of the Family Court of Australia should equate with that of the Federal Court judiciary, and
- . amend the Remuneration Tribunal Act 1973 to give the Tribunal a power to determine (rather than recommend) judicial salaries, subject to disallowance by either House of the Parliament.

The Committee has no comment on this bill.

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



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 11 OF 1989**

**6 SEPTEMBER 1989**

SCRUTINY OF BILLS ALERT DIGEST

NO.11 OF 1989

6 September 1989

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator K. Patterson (Deputy Chair)  
Senator M. Beahan  
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Senator J. McGauran  
Senator J.F. Powell

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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:

Flags Amendment Bill 1989

Geneva Conventions Amendment Bill 1989

\* Goat Fibre Levy Bill 1989

\* Goat Fibre Levy Collection Bill 1989

Industrial Relations (Directions to Stop Industrial  
Action) Amendment Bill 1989 [No.2]

National Health Amendment Bill 1989

National Health (Pharmaceutical Benefits  
Determinations) Amendment Bill 1989

Sales Tax (Exemptions and Classifications) Amendment  
Bill (No.3) 1989

Smoking and Tobacco Products Advertisements  
(Prohibition) Bill 1989

\*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.

FLAGS AMENDMENT BILL 1989

This bill was introduced into the House of Representatives on 31 August 1989 as a Private Member's Bill by Mr Fife.

The bill proposes to:

- . amend the Flags Act 1953 to ensure that the Australian national flag cannot be altered except with the approval of the Australian people voting in a referendum,
- . ensure that the Australian national flag is not changed by using the provisions of the Flags Act 1953, and
- . provide that 'other flags or ensigns' can be appointed by the Governor-General only by regulation, disallowable by either House of the Parliament.

The Committee has no comment on this bill.

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

GENEVA CONVENTIONS AMENDMENT BILL 1989

This bill was introduced into the Senate on 30 August 1989 as a Private Senator's Bill by Senator Macklin.

The bill proposes to amend the Geneva Conventions Act 1957 to enable Australia to ratify Protocols I and II, additional to the Conventions. It is identical to the bill introduced by the Government into the House of Representatives on 2 March 1989.

The Committee commented on this bill in Alert Digest No.1 of 1989 (8 March 1989) and has no further comment.

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

GOAT FIBRE LEVY BILL 1989

This bill was introduced into the House of Representatives on 30 August 1989 by the Minister for Primary Industries and Energy.

The bill proposes to impose a levy rate of 1.5 per cent (with a maximum rate of 5 per cent) on the sale of goat fibre to finance research similar to that in operation for other rural industries (eg. triticale, grain legumes, cotton and sugar).

The Committee draws the following provisions of the bill to the attention of the Senate.

Clause 4 - Extension of definition of 'leviable fibre' and 'sale value' by regulation

Subparagraph a(ii) of the definition of 'leviable fibre' and paragraph (c) of the definition of 'sale value' allow the effect of the bill to be extended by regulation. The Committee is of the view that changes to bills by regulation should only be possible when the changes are essentially technical or consequential in nature and seeks the views of the Minister as to why amendments to these definitions cannot be included in a portfolio omnibus bill.

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

#### GOAT FIBRE LEVY COLLECTION BILL 1989

This bill was introduced into the House of Representative on 30 August 1989 by the Minister for Primary Industries and Energy.

The bill proposes to enable the collection of the levy imposed by the Goat Fibre Levy Bill 1989. Levies will be paid into the Australian Special Rural Research Fund.

The Committee brings the following provisions of the bill to the attention of the Senate.

#### Subclause 3(1) - Definition of goat's fibre-selling broker

The Committee notes that the definition refers to a 'goat's fibre-selling broker'. The provision should be drafted so as to not contemplate a goat authorising a broker to sell its own fibre.

#### Subclause 3(1) - Definition of leviable amount -

Paragraph (b) of the definition of leviable amount allows the sum of \$50.00 specified in paragraph (a) to be amended by regulation.

The Committee regards provisions that leave the maximum amount of levy to be set by later regulation as unacceptable. The maximum amount of levy to be paid should be able to be ascertained from the provisions of the primary legislation.

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

**Subclause 3(1) - Definition of magistrate to include justice of the peace**

The definition of magistrate in the bill includes a 'justice of the peace', who is enabled to issue a warrant for an authorised person to enter premises pursuant to the provisions of clause 12 of the legislation. The Committee does not accept that a justice of the peace should be enabled to issue a search warrant.

The view of the Committee is that justices of the peace are not judicial officers, and that the issue of search warrants should be confined to judicial officers.

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

**Subclauses 4(1), (2), (3) and (4) - Time for payment may be amended by regulation**

The period allowed for the payment of levy pursuant to this clause is 28 days or 'such other period as is prescribed'. The Committee is prepared to accept that the subclauses be amended by regulation, but is of the opinion that the period allowed for payment of levy should not be less than 28 days.

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

**Subclause 13(2) - Abrogation of privilege against self-incrimination**

The subclause would abrogate the normal protection against self-incrimination in respect of the giving of information or a return under the Act or the regulations.

However, as the subclause is drafted so as to protect information obtained both directly or indirectly, from being used in proceedings other than those referred to in the subclause, the Committee is prepared to accept the provisions.

**Clause 15 - Appointment of authorised persons**

The clause permits the Secretary to appoint 'a person' as an authorised person, without any indication of the attributes or occupation that such persons might be expected to hold.

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)(v) 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 (DIRECTIONS TO STOP INDUSTRIAL ACTION)  
AMENDMENT BILL 1989 (NO.2)

This bill was introduced into the Senate on 30 August 1989 as a Private Senator's Bill by Senator Chaney.

The bill proposes to amend the Industrial Relations Act 1988 to ensure that directions of the Industrial Relations Commission (IRC) to stop industrial action are enforceable. Failure to comply with an injunction enforcing an IRC direction would constitute contempt of court.

The bill is identical to that introduced by Senator Chaney on 16 August 1989 (see Scrutiny of Bills Alert Digest No.10, dated 30 August 1989).

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 1989

This bill was introduced into the House of Representatives on 30 August 1989 by the Minister for Housing and Aged Care.

The bill proposes to:

- . amend the National Health Act 1953 to increase the maximum general patient contribution paid under the Pharmaceutical Benefits Scheme from \$11.00 to \$12.00 per prescription, effective from 1 October 1989, and
- . provide for the annual indexation of the general patient contribution by the March "All Groups Consumer Price Index", effective from 1 August 1990.

The Committee has no comment on this bill.

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

NATIONAL HEALTH (PHARMACEUTICAL BENEFITS DETERMINATIONS)  
AMENDMENT BILL 1989

This bill was introduced into the Senate on 1 September 1989 as a Private Senator's Bill by Senator Coulter.

The bill proposes to:

- . disallow the determination of the Pharmaceutic Benefits Remuneration Tribunal dated 28 August 1989, and
- . provide that future determinations of the Tribunal become disallowable instruments under section 46A of the Acts Interpretation Act 1901.

The Committee has no comment on this bill.

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

**SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT BILL  
(No.3) 1989**

This bill was introduced into the Senate on 1 September 1989 as a Private Senator's Bill by Senator Coulter.

The bill proposes to remove the 20 per cent sales tax from recycled paper containing 80 per cent or more weight of recycled fibre.

The Committee has no comment on this bill.

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

SMOKING AND TOBACCO PRODUCTS ADVERTISEMENTS (PROHIBITION)  
BILL 1989

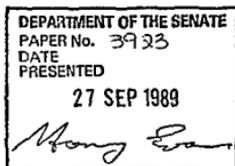
This bill was introduced into the Senate on 31 August 1989 as a Private Senator's Bill by Senator Powell.

The bill proposes to:

- . end cigarette advertising in the print media, and
- . restrict other forms of cigarette advertising, including billboards, cinema and shop front advertisements (bringing all States into line with Victorian and South Australian legislation already enacted).

The Committee has no comment on this bill.

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



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 12 OF 1989**

**27 SEPTEMBER 1989**

**SCRUTINY OF BILLS ALERT DIGEST**

**NO.12 OF 1989**

**ISSN 0729-6851**

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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Senator M. Beahan  
Senator R. Crowley  
Senator J. McGauran  
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  - (iv) inappropriately delegate legislative power; or
  - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

- Appropriation (Parliamentary Departments) Bill 1989-90
- Appropriation Bill (No.1) 1989-90
- Appropriation Bill (No.2) 1989-90
- End of War List Bill 1989
- \* Goat Fibre Levy Bill 1989
- \* Goat Fibre Levy Collection Bill 1989
- \* Hazardous Waste (Regulation of Exports and Imports) Bill 1989
- Income Tax Assessment Amendment Bill 1989
- Income Tax Amendment Bill (No.2) 1989
- \* Industrial Chemicals (Notification and Assessment) Bill 1989
- Medicare Levy Amendment Bill 1989
- National Health (Pharmaceutical Benefits Determination Revocation and Tribunal Membership) Amendment Bill 1989
- Superannuation and Other Benefits Legislation Amendment Bill 1989
- War Crimes Repeal Bill 1989

\*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.

**APPROPRIATION (PARLIAMENTARY DEPARTMENTS)  
BILL 1989-90**

This Bill was introduced into the House of Representatives on 15 August 1989 by the Minister Assisting the Treasurer.

The bill proposes to appropriate \$103.4 million from the Consolidated Revenue Fund. Of this amount \$46.3 million was authorised by the Supply (Parliamentary Departments) Act 1989-90; the balance of \$57.1 million will be authorised by this bill. The appropriation provides for the recurrent and capital expenditures of the parliamentary departments for the year ending 30 June 1990.

The Committee has no comment on this bill.

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

**APPROPRIATION BILL (No 1) 1989-90**

This Bill was introduced into the House of Representatives on 15 August 1989 by the Treasurer.

The bill proposes to appropriate \$12,418,394,700 from the Consolidated Revenue Fund for the ordinary annual services of Government.

The Committee has no comment on this bill.

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

## **APPROPRIATION BILL (No 2) 1989-90**

This Bill was introduced into the House of Representatives on 15 August 1989 by the Minister Assisting the Treasurer.

The bill proposes to appropriate \$6,318.8 million from the Consolidated Revenue Fund. Of this amount \$2,987.3 million was authorised by Supply Act (No 2) 1989-90; the balance of \$3,331.5 million will be authorised by this bill. The appropriation provides for proposed expenditure on the construction of public works and buildings, the acquisition of sites and buildings, capital plant and equipment, payments to the States, Northern Territory and the Australian Capital Territory, and new policies not authorised by special legislation.

The Committee has no comment on this bill.

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

## **END OF WAR LIST BILL 1989**

This Bill was introduced into the Senate on 7 September 1989 as a Private Senator's Bill by Senator McGauran.

The bill proposes to establish an End of War List Tribunal. The Tribunal would be responsible for preparing an End of War List for Australian Defence Forces personnel who served in Vietnam from 1962 to 1973.

The Committee has no comment on this bill.

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

**GOAT FIBRE LEVY BILL 1989**  
**GOAT FIBRE LEVY COLLECTION BILL 1989**

**GOAT FIBRE LEVY COLLECTION BILL**  
**WORKING OUT WHAT IS A LEVIABLE AMOUNT**  
**Subclause 3(1) definition of leviable amount**

The Committee commented in Alert Digest No.11 of 1989 that paragraph (b) of the definition of leviable amount in subclause 3(1) allowed the sum of \$50 specified in paragraph (a) to be amended by regulation.

The Committee commented that provisions that set maximum amounts of levy should not be capable of being amended by means of regulation.

In the instance of the Goat Fibre Levy Bill (the levy bill) the Committee notes that clause 6 of the bill provides that the levy payable may not exceed 5% of the sale value of the fibre. Clause 9 of the levy bill allows a grower an exemption from levy where the quantity of fibre processed does not exceed the leviable amount in a year.

The Committee accepts that the leviable amount can be varied by regulation provided it is not lowered to a figure of less than \$50. However, the Committee is concerned that it is difficult for anyone reading the bills to ascertain the connection between the exemption set out in clause 9 of the levy bill and the definition of leviable amount in the Goat Fibre Levy Collection Bill.

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

Clause 3 of the levy bill states that the Goat Fibre Levy Collection Bill is incorporated and shall be read as one with the levy bill. There is no similar provision contained in the Levy Collection Bill.

The Explanatory Memorandum does not clearly set out the relationship between the clause 9 exemption from levy in the levy bill, and the definition of leviable amount in the Levy Collection Bill.

Notwithstanding the provisions of section 55 of the Constitution relating to taxation bills, the Committee seeks the views of the Minister as to why the definition of leviable amount and exemptions from such amounts can be set out in a manner that makes them more easily accessible to people reading the legislation.

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

## **HAZARDOUS WASTE (REGULATION OF EXPORTS AND IMPORTS) BILL 1989**

This Bill was introduced into the House of Representatives on 6 September 1989 by the Minister representing the Minister for the Arts, Sport, the Environment, Tourism and Territories.

