



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

DEPARTMENT OF THE SENATE	
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PRESIDENT	<i>W. L. ...</i>
CLERK OF THE SENATE	

FIRST REPORT

11 MAY 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIRST REPORT

11 May 1983

ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIRST REPORT

The Committee has the honour to present its First Report (new series) to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Navigation (Protection of the Sea) Amendment Bill 1983

World Heritage Properties Conservation Bill 1983

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power;
or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b). That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

NAVIGATION (PROTECTION OF THE SEA) AMENDMENT
BILL (1983)

1. This Bill was introduced by the Minister representing the Minister for Transport in the Senate. The purpose of the Bill is to amend the Navigation Act 1912 to implement construction provisions in relation to ships carrying or using oil and ships carrying noxious liquid substances in bulk.
2. The Committee draws the attention of the Senate to the following clauses:

Clause 6 - Ministerial discretions

3. Clause 6 includes a number of proposed sections which vest unappealable discretions in the Minister. Proposed section 267B empowers the Minister to issue a certificate stating that a ship is constructed in compliance with the Convention. Proposed section 267C empowers the Minister to issue an International Oil Pollution Prevention certificate. Under proposed section 267D(5), the Minister may cancel a ship construction certificate where he has reason to believe that the certificate is invalid or fraudulently obtained. The Committee draws these provisions to the attention of the Senate under clause 1(a)(iii) in that they might be regarded as making rights, liberties and obligations unduly dependent upon non reviewable administrative decisions.

Clause 7 - Ministerial discretions

4. This clause vests similar unreviewable discretions in the Minister - in this case in relation to the issue of certificates for ships carrying noxious liquid substances. Comments made above in relation to clause 6 are also applicable to proposed sections 267Q, 267R and 267S.

WORLD HERITAGE PROPERTIES CONSERVATION BILL 1983

5. This Bill was introduced by the Minister for Home Affairs and the Environment in the House of Representatives on 21 April 1983. The purpose of the Bill is to provide for the protection of certain property that Australia has identified as 'natural heritage' or 'cultural heritage' within the meaning of an international treaty known as the Convention for the Protection of the World Cultural and Natural Heritage.
6. The Committee draws the attention of the Senate to the following Clauses of the Bill:

Clause 3 - Interpretation

7. Paragraph 3(2)(a) defines "identified property" to include properties that the Commonwealth has submitted to the World Heritage Committee as suitable for inclusion in the World Heritage List. The paragraph further defines "identified property" to include property declared by the regulations to form part of the cultural or natural heritage. Regulations of course are subject to all the usual processes of parliamentary scrutiny.
8. However, it is equally clear that a mere submission of a property by the Commonwealth to the World Heritage Committee does not call into play any parliamentary scrutiny. Thus, it may be - though the Committee regards the possibility as unlikely - that such a submission may not be known to the Parliament, or to the parties whose rights may be affected in the event that a Proclamation is made in relation to such "identified property". The Committee draws the attention of the Senate under clause 1(a)(iii) to this disparity in opportunities for parliamentary scrutiny and indeed disallowance of Commonwealth action, particularly as submission

is a condition precedent to the making of a Proclamation. Insofar as property rights may be affected should a Proclamation be made on the basis of a Commonwealth submission to the World Heritage Committee, then it might be thought that such rights are unduly dependent upon non-reviewable executive or administrative decisions.

Clause 17 - Compensation

9. This clause sets out the procedures relating to the determination of any compensation that might be payable for land acquired under the Act or under regulations made pursuant to the National Parks and Wildlife Conservation Act 1975. The procedures are intended to fulfil the Constitutional requirement that the Commonwealth acquire property "on just terms" (s.51(xxxi)).
10. Once it has been determined that the Commonwealth is liable to pay compensation, the precise amount - the "just terms" - is determined in accordance with a procedure spelt out in clauses 17(7) to 17(14). If the claimed amount is less than \$5 million, and the Commonwealth does not agree to this amount, the claimant may apply to the Federal Court for determination of the compensation, under clause 17(14).
11. However, in cases of disputed claims for \$5 million or more, the Governor-General shall establish a Commission of Inquiry to inquire into and report on the compensation payable. Under clause 17(10), a Commission has 12 months in which to report; and under clause 17(12), the Governor-General has a further 3 months in which to determine the compensation payable. Although the Committee believes that the Report of the Commission of Inquiry would be admissible as evidence in any Federal Court action taken under this clause,