The bill proposes to provide for the issuing of permits to control the import and export of hazardous wastes to ensure they are disposed of by an environmentally acceptable method. The bill will also enable Australia to meet the requirements of the 'Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal' in regard to transboundary movements. Other obligations of the Convention, which Australia can become a party to once this legislation is in effect, fall within the responsibilities of State and Territory Governments and will be contained in complementary State and Territory waste management legislation.

### **CAN AN INSPECTOR INSPECT HOUSEHOLD WASTE** Clause 4 - Definition of household waste

The definition of hazardous waste includes household waste and residue arising from the incineration of household waste, whilst exempting from the definition anything intended to be 're-used, regenerated or recycled'.

The Committee notes that paragraph 7 of the Explanatory Memorandum states that whilst household waste and its incinerated residues are not normally considered to be hazardous waste they are included in the bill

'to ensure that the Act covers all the categories of waste covered by the Convention'.

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

Given the comprehensive powers available to inspectors under Part 5 of the bill together with the wide definition given to a searchable place the Committee requests that consideration be given to exempting household waste from the provisions of Part 5 of the bill.

**FISHING EXPEDITIONS BY INSPECTORS**  
**Subclause 48(4) - Powers of inspectors and**  
**Offence related warrants**

An inspector who is refused access to a 'searchable' place may obtain an offence related warrant from a magistrate pursuant to clause 51.

The Committee notes that an 'offence related warrant' is not defined in the bill and regards it as essential that people reading the bill are able to ascertain what an offence related warrant is.

The warrant is issued on the basis that the magistrate is satisfied by information on oath that there is, or may be,

'in or on the place a particular thing (in this section called the 'evidence') that may afford evidence of the commission of an offence against this Act'.

Subclause 48(4) permits an inspector to seize things other than the evidence which the inspector is authorised by the warrant to seize.

The Committee notes that an inspector pursuant to paragraph 48(4)(b) must believe that it is necessary on reasonable grounds to seize a thing other than evidence to prevent the concealment, loss or destruction of that thing or to prevent it

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being used in committing, continuing or repeating an offence. However, the Committee is concerned that the provisions of subclause 48(4) may permit an inspector to indulge in a fishing expedition for evidence other than those things the inspector is specifically authorised to search for by the warrant.

**PERIOD OF EFFECT OF OFFENCE RELATED WARRANT**  
**Paragraph 51(4)(d) - Offence related warrants**

Clause 51 allows a Magistrate to issue a warrant where the Magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is or may be within the next 72 hours in or on a particular searchable place, a particular thing that may afford evidence of the commission of an offence against the bill.

Paragraph 51(4)(d) allows the warrant to remain valid for up to one month from the date of issue.

In view of the 72 hour period that is the basis on which the warrant is issued by the Magistrate, the Committee regards it as inappropriate that such a warrant should remain in effect for longer than one week.

**TELEPHONE WARRANTS - AN INVASION OF PRIVACY**  
**Clause 52 - Telephone warrants**

This clause will permit an inspector, if he considers it necessary to do so, to obtain a warrant by telephone. The Committee is opposed to the issue of warrants by telephone except in circumstances of utmost urgency.

**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 is particularly concerned that subclause 52(6) does not require the inspector to send the magistrate the form of the warrant and the duly sworn information until 'the day after the day of expiry or execution of the warrant (whichever is the earlier)'.

In the opinion of the Committee the clause should be drafted so as to require the inspector to establish the urgency of the need for a telephone warrant, and to require the warrant to be either executed or to lapse within one week of the date of issue.

**POWER TO AMEND THE SCHEDULE BY REGULATION**  
**Subclause 63(2) - Regulation making power**

Subclause 63(2) allows the Schedule to the bill to be amended by regulation to ensure that the schedule correctly sets out the English text of Annex 111 of the Basel Convention.

The Committee is concerned that the Senate is made aware of any provision that allows a bill, which is the primary source of legislation, to be amended by regulations. However as this particular provision is minor and of a technical nature the Committee has no further comment.

**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 1989**

This Bill was introduced into the House of Representatives on 6 September 1989 by the Minister Assisting the Treasurer.

The bill proposes to amend the Income Tax Assessment Act 1936 to:

- . require certain employers to remit pay-as-you-earn tax deductions withheld from the salaries/wages of their employees to the Commissioner of Taxation on a twice-monthly basis,
- . to raise (from \$5,000 - \$8,000, for the 1989-90 and subsequent years) the general exemption threshold from the quarterly instalment system of paying provisional tax,
- . ensure that excess provisional tax credits are not offset against quarterly instalments of provisional tax not due for payment, and
- . provide the method of calculating provisional tax for the 1989-90 income year.

The Committee has no comment on this bill.

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

**INCOME TAX AMENDMENT BILL  
(No 2) 1989**

This Bill was introduced into the House of Representatives on 6 September 1989 by the Minister Assisting the Treasurer.

The bill proposes to amend the Income Tax Act 1986 to impose the rates of income tax payable by individuals and trustees for the 1989-90 and, until the Parliament otherwise provides, the 1990-91 financial year. It also proposes to impose the rates of tax payable by companies, registered organisations and unit trusts, superannuation funds, approved deposit funds and pooled superannuation trusts for the same period.

The Committee has no comment on this bill.

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

**INDUSTRIAL CHEMICALS (NOTIFICATION AND ASSESSMENT) BILL 1989**

This Bill was introduced into the House of Representatives on 6 September 1989 by the Minister for Industrial Relations.

The bill proposes to establish a national scheme for the notification and assessment of industrial chemicals to aid in the protection of people at work, public health and the environment. New industrial chemicals will be assessed prior to their introduction and existing chemicals will be assessed on a priority basis. Chemicals used solely for agricultural and veterinary purposes are subject to already existing legislation and are excluded from this bill.

The Committee draws the following provisions of the bill to the attention of the Senate.

**IS THIS A CRIMINAL OFFENCE**

**Subclause 64(2) - Requirement to Notify Director**

The provisions of subclause 64(2) create a series of criminal offences.

The subclause states,

- (2) Where a person who introduces an industrial chemical that has been assessed under this Act becomes aware of any of the following circumstances, namely, that since the assessment:
  - (a) the function or use of the chemical has changed, or is likely to change, significantly;

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

- (b) the amount of the chemical being introduced has increased, or is likely to increase, significantly;
- (d) The method of manufacture of the chemical in Australia has changed, or is likely to change, in a way that may result in an increased risk of adverse health effects or adverse environmental effects;
- (f) a prescribed event has happened;

The Committee regards the use of the term significantly in paragraphs (a) and (b) as so imprecise as to make it difficult for anyone to be aware if they have committed an offence.

Paragraph (d) is worded in such an imprecise manner as to make it difficult for a person to ascertain that they had committed an offence.

Paragraph 64(2)(f) requires a person to be aware of the contents of the regulations as well as the bill to ensure that they do not commit an offence.

The Committee seeks the advice of the Minister as to whether guidelines can be published to clarify what is meant by the terms 'significantly' and 'is likely to change' in the context of the provisions of the bill prior to any person being charged pursuant to the provisions 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.**

**UGHT REASONABLY TO HAVE KNOWN AS A STANDARD OF CRIMINAL  
LIABILITY  
Subclause 64(3) and clause 82 - Standard of Proof**

Both subclause 64(3) and clause 82 impose criminal liability on a person even though he or she has neither an intention to commit a criminal act nor a reckless disregard for the consequences of what he or she does.

The Committee seeks the views of the Minister as to why the provisions are drafted in this form in respect of balancing the rights of the individual citizen, compared to the general welfare of the community in terms of the intention of the legislation.

**FISHING EXPEDITIONS  
Subclause 87(5)**

Subclause 87(5) is to the same effect as clause 48(4) of the Hazardous Waste Bill and the Committee reiterates its comments on the nature of the power given to the inspector in a warrant granted pursuant to subclause 87(2).

**CAN THE COMMONWEALTH BE SUED  
Clause 101 - Legal proceeding not to lie**

The clause would render the Commonwealth immune from legal proceedings for any loss or damage suffered by anyone relying on an assessment or report made pursuant to the bill. Without the clause a person suffering loss or damage by relying on an

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

assessment or report would have a common law action in negligence or deceit against the Commonwealth. The clause denies a person that right of action and a person may have no other avenue from which to recoup the loss.

The Committee suggests that the Commonwealth immunity in clause 101 be limited to actions for loss arising otherwise than through the default or neglect of Commonwealth officers.

The clause is brought to the attention of the Senate in that it may trespass unduly on personal rights and liberties.

**ALTERING THE ACT BY REGULATION**  
Subclause 105(3) - Amendment of the Schedule

Subclause 105 (1) allows the Minister by an instrument published in the Chemical Gazette, to declare that the Schedule is taken to be amended in a manner specified in the instrument and that declaration has effect accordingly.

Pursuant to the provisions of subclause 105(3) a declaration under the subclause 105(1) repealing part of the Schedule, is taken to be an Act that repeals that part.

The clause serves to make the law easier to ascertain and more accessible to those required to use it. The provision of readily accessible law in an easily understood form is a major concern of the Committee and accordingly the Committee regards subclause 105(3) as appropriate 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.

**SETTING FEES BY REGULATION**

**Subclause 110(1) - Setting fees otherwise in an Act**

The subclause allows a series of fees contained in paragraphs 110(1)(a) to (u) and payable to the Commonwealth to be set by regulations.

Subclause 110(6) states that a prescribed fee is not to be such as to amount to taxation, which effectively establishes that the Commonwealth is only allowed to recoup the cost of providing services.

This mechanism imposes an indirect limit on the level of fees and the Committee has no further comment on the provision.

The Committee will continue to bring to the attention of the Senate all provisions that allow the amount of fees to be set by regulation, without incorporating a regulating mechanism to limit the maximum amount of fees to be charged.

## **MEDICARE LEVY AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 6 September 1989 by the Minister Assisting the Treasurer.

The bill proposes to amend the Medicare Levy Act 1986 to impose a basic rate of Medicare levy of 1.25 per cent for the 1989-90 and, until Parliament otherwise provides, the 1990-91 financial year. The bill also proposes to increase the income threshold levels below which people with low incomes will not be required to pay any levy.

The Committee has no comment on this bill.

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

**NATIONAL HEALTH (PHARMACEUTICAL BENEFITS  
DETERMINATION REVOCATION AND TRIBUNAL  
MEMBERSHIP) AMENDMENT BILL 1989**

This Bill was introduced into the Senate on 6 September 1989 as a Private Senator's Bill by Senator Puplick.

The bill proposes to amend the National Health Act 1953 to:

- . disallow the determination of the Pharmaceutical Benefits Remuneration Tribunal dated 28 August 1989,
- . amend the composition of the Tribunal to provide for two additional members to be appointed by the Minister on the basis of their qualifications, knowledge and experience relevant to the pharmaceutical profession or industry, and
- . require the Tribunal to ensure its enquiries have regard to the need that variations in the Commonwealth price of any pharmaceutical benefits facilitate the efficient and effective provision of national health services.

The Committee has no comment on this bill.

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

**SUPERANNUATION AND OTHER BENEFITS  
LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 6 September 1989 by the Minister representing the Minister for Finance.

The bill proposes to amend the:

- . Defence Force Retirement and Death Benefits Act 1973,
- . Defence Forces Retirement Benefits Act 1948,
- . Superannuation Act 1922,
- . Superannuation Act 1976, and
- . Papua New Guinea (Staffing Assistance) (Superannuation) Regulations

to restore pensions payable under that legislation to the rates at which they would have been payable had they not been discounted from 10 October 1986.

The Committee has no comment on this bill.

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

**WAR CRIMES REPEAL BILL 1989**

This Bill was introduced into the Senate on 6 September 1989 as a Private Senator's Bill by Senator Hamer.

The bill proposes to repeal the War Crimes Act 1945.

The Committee has no comment on this bill.

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

DEPARTMENT OF THE SENATE  
PAPER No. 3976  
DATE  
PRESENTED  
4 OCT 1989  
*Mary Evans*



**SCRUTINY OF BILLS ALERT DIGEST**

**NO.13 OF 1989**

**4 OCTOBER 1989**

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**NO.13 OF 1989**

**4 OCTOBER 1989**

**ISSN 0729-6851**

## SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

### MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator K. Patterson (Deputy Chair)  
Senator M. Beahan  
Senator R. Crowley  
Senator J. McGauran  
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:

Supply Act (No.1) 1989-90

Supply Act (No.2) 1989-90

Supply (Parliamentary Departments) Act 1989-90

- \* Industrial Chemicals (Notification and Assessment)  
Bill 1989

\*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.

## **SUPPLY ACT (No.1) 1989-90**

This Act was introduced into the House of Representatives on 3 May 1989 by the Minister for Employment and Education Services and received the Royal Assent on 8th June 1989.

The Act provides for interim appropriations, totalling \$9,948 million, for the ongoing services of the Government for the period 1 July to 30 November 1989.

The Committee has no comment on this bill.

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

## **SUPPLY ACT (No.2) 1989-90**

This Act was introduced into the House of Representatives on 3 May 1989 by the Minister for Employment and Education Services and received the Royal Assent on 8 June 1989.

The Act provides for interim appropriations, totalling \$3,013 million, for expenditure on capital works and services, payments to or for the States, the Northern Territory and the Australian Capital Territory, and certain other services for the period 1 July to 30 November 1989.

The Committee has no comment on this bill.

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

**SUPPLY (PARLIAMENTARY DEPARTMENTS) ACT 1989-90**

This Act was introduced into the House of Representatives on 3 May 1989 by the Minister for Employment and Education Services and received the Royal Assent on 8 June 1989.

The Act provides for interim appropriations, totalling \$46.3 million, for the ongoing requirements of the parliamentary departments for the period 1 July to 30 November 1989.

The Committee has no comment on this bill.

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

**INDUSTRIAL CHEMICALS (NOTIFICATION AND  
ASSESSMENT) BILL 1989**

**MAKING THE LAW EASIER TO ASCERTAIN  
Clause 105 - Variation of Schedule**

The Committee, in Digest No.12 of 1989, commented that clause 105 contained provisions that are intended to make the law more accessible.

**Variation of Schedule by Instrument  
Subclause 105 (1)**

The subclause allows the Minister by instrument published in the Chemical Gazette to declare that the Schedule is to be taken to be amended in a manner specified in the instrument and that the declaration has effect accordingly.

The Committee comments unfavourably on any subclause that allows part of a bill to be amended by the use of an instrument.

Subclause 105(2) provides that the instrument may be disallowed by the Parliament pursuant to section 46A of the Acts Interpretation Act 1901. The Committee accepts that amendments of the Schedule by instruments in the Chemical Gazette are likely to be either technical or consequential in nature. As the instrument can be disallowed by Parliament the Committee is prepared to regard the variation of the schedule by instrument as acceptable.

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

Amendments to legislation are too often contained in instruments, guidelines, ministerial directions or one of the whole species of delegated legislative instruments that make the law increasingly difficult to ascertain. As a bare minimum these instruments should be professionally drafted, numbered, properly consolidated, published and fully distributed, and subject to tabling and disallowance.

The Committee closely examines all provisions allowing amendment by quasi legislative instruments to ensure that they are either consequential or technical in nature and will continue to bring all such provisions to the attention of the Senate where they should be included in the parent Act.

#### Legislation in Plain English Subclauses 105(3) and (4)

The Committee regards subclauses 105(3) and 105(4) as difficult to understand. Subclauses 105(3) and 105(4) state

(3) for the purposes of section 8 of the Acts Interpretation Act 1901, a declaration under subsection (1) that is taken to amend the schedule by way of repealing part of it is taken to be an Act that repeals that part.

(4) The Minister is to cause all necessary action to be taken to ensure that, where the Schedule is taken to be amended by a declaration in force under subsection (1), a copy of the Schedule as taken to be amended is available for inspection by the public at the prescribed places at the prescribed times, and on payment of the prescribed fee (if any).

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 continually stressed that clauses of bills should be expressed in clear and concise language. A person reading subclause 105(4) is required to establish precisely what is a prescribed time, a prescribed place and the prescribed fee (if any) to be paid. Subclause 105 could be clarified for the benefit of persons reading the bill.

#### Committee policy on 'Plain English'

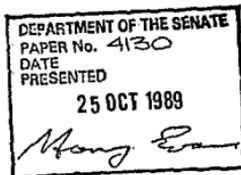
In view of the number of clauses and subclauses in bills examined by the Committee that are unnecessarily difficult to understand, the Committee intends to bring all such provisions to the attention of the Senate. The Committee hopes that the Senate will, in the performance of its review and scrutiny role, take the opportunity to provide appropriate amendments in 'plain english' to such clauses.

#### Making the Law more accessible Subclause 105(4)

The subclause requires the Minister to take all necessary action to ensure that a declaration amending the Schedule is readily accessible to the public.

Notwithstanding the use in the subclause of the word 'prescribed' on three occasions and that a fee is contemplated for persons wishing to inspect the Schedule, the Committee is particularly pleased at the manner in which the subclause is designed to assist in making the ascertainment of the law as simple as possible.

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 1989

25 OCTOBER 1989

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- (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 Federal Police Legislation Amendment Bill (No.2) 1989
- \* Crimes Legislation Amendment Bill (No.2) 1989
- Customs Legislation (Anti-Dumping) Bill 1989
- Customs Tariff (Anti-Dumping) Amendment Bill 1989
- \* Industry, Technology and Commerce Legislation Amendment Bill (No.2) 1989
- \* Pasture Seed Levy Bill 1989
- Pasture Seed Levy Collection Bill 1989
- \* Primary Industries and Energy Legislation Amendment Bill (No.3) 1989
- \* Primary Industries and Energy Research and Development Bill 1989
- Sales Tax (Exemptions and Classifications) Amendment Bill (No.2) 1989
- \* Social Securities and Veterans' Affairs Legislation Amendment Bill (No.3) 1989
- States Grants (General Purposes) Bill 1989
- \* Therapeutic Goods Bill 1989
- \* Therapeutic Goods (Charges) Bill 1989

\*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 FEDERAL POLICE LEGISLATION  
AMENDMENT BILL (No.2) 1989**

This Bill was introduced into the Senate on 4 October 1989 by the Minister for Justice.

The bill proposes to amend the Australian Federal Police Act 1979 to:

- . provide for the appointment of staff under the Australian Federal Police Act, rather than the Public Service Act 1922,
- . provide the Commissioner with Chief Executive powers in relation to the composition of the AFP and terms and conditions of service of staff,
- . replace tenure with a fixed term appointment for all staff, and
- . entitle staff to an adjustment payment which recognises the fixed term nature of that person's appointment.

**WHO SHOULD DETERMINE REMUNERATION AND ALLOWANCES**  
Proposed new subsection 20(2A)

Clause 15 of the bill inserts proposed new subsection 20(2A) of the Australian Federal Police Act 1979. The proposed subsection would give the Commissioner the discretion to determine a Deputy Commissioner's remuneration and allowances which has until now been a function of the Remuneration Tribunal (see section 20 of the Australian Federal Police Act).

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

The Committee is of the view that the discretion should remain with the Remuneration Tribunal as an independent arbiter, rather than be granted to the Commissioner.

**MAKING POLICE POLICY PUBLIC**

Proposed new subsections 30(5) and 33(2) - power to give guidelines

Proposed new subsection 30(5) would enable the Minister to give the Commissioner written policy guidelines on all matters about which the Commissioner can make a determination under proposed section 30.

The terms of proposed new subsection 33(2) would enable the Minister to give the Commissioner written guidelines relating to the secondment of members or staff members to Overseas Police Forces or any other overseas body.

The Committee is of the view that all written policy guidelines given by the Minister to the Commissioner should be tabled before the Parliament. This procedure will enable both the Parliament and the public to be informed of the general policy direction of the Australian Federal Police.

**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) 1989**

This Bill was introduced into the House of Representatives on 5 October 1989 by the Attorney-General.

The bill proposes to review the Commonwealth sentencing legislation and the laws governing Federal offenders found unfit to be tried or not guilty on the grounds of mental illness. The bill also:

- . repeals the Commonwealth Prisoners Act 1967,
- . amends the Crimes Act 1914 to consolidate all the general sentencing legislation in that Act,
- . amends the Cash Transaction Reports Act 1988, and
- . amends the National Crime Authority Act 1984.

**COMMENCEMENT DATES**  
Subclauses 2(3) to 2(9)

By virtue of subclauses 2(3) to 2(9) of the bill, certain provisions are to commence immediately after various provisions of the Cash Transactions Reports Act 1988. This Act is to commence on Proclamation with no time limit fixed within that Act.

The Committee seeks the view of the Minister as to whether the Cash Transactions Reports Act can be amended to provide that it commences at the latest within 6 months of Royal Assent being given to this bill.

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

**THE ATTORNEY-GENERAL'S DISCRETION**

Proposed paragraph 19AN(1)(c)

Proposed sections 19AP, 19AV, 20BE, 20BF, 20BK, 20BL and 20BM

The above listed proposed paragraphs and sections would give the Attorney-General a discretion, reviewable only as to legality, with regard to parole orders, releases of prisoners on licence, cancelling parole or licence, and relating to persons acquitted by reason of mental illness.

The Committee notes that the reasons the discretions are to rest with the Attorney-General are not outlined in the Explanatory Memorandum.

**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) BILL 1989**

This Bill was introduced into the House of Representatives on 5 October 1989 by the Minister for Employment and Education Services.

The bill proposes to amend the:

- . Anti-Dumping Authority Act 1988, and
- . Customs Act 1901,

to restructure the anti-dumping provisions of the Customs legislation into discrete taxing and non-taxing Acts. Further, the bill implements the recent Government decision (announced on 10 September 1989) to include a profit margin when the 'normal value' of goods is being 'constructed'.

The Committee has no comment on this bill.

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

**CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT  
BILL 1989**

This Bill was introduced into the House of Representatives on 5 October 1989 by the Minister for Employment and Education Services.

The bill complements the Customs Legislation (Anti-Dumping) Bill 1989. Primarily, it proposes a major restructuring of the Customs Tariff (Anti-Dumping) Act 1975 with the transfer of a series of existing sections from that Act into Part XVB of the Customs Act 1901.

The Committee has no comment on this bill.

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

**INDUSTRY, TECHNOLOGY AND COMMERCE LEGISLATION  
AMENDMENT BILL (No.2) 1989**

This Bill was introduced into the House of Representatives on 4 October 1989 by the Minister for Land Transport and Shipping Support.

The bill proposes omnibus amendments to the:

- . Australian Industry Development Corporation Act 1970,
- . Bounty (Ships) Act 1989,
- . Designs Act 1906,
- . Patents Act 1952,
- . Patents, Trade Marks, Designs and Copyright Act 1939, and
- . Trade Marks Act 1955.

**LIMITING PART OF THE DESIGNS ACT BY REGULATION  
Clause 21 - proposed subsection 27B(10)**

Proposed subsection 27B(10) of the Designs Act 1906 would allow the definition of 'relevant act' to be circumscribed and thereby effectively limited by means of regulation.

The Committee seeks the Minister's views on why it is necessary to amend the definition of 'relevant act' in this fashion.

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

**ATTENDANCE ON A DAY, TIME AND PLACE**  
**Proposed paragraph 41(2)(e) of the Designs Act**

Paragraph 41(2)(e) of the bill would allow the making of regulations empowering the Registrar to require an applicant who wishes to be heard, to appear for the purpose of being heard on a day, and at a place and time specified by the Registrar.

The Committee requests that the paragraph be amended so that the time, day and place are required to be reasonable in all 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.**

## **PASTURE SEED LEVY BILL 1989**

This Bill was introduced into the House of Representatives on 4 October 1989 by the Minister for Land Transport and Shipping Support.

The bill proposes to provide for the imposition of a levy on certain pasture seed produced in Australia to finance the industry's contribution to a pasture seed research scheme. Initially the levy will apply only to certified seed of medic, clover and lucerne cultivars. There is provision to add other species and cultivars to the scheme in future.

### **INCORPORATING THE PASTURE SEED LEVY BILL 1989 AND THE PASTURE SEED LEVY COLLECTION BILL 1989 Clause 3 of the Levy bill**

Clause 3 of the Levy Bill requires that the Collection Bill be incorporated with the Levy Bill, but there is no corresponding provision in the Collection Bill. This results in the situation that the phrase 'leviable seed' is used in the Collection Bill but the meaning can only be determined by reference to the Levy Bill.

The Committee requests that the Minister inform the Committee whether the Collection Bill can be amended to eliminate this problem.

### **AMENDING THE SCHEDULE TO THE BILL BY MINISTERIAL INSTRUMENT Subclause 9(1) of the bill**

Subclause 9(1) of the bill would enable the Minister, by instrument published in the Gazette, to declare that the Schedule to the Act is taken to be amended in the manner specified in the instrument.

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

This provision would enable the rate of levy to be amended by delegated legislation and no maximum rate of levy is set in the bill.

Subclause 9(4) would make instruments varying the Schedule disallowable by Parliament. However, because such instruments are not regulations they would not be required to be separately printed, numbered or otherwise freely accessible to the public.

Clause 14 of the Collection Bill would require the Secretary to take all necessary steps to make the amended Schedule available to the public for inspection at the prescribed places, at the prescribed times and on payment of the prescribed fee (if any).

The Committee is of the view that although the amendments are required to be made available to the public, any alterations to the Schedule should be in the form of regulations.

Subclause 9 is brought to the attention of the Senate in that by allowing the Schedule of the bill to be varied by instrument it may 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.**

## **PASTURE SEED LEVY COLLECTION BILL 1989**

This Bill was introduced into the House of Representatives on 4 October 1989 by the Minister for Land Transport and Shipping Support.

The bill proposes to provide the machinery necessary for collecting the levy imposed by the Pasture Seed Levy Bill 1989.

The Committee has no comment on this bill.