the Committee is concerned that the Report may otherwise not be publicly available, either through tabling in Parliament or release to the claimant. If either the Commission does not report within 12 months or the claimant contests the amount determined by the Governor-General, the claimant may apply to the Federal Court to determine a just amount.

12. The Committee draws attention to the difference in treatment accorded disputed claims which fall either side of the \$5 million. Disputed claims of \$5 million or more are made subject to a process of resolution which may, in some circumstances, be less speedy and possibly involve undue delay in the payment of amounts for land acquired by the Commonwealth. The Committee draws attention to the departure from the usual procedure set out in the Lands Acquisition Act 1955 which in most instances lends itself to the possibility of a speedy resolution of disputed claims. Insofar as there may be some extension of the time in which compensation is payable for land acquired under this Act, the Committee draws this provision under clause 17 to the attention of the Senate under clause 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.

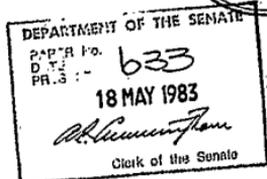
Michael Tate

Chairman

11 May 1983



AUSTRALIAN SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SECOND REPORT

18 MAY 1983 .

W. J. C.

THE SENATE

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SECOND REPORT

18 MAY 1983

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SECOND REPORT

The Committee has the honour to present its Second Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Australian Broadcasting Corporation Bill 1983
Bounty (Room Air Conditioners) Bill 1983
Bounty (Steel Products) Bill 1983
Referendum (Constitution Alteration) Amendment
Bill 1983

AUSTRALIAN BROADCASTING CORPORATION BILL 1983

1. This Bill was introduced by the Minister for Communications in the House of Representatives on 4 May 1983. The purpose of the Bill is to establish the Australian Broadcasting Corporation with a Charter setting out its functions and duties.

General Comment

2. As stated in the Minister's second reading speech, this Bill is "largely based" on the similar Bill introduced by the Government late last year. However, among the changes in the Bill are several that improve provisions to which the Committee drew attention in Scrutiny of Bills Alert Digest No. 11 (dated 23 September 1982) and the Thirteenth Report (dated 22 September 1982). The Committee welcomes changes which, inter alia, substitute a series of Community Affairs Officers in place of the proposed Commissioner for Complaints in such a way that the Committee's previous misgivings over the powers conferred by clause 83 of the 1983 Bill do not arise; delete some of the administrative machinery incidental to withholding salary during certain industrial disputes; introduce a system of Tenure Appeal Boards to hear appeals in cases of redeployment, and delete a number of questionable provisions regulating the conduct of Promotions Appeal Boards.
3. The Committee draws the attention of the Senate to the following clauses of the Bill:
Clause 64 - Disciplinary action for misconduct
4. This clause provides procedures concerning the Managing Director's treatment of persons under investigation for misconduct, as defined in clause 64(10). The Committee notes that the provisions

AUSTRALIAN BROADCASTING CORPORATION BILL 1983 (Cont. 2)

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

5. Under clause 64(3), the Managing Director may suspend from duty an officer who is subject to an inquiry for alleged misconduct; and under clause 64(4), officers under suspension shall not be paid their salary. However under clause 64(5), the Managing Director "may, in his discretion" pay, either in whole or in part, the salary of a suspended officer. The clause contains no criteria under which this discretionary power shall be exercised. Although clause 65(1) of the Bill contains an appeal provision in relation to decisions by the Managing Director to reduce the salary of an officer guilty of misconduct, the Committee draws the attention of Senators to the lack of an appeal mechanism in respect of decisions affecting suspended officers.
6. Under clause 64(8), the Managing Director is required to pay any salary, otherwise due to an employee, upon removal of a suspension. However under clause 64(9), the Managing Director is granted the discretion to decrease the amount owing by an

amount equal to any earnings which, in the opinion of the Managing Director, were received by the officer from outside work during suspension.