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

**PRIMARY INDUSTRIES AND ENERGY LEGISLATION  
AMENDMENT BILL (No.3) 1989**

This Bill was introduced into the House of Representatives on 4 October 1989 by the Minister for Land Transport and Shipping Support.

The bill is an omnibus bill for legislation administered within the Primary Industries and Energy portfolio. It proposes to amend 11 and repeal 4 Acts.

**TABLING OF RESEARCH AND DEVELOPMENT PLANS  
Clause 13**

Clause 13 makes provision for 'rolling' five year research and development plans to be prepared by the Wool Research and Development Council pursuant to section 95 of the Wool Marketing Act 1987.

The Committee asks the Minister to explain why the research and development plans are not tabled before Parliament, and whether it is possible to table the plans.

**MINISTER MAY REJECT NOMINATION TO RESEARCH COUNCIL  
Proposed subsection 109E**

Proposed subsection 109B(5) would allow the Minister to reject a person nominated by the Wool Council for appointment to the Selection Committee for the Wool Research and Development Council (Research Council), where the Minister is not satisfied that the person nominated is suitable for appointment.

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

Proposed section 109D of the bill sets out the criteria to be followed by the Selection Committee in selecting persons for membership of the Research Council. Proposed subsection 109E allows the Minister to reject the nomination of a person by written notice given to the Selection Committee, where he is not satisfied that the person nominated for appointment to the Research Council is suitable.

The Committee seeks the Minister's views as to the possibility of a person rejected by the Minister for membership of the Research Council, receiving a copy of the reasons for that rejection.

**IMMUNITY GIVEN TO THE WOOL RESEARCH AND  
DEVELOPMENT CORPORATION  
Clause 26**

Clause 26 inserts proposed new section 137 of the Wool Marketing Act 1987 granting the Wool Research and Development Corporation a very wide immunity from legal action. The immunity relates only to contracts entered into by the former Australian Wool Testing Authority, and the Committee regards the provision as acceptable 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.**

**PRIMARY INDUSTRIES AND ENERGY RESEARCH  
AND DEVELOPMENT BILL 1989**

This Bill was introduced into the House of Representatives on 4 October 1989 by the Acting Minister for Primary Industries and Energy.

The bill proposes to establish Research and Development Corporations in respect of primary industries (including energy), replacing the present research councils and committees administering the allocation of research and development program funds. The Corporations' objective will be to improve the funding of primary industries research and development to increase the economic, environmental and social benefits to the rural and wider community. The bill proposes to establish a Rural Industries Research and Development Corporation to assume the functions presently covered by the Australian Special Rural Research Fund and those Research Councils established under the Rural Industries Research Act 1985.

**MATTERS THAT ARE IN THE REGULATIONS**  
Proposed Paragraphs 5(1)(a) 5(2)(a) 56(b)  
Clause 8 and 92

Paragraphs 5(1)(a) and 5(2)(a) relate to a levy or a class of levies attached to a particular Research and Development Corporation or a Research and Development Fund.

Clause 8 - would establish Research and Development Corporations and allow for regulations to specify the primary industries in respect of which a Corporation is established.

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

Paragraph 56(b) - Division 7 of the bill relates to the Annual General meeting of a Research and Development Corporation. Paragraph 56(b) applies the Division to a Research and Development Corporation where the regulations so declare.

Clause 92 - this clause will establish both the Research and Development Council and the name the Council will be known by as specified in the regulations.

The provisions listed will allow substantive matters to be amended by regulations. The Committee notes that the definition of regulations in clause 4 of the bill includes orders. By virtue of this definition, the substantive effect of the bill can be altered by an order. Such orders may be disallowed by Parliament pursuant to subclause 149(3) of the bill.

The Committee is concerned that such orders are possibly not within the terms of the Statutory Rules Publication Act 1903 and do not have to be published by the Government Publishing Service, nor numbered and otherwise made readily available to the public.

**WHAT ARE THE FUNCTIONS OF A RESEARCH AND  
DEVELOPMENT CORPORATION**  
Paragraph 11(f)

Paragraph 11(f) - would allow for additional functions to be conferred on a Research and Development Corporation and states,

such other functions as are conferred on the Corporation by this Act or any other Act.

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

Subclause 4(1) defines 'this Act' to include the regulations which are in turn defined to include orders made pursuant to clause 149. The Committee is concerned that a Ministerial order may grant a Research and Development Corporation a wide range of additional functions. Although the order would be disallowable by Parliament the Committee considers that it may be very difficult for the public to ascertain what functions a Corporation does possess.

**TABLING OF RESEARCH AND DEVELOPMENT PLANS**  
Clauses 19 and 20

The Committee asks the Minister to explain why research and development plans are not tabled before Parliament, and whether it is possible to table the plans.

**TERMINATION OF APPOINTMENT**  
Paragraph 73(1)(a)

Paragraph 73(1)(a) of the bill states,

The Minister may terminate the appointment of  
the Chairperson or a nominated director:

(a) for misbehaviour or physical or mental  
incapacity;

**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 other grounds on which an appointment can be terminated by the Minister are matters of fact; that of physical or mental incapacity can be considered a matter of opinion.

The Committee regards it as appropriate and equitable that a Chairperson or nominated director be given the opportunity to put their view to the Minister prior to their appointment being terminated, possibly by the inclusion of a provision requiring them to 'show cause' to the Minister why their appointment should not be terminated.

**TABLING OF RESEARCH AND DEVELOPMENT COUNCIL PLANS  
Clause 101**

Clause 101 requires a Research and Development Council to prepare an operational research and development plan. The Committee requests that the Minister table the Research and Development plans of the relevant Research and Development Councils before Parliament, or explain to the Committee why the plans cannot be tabled once they have been approved.

**MEMBERSHIP OF RESEARCH AND DEVELOPMENT COUNCILS  
AND CORPORATIONS  
Part 4 of the Bill**

The various representative bodies for the relevant primary and natural resources industries nominate persons to be members of Selection Committees. Subclause 123(4) of the bill allows the Minister to reject a person nominated to be a member of a Selection Committee for a Research and Development Corporation where the Minister is not satisfied that the person nominated should be appointed.

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

Subclause 124(6) gives the Minister a similar power with respect to a predominantly Commonwealth funded Research and Development Corporation. Subclause 125(6) applies to Research and Development Councils.

Clause 130 sets out the criteria to be followed by selection committees in making nominations for Research and Development Councils and Corporations.

Clauses 133 gives the Minister the power to reject by written notice a person nominated by a Selection Committee, where the Minister is not satisfied that a person nominated for selection is suitable. The Committee seeks the Minister's views as to the possibility of a person rejected by the Minister for membership of a Research and Development Corporation receiving a copy of the reasons for that rejection.

**DIRECTION TO A RESEARCH AND DEVELOPMENT CORPORATION**  
Subclause 142(1)

The subclause would permit the Minister to give written directions to a Research and Development Corporation or Council.

The directions are required to be included in the annual report of the Corporation or Council and consequently brought to the attention of Parliament. The Committee seeks to have the directions tabled before the Parliament as soon as they are issued, unless they are commercially sensitive or their tabling would be contrary to the public interest pursuant to the provisions of subclause 142(3).

**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) 1989**

This Bill was introduced into the House of Representatives on 4 October 1989 by the Minister Assisting the Treasurer.

The bill proposes to amend the Sales Tax (Exemptions and Classifications) Act 1935 to:

- . exempt certain paper products from sales tax, if all the paper in the goods has been manufactured from recycled paper,
- . extend sales tax exemption to a wider range of goods that are for use by a sub-contractor in carrying out activities on behalf of manufacturers,
- . increase the small manufacturer exemption thresholds, and
- . reduce from 95 to 90 per cent the minimum milk content requirement in flavoured milk. Milk drinks must meet this criteria in order to be taxed at the concessional rate of 10 per cent.

The Committee has no comment on this bill.

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

**SOCIAL SECURITY AND VETERANS' AFFAIRS  
LEGISLATION AMENDMENT BILL (No.3) 1989**

This Bill was introduced into the House of Representatives on 5 October 1989 by the Minister for Social Security.

The bill proposes to amend the

- . Child Support (Assessment Act) 1989,
- . Child Support (Registration and Collection) Act 1988,
- . Income Tax Assessment Act 1936,
- . Seamen's War Pensions and Allowances Act 1940,
- . Social Security Act 1947,
- . Taxation Administration Act 1953, and
- . Veterans' Entitlements Act 1986,

to implement measures announced in the 1989-90 Budget and several other program refinements of an administrative nature. It also contains measures to improve the effectiveness of the Child Support Scheme.

**POWERS OF SECRETARIES OF DEPARTMENTS**

Proposed section 3A of the Social Security Act 1947

Proposed section 11A of the Veterans' Entitlements Act 1986

The provisions of proposed section 3A of the Social Security Act and proposed section 11A of the Veterans' Entitlements Act 1986 would allow the respective Secretaries to make

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

wide-ranging enquiries into the private lives of pensioners or beneficiaries who reside under the same roof but claim to be living separately.

The Committee notes that proposed paragraph 3A(d) of the Social Security Act and proposed paragraph 11A(d) of the Veterans' Entitlements Act requires the relevant Secretary, when forming an opinion that two people are living together in a marriage-like relationship, or for the purpose of defining 'de facto spouse' or 'married person' to have regard to all the circumstances of the relationship including any sexual relationship between them.

The Committee notes that such provisions are necessary to reveal fraud, but is concerned that the provisions may excessively intrude into personal privacy, and seeks the opinion of the Minister on this point.

**MEANING OF THE SUBCLAUSE**  
**Subclause 28(6)**

Subclause 28(6) states -

The Secretary must not form the opinion that the pensioner or claimant is not living with the other person in a marriage-like relationship unless, having regard to all of the matters specified in the paragraphs of section 3A, the weight of evidence supports formation of an opinion that the pensioner or claimant is not living in a marriage-like relationship with the other person.

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

Subclause 28(6) contains three negatives and in the opinion of the Committee is difficult to comprehend. The Committee asks the Minister to ascertain if the provision could be better expressed and to explain how the provision is intended to operate.

**CLAIMS DEEMED NOT TO HAVE BEEN LODGED**  
Subclause 28(13)

Subclause 28(13) deems a claim that has been submitted not to have been lodged, if information required by the Secretary pursuant to subclause 28(4) has not been supplied within 14 days.

The Committee asks the Minister to explain what rights of review, if any, are available to a claimant whose claim is taken not to have been lodged.

**OBTAINING A TAX FILE NUMBER**  
Proposed section 138A of the Social Security Act

Clause 42 of the bill inserts proposed section 138A of the Social Security Act. The proposed section would permit the Secretary to obtain the tax file number of an applicant for unemployment or sickness benefit. The Committee notes the provision may be regarded as necessary to prevent fraud of the Social Security system. However, the Committee is concerned that the proposed section may unduly intrude on the private lives of individuals, and seeks the view of the Minister on this point.

**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 PURPOSES) BILL 1989**

This Bill was introduced into the House of Representatives on 5 October 1989 by the Minister Assisting the Treasurer.

The bill proposes to give effect to arrangements agreed at the Premiers' Conference and Loan Council Meeting to apply in 1989-90 for the provision of general purpose assistance - including general revenue and general purpose capital grants - to the States and Northern Territory. The bill proposes to provide for a payment of \$13.1 billion, a reduction of \$550 million compared with forward estimates expected at the time of the 1989 Premiers' Conference/Loan Council Meeting.

The Committee has no comment on this bill.

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

## **THERAPEUTIC GOODS BILL 1989**

This Bill was introduced into the House of Representatives on 5 October 1989 by the Minister for Housing and Aged Care.

The bill proposes to provide national controls for therapeutic goods, commonly used in the prevention, diagnosis, cure or alleviation of a disease, ailment, defect or injury. The bill will apply to corporations who import, export, manufacture or supply therapeutic goods and to persons who import, export, trade interstate, or provide goods to the Commonwealth. Primarily, this bill will provide for the:

- . determination of standards for therapeutic goods,
- . establishment of an Australian register of therapeutic goods which are approved for import, export and supply, and
- . licensing of Australian manufacturers of therapeutic goods.

### **GAZETTE ORDERS THAT DETERMINE MANUFACTURING PRINCIPLES** Subclauses 10(1) and 36(1)

Subclause 10(1) would permit the Minister to publish orders in the Gazette. Subclause 36(1) would allow the Minister to determine manufacturing principles. The subordinate legislation is disallowable in both Houses of Parliament. The Committee suggests that both subordinate instruments should be in the form of regulations.

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

**OFFENCE RELATED WARRANTS - PERIOD OF VALIDITY  
PARAGRAPH 50(4)(d)**

Subclause 50(2) would permit a Magistrate to issue a warrant where the Magistrate is satisfied,

by information on oath, that there are reasonable grounds for suspecting that there is, or there may be within the next 72 hours, in or on the premises a particular thing (in this section called the 'evidence') that may afford evidence of the commission of an offence against this Act.

Paragraph 50(4)(d) states,

The warrant must:

- (d) specify the day (not more than one month after the issue of the warrant) on which the warrant ceases to have effect;

In view of the 72 hour period that is the basis on which the warrant is issued by a Magistrate, the Committee regards it as inappropriate that such a warrant should remain in effect for longer than a week.