7. The Committee draws the attention of the Senate under principle 1(a) (iii) to the lack of an avenue of appeal against these exercises of the Managing Director's discretion, in that these provisions might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 70 - Henry the Eighth provision

8. This clause provides, inter alia, that the Corporation shall not, without the approval of the Minister, enter into contracts involving either the payment or receipt of amounts exceeding \$500,000 - or a higher amount if so prescribed by regulations. The Committee acknowledges that the power to increase the amount by regulation is probably intended to make allowances for inflation. However, to the extent that this provision is an example of a Henry the Eighth clause enabling the Minister to amend an Act by way of regulation, the Committee draws it to the attention of the Senate under principle 1(a)(iv) in that it might be regarded as inappropriately delegating legislative power.

BOUNTY (ROOM AIR CONDITIONERS) BILL 1983

9. This Bill was introduced by the Minister for Industry and Commerce in the House of Representatives on 4 May 1983. The purpose of the Bill is to provide temporary assistance by way of a bounty scheme on the manufacture and sale in Australia of certain room air conditioning machines.

General Comment

10. In the previous Parliament, the Committee drew the attention of the Senate to a number of provisions common to many bounty schemes in Bills in the "Industry and Commerce" portfolio - see, for example, Thirteenth Report (dated 22 September 1982) and Fifteenth Report (dated 20 October 1982). Typical of the provisions identified by the Committee were clauses empowering officials with a right of entry to commercial premises without warrant; and clauses vesting officials with inquisitorial powers. The intention of recourse to these type of powers was to enable officials to restrict the flow of public moneys through a bounty scheme only to those persons meeting the eligibility criteria of any particular scheme. On a number of occasions, Ministers have responded to Committee comments, explaining that many of these provisions were inherent in the equitable and sound administration of bounty schemes. The Committee has included these explanations in its Reports - see, for example, Fifteenth Report.
11. The Committee acknowledges the view of the then Minister, as reported in the Fifteenth Report, "that it is not unreasonable for persons who are paid moneys out of the public purse to expect a degree of auditing by investigators to establish that such payments have been correctly made".

BOUNTY (ROOM AIR CONDITIONERS) BILL 1983 (Cont.2)

To the extent that such investigation is confined to matters of compliance auditing, the Committee does not see the need to alert the Senate to the possibility of any serious infringement of rights or fundamental liberties.

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

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

Clause 6 - Lack of appeal provision

14. Clause 21 of the Bill states which decisions or determinations are subject to review on the merits by the Administrative Appeals Tribunal. Clause 21(1)(b) includes within the scope of reviewable decisions a decision of the Comptroller-General under clause 10 approving, or refusing to approve, payment of bounty. Clause 10 empowers the Comptroller-General to pay an application for bounty "if he is satisfied that bounty is payable ...". However, under Clause 6(3), manufacturers must first meet specific eligibility criteria in order to become entitled to the bounty. Included among these criteria is the condition, under clause 6(3)(d), that the Comptroller-General "is satisfied that ... the air conditioner is of good and merchantable quality".

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

15. The Committee is concerned that Clauses 6 and 10 together provided for a double satisfaction test, and further that the Bill allows for review only of the second decision of satisfaction under clause 10. Clause 6(3) strictly requires only the satisfaction of the Comptroller-General of the existence of certain facts, not the objective existence of those facts. There would appear to be no avenue of appeal against what might be regarded as the subjective decision-making power of the Comptroller-General. In this respect, the Committee repeats misgivings aired in relation to past "good and merchantable quality" clauses - see Fifteenth Report, paragraph 5. Again, the Committee asks if it is possible explicitly to include the matters referred to in Clause 6 as criteria governing the reviewable decision made in Clause 10. The Committee continues to draw this type of provision to the attention of the Senate under principle 1(a)(iii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 11 - Registration of premises

16. Clause 6 includes in the list of conditions necessary for payment of the bounty the specification that the assembly of units shall take place at registered premises. Clause 11 states the procedure to be adopted for the registration of premises by the Minister - or delegate, as provided for under clause 20. The clause vests a number of non-reviewable discretions in the Minister or delegate.