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

**PERIOD OF VALIDITY OF OFFENCE WARRANTS OBTAINED BY TELEPHONE  
Clause 51**

The provisions of clause 51 would allow an authorised person to obtain a telephone warrant from a magistrate where the authorised person considers it necessary to do so in an emergency. The Committee is concerned that the provisions of subclause 51(6) would allow the warrant to remain valid until executed or for a period of up to one month.

As the warrant is obtained in urgent circumstances the Committee regards it as inappropriate that the warrant should remain in effect for longer than one week.

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

## **THERAPEUTIC GOODS (CHARGES) BILL 1989**

This Bill was introduced into the House of Representatives on 5 October 1989 by the Minister for Housing and Aged Care.

The bill proposes to provide for annual charges for the registration and listing of therapeutic goods and for the licensing of manufacturers of licensed goods in Australia under the Therapeutic Goods Bill 1989.

### **CHARGES TO BE FIXED BY REGULATION Subclause 41(1)**

Subclause 41(1) of the bill would permit the amount of an annual charge to be fixed by regulation. There is no upper limit for the charge specified in the bill.

In his Second Reading Speech the Minister has indicated that whilst the level of charges is currently being determined, it will be set at no more than half the cost of the program.

The Committee requests that the Minister's statement in the Second Reading Speech on the upper limit to the charges be made a provision 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.**

DEPARTMENT OF THE SENATE  
PAPER No. 4244  
DATE  
PRESENTED  
1 NOV 1989  
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**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 15 OF 1989**

**1 NOVEMBER 1989**

**SCRUTINY OF BILLS ALERT DIGEST**

**NO.15 OF 1989**

**ISSN 0729-6851**

## SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

### MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator K. Patterson (Deputy Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator J. McGauran  
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:

- Aboriginal Education (Supplementary Assistance) Bill 1989
- \* Australian Wine and Brandy Corporation Amendment Bill 1989
- Customs Tariff Amendment Bill (No.4) 1989
- Excise Tariff Amendment Bill (No.2) 1989
- Grape Research Levy Amendment Bill 1989
- Higher Education Funding Amendment Bill (No.2) 1989
- Migration Legislation Amendment (Consequential Amendments) Bill 1989
- Overseas Students Charge Amendment Bill 1989
- Overseas Students Charge Amendment Bill (No.2) 1989
- States Grants (Schools Assistance) Amendment Bill (No.2) 1989
- \* States Grants (TAFE Assistance) Bill 1989
- \* Student Assistance Amendment Bill (No.2) 1989
- \* University of Canberra Bill 1989
- Wine Grapes Levy Amendment Bill 1989

\*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.

**ABORIGINAL EDUCATION (SUPPLEMENTARY  
ASSISTANCE) BILL 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Minister for Employment, Education and Training.

The bill proposes to endorse a National Aboriginal and Torres Strait Islander Education Policy. The Policy is a long-term commitment to promote educational equality between Aboriginal people and other Australians in access to, participation in and outcomes from all forms of education.

The Committee has no comment on this bill.

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

**AUSTRALIAN WINE AND BRANDY  
CORPORATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 25 October 1989 by the Minister for Primary Industries and Energy.

The bill proposes to:

- . provide for the implementation of a wine label integrity program by the Australian Wine and Brandy Corporation, and
- . make consequential amendments necessitated by the Wine Grapes Levy Amendment Bill 1989.

The Committee draws the following provisions of the bill to the attention of the Senate.

**PERIOD OF OFFENCE RELATED WARRANT**  
Proposed section 39ZF

Proposed section 39ZF would allow an inspector to apply to a magistrate for a warrant in relation to particular wine premises.

A warrant is issued to an inspector on the basis of the possible existence of evidence relating to the commission of a label offence on specified premises. The magistrate is required to be satisfied that the evidence will be on the wine premises within the next 72 hours. In the opinion of the Committee the warrant should not remain valid for longer than the period within which the evidence may be located on the premises.

**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 proposed paragraph 39ZF(4)(d) a warrant can remain valid for a period of up to one month, allowing an inspector to invade a person's privacy at any time during that period.

The Committee requests that the period for which the warrant is to remain valid pursuant to proposed paragraph 39ZF(4)(d) should not exceed one week.

The proposed paragraph is brought to the attention of the Senate in that it may trespass unduly on individual rights and liberties.

**RETENTION OF EVIDENCE**  
**Proposed paragraph 39ZG(1)(c)**

Proposed subsection 39ZG(1) provides that where an inspector enters premises under a warrant the inspector may seize evidence and keep it for 60 days or until any proceedings have been completed. Proposed paragraph 39ZG(1)(c) provides if the evidence is a book, record or document, the inspector must allow anyone, who would be entitled to inspect it if it were not being held, to look at it.

As such evidence may, for instance, be vital documents concerned with the running of a business, the Committee regards it as appropriate to permit anyone entitled to inspect the documents to make copies of them.

**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.4) 1989**

This Bill was introduced into the House of Representatives on 25 October 1989 by the Minister for Land Transport and Shipping Support.

The bill, containing 9 schedules, proposes to enact a range of changes to the Customs Tariff Act 1987.

The Committee has no comment on this bill.

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

**EXCISE TARIFF AMENDMENT  
BILL (No.2) 1989**

This Bill was introduced into the House of Representatives on 25 October 1989 by the Minister for Land Transport and Shipping Support.

The bill proposes to:

- . incorporate an excise tariff proposal altering the duty on naturally occurring liquefied petroleum gas from \$6.25 a kilo litre to a free rate, effective from 1 April 1989, and
- . take account that the ACT has attained self-government and place any government enterprises established by the ACT Government on the same footing as enterprises established under State legislation.

The Committee has no comment on this bill.

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

**GRAPE RESEARCH LEVY AMENDMENT  
BILL 1989**

This Bill was introduced into the House of Representatives on 25 October 1989 by the Minister for Primary Industries and Energy.

The bill proposes to increase the maximum rate of the levy on fresh and dried grapes and grape juice delivered to a processing establishment from \$0.50 per tonne to \$2.00 per tonne. The increased levy has the agreement of relevant industry organisations.

The Committee has no comment on this bill.

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

**HIGHER EDUCATION FUNDING  
AMENDMENT BILL (No.2) 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Minister for Employment, Education and Training.

The bill proposes to provide funding for higher education institutions of \$2865 million. The bill also proposes to provide for the incorporation of Australian Research Council programs into the Higher Education Funding Act 1988 to implement the Government's decision to fund these programs on a rolling triennial basis.

The Committee has no comment on this bill.

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

**MIGRATION LEGISLATION AMENDMENT  
(CONSEQUENTIAL AMENDMENTS) BILL 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Minister Representing the Minister for Immigration, Local Government and Ethnic Affairs.

The bill proposes to amend 8 Commonwealth Acts as a consequence of provisions of the Migration Legislation Amendment Act 1989. The majority of the amendments either update terminology, make changes in wording or correct internal references in the Act.

The Committee has no comment on this bill.

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

**OVERSEAS STUDENTS CHARGE  
AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Minister for Employment, Education and Training.

The bill proposes to fix the amounts of the charges payable in 1990 by overseas students enrolled in Australian education institutions under the subsidised program administered by the Overseas Students Charge Act 1979.

The Committee has no comment on this bill.

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

**OVERSEAS STUDENTS CHARGE  
AMENDMENT BILL (No.2) 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Minister Representing the Minister for Immigration, Local Government and Ethnic Affairs.

The bill proposes to implement technical amendments consequent upon the Migration Legislation Amendment Act 1989.

The Committee has no comment on this bill.

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

**STATES GRANTS (SCHOOLS ASSISTANCE)  
AMENDMENT BILL (No.2) 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Minister for Employment, Education and Training.

The bill proposes to:

- . supplement existing financial provisions to account for increased price levels,
- . extend annual programs to the 1990 program,
- . provide for a Rural Hostels Program and extend eligibility for the Capital Grants Program to rural hostels,
- . broaden the eligibility for the New Arrivals Element of the English as a Second Language Program, and
- . amend the definition of 'full fee paying private overseas secondary students' so that it applies to primary as well as secondary students.

The Committee has no comment on this bill.

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

**STATES GRANTS (TAFE ASSISTANCE)  
BILL 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Minister for Employment, Education and Training.

The bill proposes to appropriate \$328.896 million for the funding of technical and further education in the States and Territories in 1990.

The committee brings the following provisions of the bill to the attention of the Senate.

**MINISTERIAL DETERMINATIONS**  
Clauses 10,13 and 14

Clauses 10,13 and 14 provide for the Minister to make determinations for recurrent or capital expenditure within the sums specified in the bill.

The determinations are disallowable pursuant to clause 20 and are in accord with the usual pattern for such determinations for tertiary institutions.

Clause 21 allows the Minister to delegate all or any powers under the bill to any officer in the Department. The Committee is of the view that the delegation should be limited to the Secretary and members of the Senior Executive Service and seeks the views of the Minister 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.

**STUDENT ASSISTANCE AMENDMENT  
BILL (No.2) 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Minister for Employment, Education and Training.

The bill, as well as making minor technical amendments, proposes to:

- . extend the application of existing provisions of the Principal Act relating to the prevention of fraud and the recovery of over-payments,
- . impose payable interest on outstanding debts incurred under AUSTUDY, Postgraduate Awards and other non-legislated schemes,
- . enable Ministerial guidelines to be set giving guidance in the exercise of various administrative powers under the Principal Act, and
- . cease the administration of the Postgraduate Research Awards under the Principal Act and devolve this responsibility to individual institutions.

**REVIEW OF DECISIONS  
Subclause 16(2)**

Proposed subclause 16(2) would empower the Minister to determine the times at which, the name in which and, particularly, the person to whom benefits payable under student

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

assistance are to be paid. This power can be exercised by the Secretary or an officer of the Senior Executive Service if there is a delegation by the Minister under proposed subsection 34A(2) of the bill.

Proposed section 30H would allow the Minister to determine guidelines to be complied with by the Minister and other persons exercising powers under this Part of the Bill. The guidelines would be disallowable by Parliament pursuant to section 46A of the Acts Interpretation Act 1901.

The Committee requests that the Minister make any matter determined pursuant to subclause 16(2) as a Ministerial guideline under proposed section 30H.

#### RECOUPING OVERPAYMENTS Proposed section 30B

Proposed section 30B provides that overpayments whether made before or after the commencement of the provision may be recouped by deductions from current payments in such amounts as an officer determines. The Committee notes that many such overpayments could be received quite innocently, as opposed to those dealt with pursuant to proposed section 30C which relate to payments received after the making of false or misleading statements.

The Committee seeks the advice of the Minister as to what review provisions are available for determinations made pursuant to clause 30B.

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

**WAIVER AND WRITE OFF OF OVERPAYMENTS**  
**Proposed section 30E**  
**Proposed subsection 30G(2)**

Proposed section 30E and proposed subsection 30G(2) respectively confer discretions to waive the payment of interest on overpayments and to write off, waive payment of, or arrange repayment by instalments of overpayments.

Proposed subsection 34(2) empowers the Minister to delegate to any officer or employee authority under these clauses.

The proposed section and subsection confer important discretionary powers and the Committee considers that all such powers other than the power to write off or waive payment should be reviewable.

The Committee seeks the views of the Minister as to what review provisions are available under the measures.

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

**UNIVERSITY OF CANBERRA  
BILL 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Minister for Employment, Education and Training.

The bill proposes to establish the University of Canberra which will replace the Canberra College of Advanced Education. The University will be established under the sponsorship of Monash University.

The Committee brings the following provisions of the bill to the attention of the Senate.

**MINISTERIAL GUIDELINES  
Clause 31**

Subclause 31(1) of the bill would permit the Minister to issue guidelines relating to the exercise of statute-making powers in relation to fees payable to the University pursuant to subparagraphs 40(1)(f)(i) to (ix). Subclause 40(2) requires the guidelines to be in writing and published in the Gazette.

The Committee regards it as proper that the Ministerial guidelines should be tabled before Parliament as a disallowable instrument.

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

**UNIVERSITY STATUTES**  
**Subclause 42(a)**

Clause 42 provides that statutes made by the University Council are required to be approved by the Governor-General and notified in the Gazette.

Subclause 42(4) requires the Statutes to be tabled before the Parliament but they are not to be disallowable. The Committee is of the opinion that the Statutes of the University should not only be tabled but should be disallowable.

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

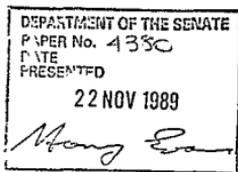
**WINE GRAPES LEVY AMENDMENT  
BILL 1989**

This Bill was introduced into the House of Representatives on 25 October 1989 by the Minister for Primary Industries and Energy.

The bill proposes to restructure the levy which funds the Australian Wine and Brandy Corporation by abolishing the levy ceiling, introducing a tiered levy system and reducing the threshold tonnage below which levy is not payable.

The Committee has no comment on this bill.

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



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 16 OF 1989**

**22 NOVEMBER 1989**

**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 16 OF 1989**

**22 November 1989**

**ISSN 0729-6851**

## SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

### MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator K. Patterson (Deputy Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator J. McGauran  
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:

- \* **Aboriginal Land Rights (Northern Territory) Amendment Bill 1989**  
**Australian Heritage Commission Amendment Bill 1989**  
**Broadcasting Amendment Bill 1989**
- \* **Community Services and Health Legislation Amendment Bill (No.2) 1989**
- \* **Copyright Reform Bill 1989**
- \* **Courts and Tribunals Administration Amendment Bill 1989**
- \* **Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Bill 1989**
- \* **Customs and Excise Legislation Amendment Bill (No.4) 1989**  
**Grain Legumes Levy Legislation Amendment Bill 1989**
- \* **Higher Education Funding Amendment Bill (No.3) 1989**
- \* **Housing Assistance Bill 1989**  
**Income Tax (International Agreements) Amendment Bill (No.2) 1989**
- \* **Industry Commission Bill 1989**
- \* **Marine Navigation Levy Bill 1989**  
**Marine Navigation Levy Collection Bill 1989**
- \* **Social Security and Veterans' Affairs Legislation Amendment Bill (No.4) 1989**
- \* **Taxation Laws Amendment Bill (No.5) 1989**  
**Transport and Communications Legislation Amendment Bill (No.2) 1989**

\*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.**

**ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY)  
AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 31 October 1989 by the Minister for Aboriginal Affairs.

The bill proposes to provide for the grant of certain areas of stock routes and reserves to Aboriginal Land Trusts, to expand the range of Aboriginal organisations to which Land Councils may distribute moneys, restore an exemption from consent provisions in relation to the Eastern Areas of Groote Eylandt, change the arrangements for mining on Aboriginal land and make other minor consequential amendments to the Lands Acquisition Act 1989.

**APPOINTING AN ARBITRATOR**  
Clause 15

Clause 15 of the bill inserts proposed section 68A, which deals with access to Aboriginal land through alienated Crown land. Where agreement cannot be reached on an appropriate access route the Minister is required to appoint an impartial arbitrator.

The Committee regards it as important that the contending parties have input into the process by which the arbitrator is chosen. This could be achieved by allowing each party to nominate people from whom the Minister could choose an arbitrator.

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

**AMENDING THE SCHEDULE BY REGULATION**  
**Clause 16**

Clause 16 inserts proposed section 77C which would allow regulations to amend Schedule 1 of the bill by modifying any description of an area of land in Part 2 or 3 of that Schedule.

The Committee seeks an explanation from the Minister as to why it is seen as necessary to allow the Schedule to the bill to be amended by regulation.

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

**AUSTRALIAN HERITAGE COMMISSION AMENDMENT  
BILL 1989**

This Bill was introduced into the House of Representatives on 1 November 1989 by the Minister Representing the Minister for the Arts, Sport, the Environment, Tourism and Territories.

The bill proposes changes to the Australian Heritage Commission's operating procedures, to make provision for the Commission to administer the National Estate Grants Program, to omit a subsection of the principal Act dealing with Aboriginal sites, to exempt authorities of the self-governing Territories and Australian Airlines Limited from the requirements of the Act and to make other administrative changes.

The Committee has no comment on this bill.

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

## **BROADCASTING AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 1 November 1989 by the Minister for Transport and Communications.

The bill proposes to amend the Broadcasting Act 1942 to give the Australian Broadcasting Tribunal a range of remedies as an alternative to licence suspension or revocation where an adverse finding has been made in relation to the suitability of a commercial radio or television licensee. The proposed alternative remedies will enable the Tribunal to revoke, vary or impose licence conditions, issue directions and, if necessary, direct interests to be divested within 6 months.

The Committee has no comment on this bill.

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

**COMMUNITY SERVICES AND HEALTH LEGISLATION  
AMENDMENT BILL (NO.2) 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Minister for Community Services and Health.

The bill proposes to amend the Aged or Disabled Persons Homes Act 1954, the Aged or Disabled Persons Homes Amendment Act 1989, the First Home Owners Act 1983, the Health Insurance Act 1973, the National Health Act 1953 and the Nursing Homes Assistance Act 1974.

The amendments are based on recommendations arising from the Report titled "Residents' Rights in Nursing Homes and Hostels". The major effects of the bill will be to enable contractual arrangements to be entered into between residents and nursing home proprietors as a condition of funding, to provide for a charter of Residents' Rights and Responsibilities, to establish as a condition of funding that nursing homes provide access to their facilities to authorised persons, and to provide for the Minister to publish relevant information about the performance of nursing homes and hostels in complying with standards.

**THE PUBLICATION OF STANDARDS IN RELATION TO HOSTELS AND NURSING HOMES**  
Clauses 5 and 30.

Clause 5 inserts proposed new section 10FB of the Aged or Disabled Person Homes Act 1954 which would allow the Minister to publish a statement containing relevant information about each hostel approved by the Minister.

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

Clause 30 inserts proposed section 45DA of the National Health Act 1953 relating to statements that may be published by the Minister in relation to approved nursing homes.

The Committee notes that pursuant to proposed subsections 10FB(3) and 45DA(2) the statement is required to be made available for public inspection at each office of the Department, and that proposed subsections 10FD(2) and 45DA(2) set out the criteria to be included in such statements.

The Committee requests that the Ministerial statements be tabled before Parliament.

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

## **COPYRIGHT REFORM BILL 1989**

This Bill was introduced into the House of Representatives on 26 October 1989 by the Hon. Mr N.A. Brown MP as a Private Member's Bill.

The bill proposes to amend the Copyright Act 1968 by implementing the recommendations of the Copyright Law Review Committee relating to the importation of books and other reproduced articles. The main purpose of the bill is to allow the importation of books after a reasonable time has elapsed since their publication overseas.

### **COMMENCEMENT DATE** **Clause 2**

Clause 2 would give the Minister an unfettered discretion to determine when the Bill comes into operation.

The Committee has in the past commented unfavourably on provisions that do not provide for a specific date on which the bill is to be proclaimed. The Committee is very strongly of the view that there should be a specific commencement date provided for in 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.**

**INFRINGEMENT OF COPYRIGHT  
Clauses 4,7 and 9**

Clauses 4,7 and 9 of the bill would amend the principal Act to delete the requirement that a person infringes copyright only when he or she has knowledge of certain facts and to substitute the lesser requirement of being in a position reasonably to have had knowledge of those facts.

As an infringement of copyright may be a criminal offence the Committee is concerned that the clauses impose criminal liability without guilty intent being required.

Proposed Paragraph 132(1A)(d) applies the lesser criminal standard to a proposed subsection directly creating a criminal offence. The Committee notes that subsection 132 (1) of the Copyright Act 1968 which contains a similar provision was passed in 1968 before the Committee was established.

Clauses 4,7 and 9 of the bill are brought to the attention of the Senate in that they may trespass unduly on personal rights and liberties.

**WHAT IS A REASONABLE TIME  
Proposed subsections 38C(1) and 103D(1)**

Proposed subsections 38C(1) and 103D(1) would permit the definition of what constitutes 'a reasonable time' to be specified by regulation. The Committee is of the opinion that the definition of reasonable time should be incorporated within the terms 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.**

**GENDER SPECIFIC TERMS**

Proposed subsections 37A(4) and (5), 38A(4) and (5), 102A(4) and (5), 103C(4) and (5), 132(5A)

The proposed subsections are gender specific in that they refer only to males. The Committee does not regard gender specific legislation as appropriate and requests that the proposed subsections be redrafted in gender neutral terms.

**THE MEANING OF THE SECTION**

Proposed section 38(B)

The Committee regards proposed subsection 38B as being very unclear. Proposed subsection 38B(1) provides that sections 37 and 38 do not apply in certain circumstances. Proposed subsection 38B(2) states that proposed subsection 38B(1) does not apply in certain other circumstances. The Committee is unclear as to what does actually apply under the terms of the proposed section.

**MEANING OF PROPOSED SUBSECTION 132(1B)**

Clause 12

Clause 12 would insert proposed section 132 into the bill. The Committee is not certain as to what is meant by the terms of proposed subsection 132(1B). If the provision is intended to mean that proof that a person knew that an article was an infringing copy is prima facie evidence that an article was an infringing copy, the provision appears to reverse the onus of proof in a criminal offence.

The Committee seeks an explanation of what proposed subsection 132(1B) is intended to mean.

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

**COURTS AND TRIBUNALS ADMINISTRATION AMENDMENT  
BILL 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Attorney-General.

The bill proposes to confer administrative independence on the Administrative Appeals Tribunal, the Family Court of Australia and the Federal Court of Australia. The bill would make the Chief Judges of the Family Court of Australia and the Federal Court of Australia and the President of the Administrative Appeals Tribunal responsible for managing the administrative affairs of their respective bodies.

**TERMINATION OF APPOINTMENT**  
Clauses 5, 13 and 15

Clauses 5, 13 and 15 insert proposed section 24K of the Administrative Appeals Tribunal Act 1975, proposed section 38K of the Family Law Act 1975 and proposed section 18K of the Federal Court Act 1976 respectively. The proposed sections provide for the termination by the Governor-General of the appointment of the Registrars of the Administrative Appeals Tribunal and the Federal Court, and the Chief Executive Officer of the Family Court 'for misbehaviour or physical or mental incapacity'. Each of these grounds involves elements of subjective judgement and no provision exists for the relevant officers to be given an opportunity to show that their appointment should not be terminated.

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

**SELF-INCRIMINATION**  
**Clauses 5, 13 and 15**

Clauses 5, 13 and 15 of the bill also insert proposed sections 24T, 38U and 18U of the respective Acts. The provisions deal with audit and require a person to produce information with the threat of conviction in the absence of a reasonable excuse for failing to do so. The Committee suggests that the provisions be amended to require that a person has to comply with the provision only to the extent that they are able to do so.

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

**CRIMES (TRAFFIC IN NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES) BILL 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Attorney-General.

The bill proposes to provide for the Commonwealth Government to meet its obligations under the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances as part of the process of ratification of the Convention. The main function of the bill is to extend Australia's extra-territorial jurisdiction in accordance with Article 4 of the Convention.

**WHAT IS A REASONABLE TIME**  
**Clause 16**

The Committee notes that subclause 16(2) would provide that prosecutions under the bill are not to be instituted except with the consent of the Attorney-General, but a person may still be charged, arrested, remanded in custody or on bail where the consent has not been given. The Committee notes that a similar provision exists in the Crimes (Hostages) Act 1988 and that the Explanatory Memorandum states that the subclause is Attorney-General giving consent.

Subclause 16(3) states that subclause 16(2) does not prevent the discharge of the accused if proceedings are not continued within a reasonable time. What constitutes a reasonable time is not disclosed in the bill, and the Committee requests that the bill be amended to provide some guidance on what constitutes 'a reasonable time'.

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

**REVERSAL OF ONUS OF PROOF**  
**Clause 17**

The Committee notes that clause 17 contains a serious reversal of the onus of proof under which a person who possesses or imports a trafficable quantity of drugs is presumed to have the drugs for 'the purpose of sale or supply'. Notwithstanding the existence of similar provisions in other Acts relating to offences concerning the possession, sale or supply of drugs, the Committee brings the clause to the attention of the Senate.

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

**CUSTOMS AND EXCISE LEGISLATION AMENDMENT  
BILL (NO.4) 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Minister Representing the Minister for Industry, Technology and Commerce.

This is an omnibus bill proposing a series of amendments to the Customs Act 1901 and the Excise Act 1901. The bill also proposes to effect a series of repeals of unproclaimed sections of three Customs and Excise Amendment Acts. Major amendments involve the termination of manufacturing in bond, changes to the requirements for importing potable spirits, amendments to the Commercial Tariff Concession System as well as a series of minor policy and technical drafting changes.

**REVIEW OF DECISIONS  
Clauses 20-22**

Clauses 20-22 of the bill contain amending provisions concerning decisions about commercial tariff concessions orders. The Comptroller of Customs makes decisions on applications but is required to refer certain matters to the Minister for decision. The decisions are all of commercial significance and the Committee cannot establish what process exists for review of decisions on the merits.

The Committee seeks the Minister's advice 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.**

## **GRAIN LEGUMES LEVY LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 1 November 1989 by the Minister for Primary Industries and Energy.

The bill proposes to increase the levy on peanuts and specifies the levy on certain grain legumes. The bill would also repeal the Grain Legumes Research Regulations. Provision is also made for the mung bean species 'vigna mungo' to be leviable.

The Committee has no comment on this bill.

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

**HIGHER EDUCATION FUNDING AMENDMENT  
BILL (NO.3) 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Minister for Employment, Education and Training.

The bill proposes to amend the Higher Education Funding Act 1988 to provide as a condition of payments made under the Act, that States will not take any action to prevent or hinder the imposition or collection of fees by higher education institutions for organisations representing the interests of students.