Clause 11 (5) permits the Minister to register a certain range of premises when "in the opinion of the Minister, the registration of those premises will promote the orderly development in Australia of the industry manufacturing bountiable air conditioners". Clause 11(8) permits the Minister to determine the date at which registration shall be deemed to take effect. The Committee draws these provisions to the attention of the Senate under principle 1(a)(iii) in that they might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 16 - Powers of officers

17. Clause 16(1) empowers a Collector, or officer authorized by a Collector, to demand the attendance of "a person" believed "to be capable of giving information relevant to the operation of this Act", to answer questions and produce documents. The Committee notes the onerous penalties - \$1,000 - for those persons who, without reasonable excuse, refuse to comply with such a demand. In light of these penalties, the Committee is concerned that under this clause any person, including a member of the public who purchased a unit can be required to attend and answer questions. Clause 16(6) is more strictly limited to manufacturers or their employees. The Committee draws clause 16(1) to the attention of the Senate under principle 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.
18. Clause 16(3) provides penalties for those persons who produce false or misleading documents to a Collector or authorized officer. Unlike clause 16(5), which is a fairly standard self-incrimination

BOUNTY (ROOM AIR CONDITIONERS) BILL 1983 (Cont. 5)

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

BOUNTY (STEEL PRODUCTS) BILL 1983

19. This Bill was introduced by the Minister for Industry and Commerce in the House of Representatives on 4 May 1983. The purpose of the Bill is to provide temporary assistance by way of a bounty scheme on the production in Australia of certain high alloy steel products.

General Comment

20. General comments made above in relation to the Bounty (Room Air Conditioners) Bill 1983 are applicable to this Bill.
21. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 11 - Registration of Premises

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

Clause 16 - Powers of Officers

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

REFERENDUM (CONSTITUTION ALTERATION) AMENDMENT BILL 1983

24. This Bill was introduced by the Special Minister of State in the House of Representatives on 4 May 1983. The purpose of the Bill is to make machinery amendments to the Referendum (Constitution Alteration) Act 1906 to give effect to the proposal approved at the 1977 referendum to give Territory electors the right to vote in referendums.
25. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clauses 4 and 9 - Lack of parliamentary scrutiny

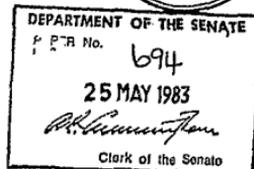
26. Under Clauses 4(f) and 9 there is reference to ballot papers being in a certain prescribed form "subject to any modifications made by the Chief Electoral Officer". The Committee notes that this administrative discretion is not subject to the standard form of parliamentary scrutiny which would accompany the exercise of the power if exercised under regulations, and draws these provisions to the attention of the Senate under principle 1(a)(v) in that they might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

Michael Tate
Chairman

18 May 1983



AUSTRALIAN SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

THIRD REPORT

25 MAY 1983

THE SENATE

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

THIRD REPORT

The Committee has the honour to present its Third Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1 (a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Bounty (Room Air Conditioners) Bill 1983

Bounty (Steel Products) Bill 1983

Broadcasting and Television Amendment (Election Blackout) Bill 1983

Conciliation and Arbitration Amendment Bill 1983

Customs Amendment Bill 1983

BOUNTY (ROOM AIR CONDITIONERS) BILL 1983

BOUNTY (STEEL PRODUCTS) BILL 1983

General Comment

1. These Bills were originally commented on by the Committee in the Second Report, dated 18 May 1983. At that stage, the Committee not only commented specifically upon a number of clauses of the Bills, but also commented generally on some of the background to the Committee's traditional treatment of provisions within Bounty Bills. The Committee then made reference to past Ministerial responses to its comments; and since then another Ministerial response, in relation to these Bounty Bills, has been received.
2. The Committee welcomes the Minister's latest response, and draws the attention of the Senate especially to a number of promised amendments or reviews of provisions commented upon in the Second Report. As the two Bills follow a uniform pattern and similar provisions are like numbered, the following comments are directed to the relevant clauses of both Bills.

Clause 6 - Lack of appeal provision

3. In the Second Report, the Committee was concerned that clauses 6 and 10 together provided for a double satisfaction test,

and further that the Bill allowed for review only of the second decision of satisfaction under clause 10. Clause 6(3) strictly requires only the satisfaction of the Comptroller-General of the existence of certain facts, not the objective existence of those facts. There would appear to be no avenue of appeal against what might be regarded as the subjective decision-making power of the Comptroller-General. The Committee asked if it is possible explicitly to include the matters referred to in clause 6 as criteria governing the reviewable decision made in clause 10. The Committee drew this type of provision to the attention of the Senate under principle 1(a)(iii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

4. The Minister's response quotes advice received from the Attorney-General's Department, which holds that:

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

5. The Minister then noted the importance of maintaining the uniform nature of Bounty legislation, suggesting that any improvement by way of amendment should not proceed on a piecemeal basis. The Committee acknowledges this concern, and takes encouragement from the Minister's statement of general review:

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

Clause 11 - Registration of premises

6. In the Second Report, the Committee was concerned that this clause vests a number of non-reviewable discretions in the Minister or delegate. Clause 11 (5) permits the Minister to register a certain range of premises when "in the opinion of the Minister, the registration of those premises will promote the orderly development in Australia of the industry manufacturing bountiable air conditioners". Clause 11(8) permits the Minister to determine the date at which registration shall be deemed to take effect. The Committee drew these provisions to the attention of the Senate under principle 1(a)(iii) in that they might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

7. In his response, the Minister explains that:

Both Bills are the result of Government decision taken on Temporary Assistance Authority (TAA) reports which recommended that urgent action be taken to provide assistance to the industries producing the goods under reference.

In considering the TAA's recommendations, the Government decided that only those firms manufacturing certain goods at a specified time should be eligible for bounty payments.

The provisions of clauses 11(5) and 11(8) reflect the Government's decisions on these matters. The actual wording of the clauses is a matter of legal drafting policy and I am advised that the words to give effect to the Government's decision.

Temporary assistance of the nature specified in the Bills is provided to certain companies to help them overcome particular difficulties. It is essential therefore, that the assistance not be diverted from the specified purpose.

8. The Committee acknowledges the Minister's view, although it continues to draw these provisions to the attention of Senate under principle 1(a)(iii) in that they might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 16 - Powers of officers

9. In the Second Report, the Committee was concerned that under clause 16(1) any person, including a member of the public who purchased a unit, can be required to attend and answer questions. In contrast, clause 16(6) is more strictly limited to manufacturers or their employees. The Committee drew clause 16(1) to the attention of the Senate under principle 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.

10. In his response, the Minister states:

I understand the power so conferred on a Collector is not unlimited as it is not every person who would be believed to be capable of giving information, so as to be required to attend under the provision. To justify requiring his attendance the information that a person is believed to be capable of giving must be that which is relevant to the operation of the Act in relation to one of the matters set out in that provision.

Within the scope of this test of relevance I believe the proper administration of the bounty scheme requires attendance by all of those persons able to give that information.

11. The Committee acknowledges the Minister's view, although it continues to draw clause 16(1) to the attention of the

Senate under principle 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.

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

13. In his response, the Minister states:

In relation to clause 16(5) I understand that as the result of the Committee's views, the Attorney-General's Department, and the Office of Parliamentary Counsel have agreed with my Department that amendment to the Bill is appropriate. I am, therefore, able to advise the Committee that I will seek to have the appropriate amendment introduced at the earliest possible date.

14. The Committee welcomes this promised amendment, and generally thanks the Minister for his response to the Committee's Second Report.