**DETERMINATIONS BY THE MINISTER  
Clause 3**

Clause 3 of the bill inserts proposed section 107A under which a State is not to prevent the imposition by government bodies of fees for student organisations. The Minister will be able to determine that an amount is payable by the Commonwealth to an institution in a State for an organisation representing the interests of students.

The Committee is of the view that the determinations made by the Minister should be required to be tabled before the Parliament and be subject to disallowance.

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

## **HOUSING ASSISTANCE BILL 1989**

This Bill was introduced into the House of Representatives on 1 November 1989 by the Minister for Community Services and Health.

The bill proposes to authorise a new Commonwealth State Housing Agreement between the Commonwealth and the States, the Northern Territory and the Australian Capital Territory. The agreement would relate to the provision of housing assistance for rental housing and for home purchase and would operate for ten years from 1 July 1989.

### **DETERMINATIONS BY MINISTER Clause 19**

The clause would allow the Minister to make determinations under the Act. The Committee is of the opinion that the Ministerial determinations should be required to be tabled before the Parliament and be subject to disallowance.

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

**INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT  
BILL (NO.2) 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Minister Assisting the Treasurer.

The bill proposes to amend the Income Tax (International Agreements) Act 1953 to give the force of law in Australia to protocols amending the existing comprehensive double taxation agreements between Australia and Singapore and Australia and France, and new comprehensive double taxation agreements between Australia and Papua New Guinea and Australia and Thailand.

The Committee has no comment on this bill.

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

## **INDUSTRY COMMISSION BILL 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Minister Assisting the Treasurer.

The bill proposes to establish an Industry Commission to replace the Industries Assistance Commission, the Inter-State Commission and the Business Regulation Review Unit. The Commission's functions will be to hold public inquiries on matters referred to it by the Government.

### **COPIES OF DOCUMENTS Proposed Section 23**

Proposed section 23 would give the Commission power to take and keep possession of copies of documents, and allow people entitled to inspect them to do so. The Committee regards it as appropriate that persons entitled to inspect the documents be allowed to make copies of them.

### **REVERSAL OF ONUS OF PROOF Clause 26**

Clause 26 of the bill prohibits prejudice of employment where a person gives assistance to the Commission. Subclause 26(2) reverses the onus of proof by requiring a person charged with an offence under the clause to prove that the prejudice did not arise as a result of the assistance rendered to the Commission.

**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 brought to the attention of the Senate, in that by reversing the onus of proof it may trespass unduly on individual rights and liberties.

**REMOVAL OF COMMISSIONER OR ASSISTANT COMMISSIONER**  
**Clause 38**

Clause 38 provides for a suspension which can lead to the removal of a Commissioner or Assistant Commissioner for 'proved misbehaviour or incapacity'. A statement of the grounds for suspension is to be laid before both Houses of Parliament and if they both declare that the person should be restored to office, then the Governor General is to terminate the suspension.

The Committee notes the provision is different from standard provisions of this type, such as clause 52 of the bill which states in relation to current members of the Inter-State Commission that members can only

be removed from office as a Commissioner by the Governor-General on an address from both Houses of the Parliament in the same session praying for removal on the ground of proved misbehaviour or incapacity, but the person is not to be removed otherwise.

The Committee seeks the Minister's views on why clause 38 should not be worded in the same manner as clause 52.

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

## **MARINE NAVIGATION LEVY BILL 1989**

This Bill was introduced into the House of Representatives on 1 November 1989 by the Minister for Transport and Communications.

The bill proposes a levy to be imposed on commercial ships for the purpose of funding navigational services provided to them by the Commonwealth. The proposed levy would replace the light dues under the Lighthouses Act 1911 which have been imposed on commercial ships since 1915.

### **AMOUNT OF LEVY TO BE IMPOSED Clauses 7 and 8**

Clause 7 fixes the amount of levy to be imposed pursuant to the bill. Clause 8 provides that changes to the amount of levy can be made by regulation. As subclause 8(2) provides that the levy can not be increased by more than 15% in any 12 month period, the Committee has no further comment on 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.**

## **MARINE NAVIGATION LEVY COLLECTION BILL 1989**

This Bill was introduced into the House of Representatives on 1 November 1989 by the Minister for Transport and Communications.

The bill proposes to provide for the collection of the levy to be imposed by the Marine Navigation Levy Bill 1989.

The Committee has no comment on this bill.

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

**SOCIAL SECURITY AND VETERANS' AFFAIRS LEGISLATION  
AMENDMENT BILL (NO.4) 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Minister for Social Security.

This is an omnibus Bill proposing a series of amendments to ten Acts. The main changes involve a restructuring of the overlap between the Pension Income Test and taxation, alterations to the method of assessment of annuities and superannuation pensions under the Income Test, changes to rent assistance and amendments to the Young Homeless Allowance, the Job Search Allowance and other areas of benefits for youth.

**PENSIONABLE AGE**  
**Paragraphs 21(o), 92(m) and 98(c)**

Paragraph 21(o) of the bill would amend section 3 of the Social Security Act 1947 to provide that the pensionable age is 65 for a man and 60 for a woman.

Paragraph 92(m) of the bill would amend proposed section 35 of the Veterans' Entitlements Act 1986 to establish that the pensionable age is 60 for a male veteran and 55 for a female veteran, or 65 and 60 respectively if the man or woman is not a veteran.

Paragraph 98(c) of the bill would amend subsection 43(4) of the Veterans' Entitlements Act to provide that in order to qualify for a service pension on grounds of invalidity a person has to be aged 60 years if a woman and 65 years if a man.

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 regards the use of different ages for men and women for the payment of benefits as discriminatory.

**EXCLUSION OF SOCIAL SECURITY APPEALS TRIBUNAL REVIEW  
Clauses 71 and 72**

Clauses 71 and 72 propose amendments to sections 178 and 182 respectively of the Social Security Act. The effect of the amendments is to exclude determinations made by the Secretary relating to certain foreign currency matters and the date of effect for re-assessed exchange rates, from review by the Social Security Review Tribunal.

In view of the technical nature of the matters excluded from review the Committee has no further comment.

**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) 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Minister Assisting the Treasurer.

The bill proposes to amend the Income Tax Assessment Act 1936 to change the way Income Tax is paid by companies, superannuation funds, approved deposit funds and pooled superannuation trusts and to introduce various measures announced in the Budget on 15 August 1989.

### **AMENDMENT OF DETERMINATIONS Clause 15**

Clause 15 of the bill inserts a proposed new subsection 160AK(2) so that a determination of credit made under Division 19 of Part III of the Act cannot be amended after the end of four years from the original determination, except to correct a calculation error or mistake of fact or as a consequence of a variation in, or a credit or refund of Australian or foreign tax.

The effect of the amendment is to authorise the Commissioner to amend determinations to decrease or increase an amount of credit for any reason within four years of the date of the original determination. The period was previously three years.

The Committee regards the possible decrease of a taxpayer's credit after four years rather than the current three year period as being to the detriment of taxpayers.

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

**RETROSPECTIVITY**  
**Clause 46**

Clause 46 inserts proposed amendments into a number of provisions that will have periods of retrospectivity back to 4 April 1989. As the retrospectivity is beneficial to taxpayers, the Committee has no further comment.

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

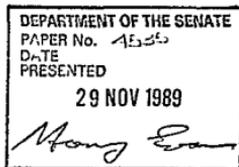
**TRANSPORT AND COMMUNICATIONS LEGISLATION  
AMENDMENT BILL (NO.2) 1989**

This Bill was introduced into the House of Representatives on 2 November 1989 by the Minister for Land Transport and Shipping Support.

This is an omnibus Bill proposing amendments to 15 Acts administered within the Transport and Communications portfolio. The amendments are of a minor and technical nature, changing mechanisms for the implementation of schemes, amending minor parts of existing schemes and removing certain drafting problems.

The Committee has no comment on this bill.

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



## SCRUTINY OF BILLS ALERT DIGEST

NO. 17 OF 1989

29 NOVEMBER 1989

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator K. Patterson (Deputy Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator J. McGauran  
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:

Acts Interpretation (Ministerial Undertakings)  
Amendment Bill 1989

- \* Australian Heritage Commission (National Estate  
Protection) Amendment Bill 1989

Australian War Memorial Amendment Bill 1989

Bounty (Photographic Film) Bill 1989

- \* Commonwealth Serum Laboratories (Conversion into  
Public Company) Bill 1989

- \* 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.

**ACTS INTERPRETATION (MINISTERIAL UNDERTAKINGS)  
AMENDMENT BILL 1989**

This Bill was introduced into the Senate on 24 November 1989 as a Private Senator's Bill by Senator Sanders.

The bill proposes to give the Senate power to disallow delegated legislation when a written undertaking has been given by a Minister, or a subordinate lawmaker, to repeal or amend a defective instrument and this undertaking is not honoured within a specified period of time.

The Committee has no comment on this bill.

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

**AUSTRALIAN HERITAGE COMMISSION (NATIONAL ESTATE PROTECTION) AMENDMENT BILL 1989**

This Bill was introduced into the Senate on 22 November 1989 as a Private Senator's Bill by Senator Dunn.

The purpose of this Bill is to amend the Australian Heritage Commission Act 1975 to allow for regulations to be made to control certain actions by corporations within the National Estate. The bill relies on the Commonwealth's power with respect to foreign corporations and trading or financial corporations and its powers with respect to the peoples of the Aboriginal race.

**GENERAL COMMENT**

The Committee notes that the terms of this bill are particularly unclear and as a consequence the bill is difficult to understand.

**CREATION OF CRIMINAL OFFENCES BY REGULATION  
Proposed sections 30A and 30B**

Proposed sections 30A and 30B of the Principal Act will allow for the creation of criminal offences by means of regulation. The Committee is concerned that the bill allows too wide and vague a power for the creation of criminal offences bearing high penalties.

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

## **AUSTRALIAN WAR MEMORIAL AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 23 November 1989 as a Private Member's Bill by Mr Shipton.

The bill proposes to amend the Australian War Memorial Act 1980 to include in the functions of the memorial the power to allow the exhibition of historical material outside Australia.

The Committee has no comment on this bill.

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

## **BOUNTY (PHOTOGRAPHIC FILM) BILL 1989**

This Bill was introduced into the House of Representatives on 21 November 1989 by the Minister Representing the Minister for Industry, Technology and Commerce.

The bill proposes to provide bounty assistance for the production of photographic colour film which has been sensitised and finished in Australia. The proposed bounty would total up to 12 million dollars a year for 3 years commencing on 1 January 1990.

The Committee has no comment on this bill.

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

## **COMMONWEALTH SERUM LABORATORIES (CONVERSION INTO PUBLIC COMPANY) BILL 1989**

This Bill was introduced into the House of Representatives on 22 November 1989 by the Minister for Housing and Aged Care.

The bill proposes to establish the Commonwealth Serum Laboratories (CSL) as a company and for CSL to be registered as a company incorporated under the Companies Act 1981 on a day to be proclaimed.

### **GENERAL COMMENT**

#### **Annual Report**

CSL is currently required to make an Annual Report to Parliament. Pursuant to the provisions of this bill the only reporting on the activities of the company will be the Annual Report made pursuant to the Companies Act 1981. Although the Annual Report is a public document, the Committee requests that the Minister take appropriate steps to ensure that it is tabled before 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.**

**CORRIGENDUM**

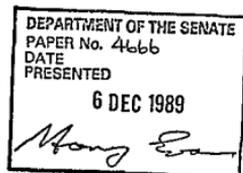
**Crimes (Traffic in Narcotic Drugs and Psychotropic Substances) Bill 1989**

The Committee commented on this bill on page 16 of Alert Digest No. 16 of 1989 (22 November 1989). The last sentence in the third paragraph on page 16 should read

The Committee notes that a similar provision exists in the Crimes (Hostages) Act 1988 and that the Explanatory Memorandum states that the subclause is to allow preliminary steps to be taken prior to the Attorney-General giving consent.

The second last line in the paragraph was inadvertently omitted during the printing of the Digest.

**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 1989**



**6 DECEMBER 1989**

**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 18 OF 1989**

**6 DECEMBER 1989**

**ISSN 0729-6851**

## SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

### MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)  
Senator K. Patterson (Deputy Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator J. McGauran  
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.

D18/89

The Committee has considered the following Bills:

- \* Civil Aviation Amendment Bill 1989
  - \* Customs (Detention and Search) Bill 1989
  - \* Defence Legislation Amendment Bill (No. 2) 1989
  - Extradition Amendment Bill 1989
  - Federal Airports Corporation Amendment Bill 1989
  - Industrial Relations Legislation Amendment Bill 1989
  - National Health Amendment Bill (No. 2) 1989
  - \* Occupational Health and Safety (Commonwealth Employment) Bill 1989
  - Occupational Superannuation (Reasonable Benefit Limits) Amendment Bill 1989
  - \* Superannuation Bill 1989
  - \* Taxation Laws Amendment Bill (No. 6) 1989
- \* 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.**

## **CIVIL AVIATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 29 November 1989 by the Minister for Transport and Communications.