BROADCASTING AND TELEVISION AMENDMENT (ELECTION BLACK-
OUT) BILL 1983

15. This Bill was introduced by the Minister for Communications in the House of Representatives on the 11 May 1983. The purpose of the Bill is to remove the ban on political news and comment applying to radio and television stations in the three days before Federal and State elections.
16. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 3 - Tribunal Discretionary Power

17. Clause 3 proposes to amend section 116 of the Broadcasting and Television Act 1942 relating to the operation of the election blackout provisions. The proposed amendment vests a discretion in the Australian Broadcasting Tribunal as to which licensees shall be notified to refrain from broadcasting or televising election advertisements. Proposed section 116(4)(b) requires the Tribunal to issue notices to refrain where "the Tribunal is of the opinion" that programs broadcast or televised from a certain station "are ordinarily received in the whole or in a substantial part of the area ... to which the election relates ...".
A licensee in receipt of such a notice shall not broadcast or televise an election advertisement.
18. The Committee notes that the Administrative Review Council in Report No. 16 of 11 June 1982 entitled Review of Decisions under the Broadcasting and Television Act 1942 recommended that many Tribunal decisions, including those relating to the operation of the election blackout, "should be open to review on the merits by the Administrative Appeals Tribunal", subject to leave being granted by the

President of the AAT (paragraphs 66, 69). In respect of proposed new section 116, the Committee notes the view of the Administrative Review Council and draws this provision to the attention of the Senate under principle 1(a)(iii) in that it might be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

CONCILIATION AND ARBITRATION AMENDMENT BILL 1983

19. This Bill was introduced by the Minister for Employment and Industrial Relations in the House of Representatives on the 11 May 1983. The Purpose of the Bill is to abolish the Industrial Relations Bureau and establish an Arbitration Inspectorate within the Department of Employment and Industrial Relations; and to facilitate the amalgamation of organizations registered under the Act.
20. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 7 - Powers of Inspectors

21. Clause 7 proposes to insert a new section 125 in the Conciliation and Arbitration Act 1904, establishing an Inspectorate to secure the observance of the Act, the regulations and awards.
22. Proposed section 125(4) states that an inspector has such powers and duties as are directed by the Minister; and proposed section 125(5) requires the Minister to publicise such directions "by notice published in the Gazette". The Committee acknowledges the Minister's statement in the second reading speech that "... the proposed legislation will not give the Inspectorate the intrusive role that the (Industrial Relations) Bureau had in respect of the internal affairs of registered organizations". The Minister further stated that the powers and duties of the Inspectorate "will be open to public scrutiny by publication in the Gazette". However, the proposed legislation does not contain any requirement for parliamentary scrutiny - e.g., tabling of the Ministerial Notices - of the actual powers and duties of the Inspectorate. While the Committee accepts the need for flexibility in many administ-

rative matters, it draws this provision to the attention of the Senate under principle 1(a)(v) in that it might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

23. Proposed sub-section 125(6)(b)(iv) empowers an Inspector to require a person to produce books and records. A person who refuses to comply "within a reasonable time" may, under 125(7), be issued by an Inspector with a notice to produce, at a time and place specified by the Inspector. Refusal to comply "without reasonable excuse" with such a notice is made an offence under 125(10), with a penalty of \$500 or 6 months imprisonment. The Committee is concerned that decisions by an Inspector made pursuant to these provisions governing the production of books are not subject to any review by any supervisory Board or Panel. Demands for the production of books might be oppressive to an employer, and an avenue of appeal, particularly as to the time and place for the production of documents under proposed section 125(7), might be a useful protection against excessive use of this regulatory power. The Committee draws these provisions to the attention of the Senate under principle 1(a)(iii) in that they might be regarded as making rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

CUSTOMS AMENDMENT BILL 1983

24. This Bill was introduced by the Minister for Administrative Services in the House of Representatives on the 11 May 1983. The purpose of the Bill is to introduce a new system for granting tariff concessions, to be known as the Commercial Tariff Concession System.
25. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 5 - Tariff Concession Orders