The bill proposes to implement reforms to the Civil Aviation Authority which remove a range of detailed controls exercised by Government and change the accountability of the board as well as to make a number of minor, unrelated amendments to the Civil Aviation Act 1988 to facilitate the operation of the Authority.

### **RETROSPECTIVITY** Subclause 2(3)

Subclause 2(3) of the bill would amend paragraph 3(a) of the Principal Act to make it retrospective to 1 July 1988. As the retrospectivity is to correct a drafting oversight the Committee has no further comment.

### **IMMUNITY OF AUTHORITY FROM STATE AND TERRITORY LAWS** Proposed subsections 11A(1) and (2)

Proposed subsections 11A(1) and (2) of the Principal Act would grant to the Civil Aviation Authority an immunity from State laws in certain circumstances. The Explanatory Memorandum states that the immunity applies only to functions of the Authority that relate directly to regulating the safety of air navigation.

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

D18/89

The Committee notes that proposed subsection 11A(3) phrases the immunity to cover any acts of the Authority unless they are wholly unconnected with the safety of air navigation.

The Committee seeks the views of the Minister on why it is necessary for the immunity to be drafted in such wide terms.

**TERMINATION OF APPOINTMENT**  
**Clause 21**

Paragraph 21(b) of the bill amends section 42 of the Principal Act to allow the Minister to terminate the appointment of a board member, where the Minister is of the opinion that the performance of the member has been unsatisfactory for a significant period of time.

As what constitutes unsatisfactory performance may be a matter of opinion, the Committee regards it as appropriate that a board member facing the termination of an appointment should be given the opportunity to show cause to the Minister why the appointment should not be terminated.

**IMMUNITY FROM ACTION**  
**Clause 33**

Proposed paragraph 80(1)(c) would extend the immunity from legal action currently enjoyed by the Authority. As the immunity is only available when the Authority acts without recklessness or negligence the Committee has no further comment.

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

## **CUSTOMS (DETENTION AND SEARCH) BILL 1989**

This Bill was introduced into the House of Representatives on 30 November 1989 by the Minister Representing the Minister for Industry, Technology and Commerce.

The bill proposes to amend the Customs Act 1901 to repeal the current power to detain and search persons suspected of unlawfully carrying prohibited goods, and insert in its place a new Division containing a more comprehensive range of customs detention and search powers. Major changes would include giving authorised customs officers the power to detain and search persons suspected of internally concealing narcotics as well as the power to stop and frisk search persons for prohibited goods within customs controlled areas at international air and sea ports.

### **GENERAL COMMENT**

The bill would grant extensive powers to customs officers and police officers to detain and search persons reasonably suspected of bringing prohibited substances into Australia. However, it appears that the rights of individuals are adequately protected and the appropriate efforts have been made to protect persons against abuses of power by customs and police officers. Accordingly the Committee has no further comment about 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.

D18/89

## **DEFENCE LEGISLATION AMENDMENT BILL (NO. 2) 1989**

This Bill was introduced into the House of Representatives on 19 November 1989 by the Minister for Defence.

This is an omnibus bill proposing various amendments to a series of Acts within the Defence portfolio. Major proposals include the removal of restrictions on the power of the Chief of the Defence Force to make single service command appointments and organisational arrangements, and the increase of the orphan's benefit under Defence Force Retirement and Death Benefits legislation from \$702 to \$5000.

### **RETROSPECTIVITY Subclause 2(4)**

By virtue of subclause 2(4), the amendments to be made by Schedule 2 will have effect retrospectively to 30 June last. As the amendments are beneficial to orphaned dependents of members of the Defence Forces the Committee has no further comment.

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

## **EXTRADITION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 29 November 1989 by the Attorney-General.

The bill proposes to amend the Extradition Act 1988 to clarify the scheme for the making of regulations with respect to multilateral treaties, bi-lateral treaties and reciprocal arrangements, to provide a scheme for consent surrender to New Zealand similar to that provided for other countries, to provide police with a power to arrest without warrant a person who does not comply with bail conditions, to permit an Australian magistrate to take evidence outside of Australia and to make other minor technical changes to the Act.

The Committee has no comment on this bill.

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

## **FEDERAL AIRPORTS CORPORATION AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 29 November 1989 by the Minister for Transport and Communications.

The bill proposes to amend the Federal Airports Corporation Act 1986 to implement reforms to the Federal Airports Corporation which remove a range of detailed controls exercised by Government and change the accountability of the board as well as to remove a provision which prevents the Federal Airports Corporation engaging in anti-hijack activities.

The Committee has no comment on this bill.

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

**INDUSTRIAL RELATIONS LEGISLATION AMENDMENT  
BILL 1989**

This Bill was introduced into the House of Representatives on 30 November 1989 by the Minister for Industrial Relations.

This is an omnibus bill proposing a series of amendments to six Acts administered within the Industrial Relations portfolio. The amendments are not substantial and deal mainly with drafting and technical problems and minor operational changes.

The Committee has no comment on this bill.

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

**NATIONAL HEALTH AMENDMENT BILL (NO. 2) 1989**

This Bill was introduced into the House of Representatives on 29 November 1989 by the Minister for Housing and Aged Care.

The bill proposes to expand the membership of the Pharmaceutical Benefits Remuneration Tribunal by the addition of two new members who would be appointed by the Minister. In addition the National Health Act 1953 would be amended to require that the Chairperson and at least two other members would constitute the Tribunal.

The Committee has no comment on this bill.

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

**OCCUPATIONAL HEALTH AND SAFETY (COMMONWEALTH  
EMPLOYMENT) BILL 1989**

This Bill was introduced into the House of Representatives on 30 November 1989 by the Minister for Industrial Relations.

The bill proposes to improve the provisions for the protection of the health and safety of Commonwealth employees at work. The bill would impose on Commonwealth employers and Commonwealth employees a general duty of care and specific obligations in respect of the protection of health and safety at work, similar to the obligations currently imposed on employers and employees by legislation enacted by most of the Australian states.

**ONUS OF PROOF  
Subclause 7(2)**

Subclause 7(2) would cast on the defendant the onus of proof of some matters in a criminal prosecution. The only matter that the defendant would be required to prove is the reason for undertaking a course of action. This is a matter peculiarly within the knowledge of the defendant and is acceptable to 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.**

**OCCUPATIONAL SUPERANNUATION (REASONABLE  
BENEFIT LIMITS) AMENDMENT BILL 1989**

This Bill was introduced into the House of Representatives on 29 November 1989 by the Minister Assisting the Treasurer.

The bill proposes to amend the Occupational Superannuation Standards Act 1987 to provide for regulations in relation to the method for determining the reasonable benefit limits and the method by which the Insurance and Superannuation Commissioner will determine whether a benefit received by a person is within or in excess of those limits. The bill also proposes to amend the Income Tax Assessment Act 1936 to establish arrangements whereby the Insurance and Superannuation Commissioner can administer benefit limits.

The Committee has no comment on this bill.

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

## **SUPERANNUATION BILL 1989**

This Bill was introduced into the House of Representatives on 29 November 1989 by the Minister Representing the Minister for Finance.

The bill proposes to establish a new superannuation scheme for commonwealth employees which would be implemented from 1 July 1990. The bill proposes to adopt the approach used for private sector superannuation schemes, and use a Trust Deed administered by Trustees to set up the scheme. Members of the current Commonwealth Superannuation Scheme would be given 12 months from 1 July 1990 in which to decide whether to join the new scheme.

### **AMENDMENT BY REGULATION**

Subclause 5(1) and paragraphs 6(1)(j) and 6(2)(c) would allow various matters contained in the bill to be established by means of regulation. Clause 43 of the bill will require the relevant ministerial instruments or declarations to be not only disallowable instruments but statutory rules and consequently published, numbered, consolidated and reasonably accessible to the public. Accordingly, the Committee has no further comment.

**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. 6) 1989**

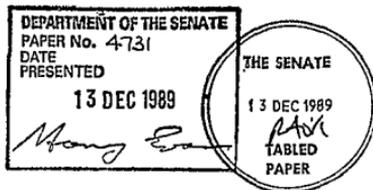
This Bill was introduced into the House of Representatives on 30 November 1989 by the Minister Assisting the Treasurer.

The bill proposes a series of amendments to the Income Tax Assessment Act 1936 dealing with capital gains tax, double dipping, research and development, veteran carer's pension, approved actuary definition, gift provisions and the payment of interest provisions. The bill also proposes an amendment to the Industry Research and Development Act 1986 to empower the Industry Research and Development Board to certify to the Commissioner of Taxation whether particular technology was core technology in relation to particular research and development activities, and to delete the requirement that syndicates of eligible companies must include financial institutions.

### **RETROSPECTIVITY Clause 38**

Clause 38 of the bill would provide that various provisions of the bill are to have retrospective effect. As the retrospectivity is either technical, beneficial to tax payers or to give effect to matters announced in the Budget the Committee has no further comment.

**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. 19 OF 1989

13 DECEMBER 1989

**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 19 OF 1989**

**13 DECEMBER 1989**

**ISSN 0729-6851**

**SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS**

**MEMBERS OF THE COMMITTEE**

Senator B. Cooney (Chairman)  
Senator K. Patterson (Deputy Chairman)  
Senator M. Beahan  
Senator R. Crowley  
Senator J. McGauran  
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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  - (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 Bill:

Senate (Quorum) Bill 1989

\* 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.**

**SENATE (QUORUM) BILL 1989**

This Bill was introduced into the Senate on 7 December 1989 by the Manager of Government Business in the Senate.

The bill proposes to change the quorum of the Senate from one-third to one-quarter of the Senators. The effect of the bill will be to reduce the number of Senators required to constitute a meeting of the Senate for the Senate to exercise its powers from 26 to 19.

The Committee has no comment on this bill.

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

STANDING COMMITTEE ON FINANCE AND PUBLIC  
ADMINISTRATION - PRESENTATION OF REPORT

(At Tabling of Papers)

SENATOR COATES:

Mr President,

I present the report of the Standing Committee on Finance and Public Administration on the Aboriginal Development Commission Annual Report 1987-88, together with the transcript of evidence and move - That the report be printed.

(When motion agreed to)

Mr President,

I seek leave to move a motion in relation to the report.

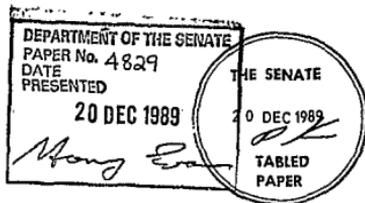
(When leave granted)

Mr President,

I move - That the Senate take note of the report.

(Make tabling statement)

13.12.89



**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 20 OF 1989**

**20 DECEMBER 1989**

**SCRUTINY OF BILLS ALERT DIGEST**

**NO. 20 OF 1989**

**20 DECEMBER 1989**

**ISSN 0729-6851**

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Senator K. Patterson (Deputy Chairman)  
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The Committee has considered the following Bills:

Federal Court (Grouped Proceedings) Bill 1989

Industrial Relations (Right to Strike) Amendment  
Bill 1989

Migration Legislation Amendment Bill (No. 2) 1989

\*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.**

**FEDERAL COURT (GROUPED PROCEEDINGS) BILL 1989**

This Bill was introduced into the Senate on 11 December 1989 by Senator Haines.

This Bill proposes to provide for the grouping of proceedings in the Federal Court of Australia. The Bill would enable private action to be taken in cases of alleged multiple wrongdoing to secure a binding decision in respect of all those affected.

The Committee has no comment on this bill.

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

**INDUSTRIAL RELATIONS (RIGHT TO STRIKE) AMENDMENT  
BILL 1989**

This Bill was introduced into the Senate on 14 December 1989 by Senator McLean.

This Bill proposes to amend the Industrial Relations Act 1988 to insert a division relating to the right to strike. The Bill would restrict the legal action which could be taken against employee organizations and their officials and members involved in an industrial dispute.

The Committee has no comment on this bill.

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

### **MIGRATION LEGISLATION AMENDMENT BILL 1989**

This Bill was introduced into the Senate on 14 December 1989 by the Minister for Immigration, Local Government and Ethnic Affairs.

This Bill proposes to amend the Migration Legislation Amendment Act 1989 to introduce into the review process of immigration cases the power of the Minister to substitute a decision after the first tier of review. This amendment would augment a provision in the Migration Legislation Amendment Act 1989 which allows the Minister to set aside a decision of the Immigration Review Tribunal and substitute a decision more favourable to the applicant if the Minister thinks it is in the public interest to do so.

The Committee has no comment on this bill.

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



AUSTRALIAN SENATE  
CANBERRA, A.C.T.

STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

PARLIAMENT HOUSE  
CANBERRA, A.C.T. 2600  
TEL: (062) 77 3050

20 DECEMBER 1989

SCRUTINY OF BILLS COMMITTEE

TABLING OF REPORT

CHAIRMAN

MR PRESIDENT,

I PRESENT TO THE SENATE SCRUTINY OF BILLS ALERT DIGEST NO.20  
OF 1989 DATED 20 DECEMBER 1989.

~~MR PRESIDENT I MOVE THAT THE DIGEST BE PRINTED.~~