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

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

28. The Committee reserves final comment on this aspect of the Bill until the completion of the examination by the Administrative Review Council of the current review of decisions under the Customs Act 1901. However, the Committee draws the clause to the attention of the Senate under principle 1 (a)(iii) in that it might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

Michael Tate
Chairman

25 May 1983

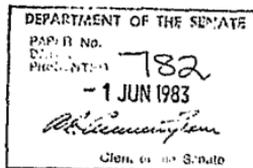


AUSTRALIAN SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FOURTH REPORT



1 JUNE 1983

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THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FOURTH REPORT

1 JUNE 1983

ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power;
or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE, FOR THE SCRUTINY OF BILLS

FOURTH REPORT

The Committee has the honour to present its Fourth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Conciliation and Arbitration Amendment Bill 1983

Income Tax Assessment Amendment Bill 1983

Parliamentary Contributory Superannuation Amendment Bill 1983

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

Taxation (Unpaid Company Tax) Assessment Amendment Bill 1983

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CONCILIATION AND ARBITRATION AMENDMENT BILL 1983

1. This Bill was introduced by the Minister for Employment and Industrial Relations in the House of Representatives on the 11 May 1983. The Purpose of the Bill is to abolish the Industrial Relations Bureau and establish an Arbitration Inspectorate within the Department of Employment and Industrial Relations; and to facilitate the amalgamation of organizations registered under the Act.

General Comment

2. This Bill was originally commented on in Scrutiny of Bills Alert Digest No. 3 of 18 May 1983 and in the Third Report of 25 May 1983. The Committee has since received a written response from the Minister, substantial parts of which are incorporated below. The Committee welcomes such Ministerial responses, and makes every endeavour to incorporate relevant passages in follow-up reports on the Bills concerned. The Committee believes that this procedure is beneficial to the legislative process in that it brings before the Senate a greater range of information which is especially relevant to the consideration of Bills during their Committee stage debate. The Committee notes the general assurance given by the Minister that "all the provisions of the Bill were fully discussed with the ACTU and employers through the National Labour Consultative Committee and endorsed by them. Close attention was in fact given by the members of the Council to the particular provisions referred to [by the Committee] and they were agreed to in the form in which they appear in the Bill."
3. The Committee draws the attention of the Senate to the following clause of the Bill:

CONCILIATION AND ARBITRATION AMENDMENT BILL 1983
(Cont. 2)

Clause 7 - Powers of Inspectors

4. Clause 7 proposes to insert a new section 125 in the Conciliation and Arbitration Act 1904, establishing an Inspectorate to secure the observance of the Act, the regulations and awards.
5. Proposed section 125(4) states that an inspector has such powers and duties as are directed by the Minister; and proposed section 125(5) requires the Minister to publicise such directions "by notice published in the Gazette". The Committee acknowledges the Minister's statement in the second reading speech that "... the proposed legislation will not give the Inspectorate the intrusive role that the (Industrial Relations) Bureau had in respect of the internal affairs of registered organizations". The Minister further stated that the powers and duties of the Inspectorate "will be open to public scrutiny by publication in the Gazette". However, the proposed legislation does not contain any requirement for parliamentary scrutiny - e.g., tabling of the Ministerial Notices - of the actual powers and duties of the Inspectorate. While the Committee accepts the need for flexibility in many administrative matters, it has drawn this provision to the attention of the Senate under principle 1(a)(v) in that it might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.
6. The Minister's response notes that one important improvement in the reintroduction of the Inspectorate is the requirement that the Minister "publish his directions in the Australian Government Gazette". The Minister's response continues:

CONCILIATION AND ARBITRATION AMENDMENT BILL 1983
(Cont. 3)

Your Committee was concerned that these provisions may be deficient in not providing for Parliamentary scrutiny of the directions. I do not consider it necessary to make such provision in the Bill as it is my intention to seek to incorporate, by leave, such directions in the Hansard. This was previously done by a former Minister for Employment and Industrial Relations, the Hon. A.A. Street - see House of Representatives Hansard of 27 May 1979 at pages 2040-2042. It would be appropriate for this to be done in both Houses of Parliament.

I should add that proposed sub-section 125(12) requires the Minister to have a copy of the annual report on the operations of the Inspectorate laid before each House of Parliament. The report will also contain the directions given by the Minister.

7. The Committee welcomes the Minister's stated intention to inform Parliament regularly of such Ministerial directions, and notes the requirement for an annual report on the operation of the Inspectorate. However, to the extent that the Ministerial directions are free from any statutory requirement for automatic parliamentary scrutiny, the Committee draws proposed section 125(5) to the attention of the Senate under principle 1(a)(v) in that it might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.
8. Proposed sub-section 125(6)(b)(iv) empowers an Inspector to require a person to produce books and records. A person who refuses to comply "within a reasonable time" may, under 125(7), be issued by an Inspector with a notice to produce, at a time and place specified by the Inspector. Refusal to comply "without reasonable excuse" with such a notice is made an offence under 125(10), with a penalty of \$500 or 6 months imprisonment. The Committee is concerned that decisions by an Inspector made pursuant to these provisions governing the production of books are not subject to any review by any supervisory Board or Panel. Demands for the production

CONCILIATION AND ARBITRATION AMENDMENT BILL 1983
(Cont. 4)

of books might be oppressive to an employer, and an avenue of appeal, particularly as to the time and place for the production of documents under proposed section 125(7), might be a useful protection against excessive use of this regulatory power. The Committee has drawn these provisions to the attention of the Senate under principle 1(a)(iii) in that they might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

9. The Minister's response outlines some of the background to these provisions:

Such powers of entry and inspection have been conferred on Inspectors under the Act since 1928. Officers of the Bureau were also given such powers under section 126P of the Act when the Bureau took over the labour inspection role from the former Inspectorate. The powers of entry and inspection are designed to ensure that labour inspection is conducted efficiently and effectively and they are consistent with the requirements of International Labour Organisation Convention No. 81 on Labour Inspection (copy attached and, in particular, see Articles 12 and 18) which Australia has ratified.

10. In relation to the current Bill, the Minister continues:

The similar provisions applying to the Bureau and which applied to the former Inspectorate were shown, however, to be deficient in one respect. Situations could arise, from time to time, where an employer did not have such records available at the time of an inspection and subsequently refused or failed to produce them.

Although obstruction of an Inspector or an officer of the Bureau has always been an offence (proposed sub-section 125(10) will continue this), that in itself does not overcome the problem of, for example, an intransigent employer who effectively refuses to make his records readily available for inspection. Overcoming such a difficulty under the existing arrangements might well result in lengthy delays in securing the rights of employees.

CONCILIATION AND ARBITRATION AMENDMENT BILL 1983
(Cont. 5)

It had been previously thought that in such circumstances the Act permitted the Inspector, or the officer of the Bureau, to require production of the books or documents concerned at some other time and place (e.g., the premises of the Inspectorate or Bureau, or some convenient Commonwealth office). Advice provided to the Bureau by the Attorney-General's Department indicated that, in the absence of express provision, this was not the case.

Accordingly, in developing the relevant provisions of the Bill, a new sub-section 125(7) was proposed whereby a person who refused, or failed within a reasonable time, to produce a book or document upon request by an Inspector could be required to produce it at another specified time and place.

11. The Committee welcomes this statement of the background, and notes additional comments by the Minister on the qualifications on the powers of Inspectors, as provided for in proposed sub-sections 125(7), (8) and (9). The Committee also welcomes the further safeguard undertaken by the Minister:

In addition, it is proposed that an Inspector will only be able to issue such a notice where he has first satisfied a senior officer of my Department who is responsible for the administration of the Inspectorate that such action is justified. This additional requirement will be included in the Ministerial directions to Inspectors under proposed sub-section 125(5), which I have discussed above, and this has also been agreed to by the members of the National Labour Consultative Council.

12. However, for the reason stated above in relation to proposed section 125(5), the Committee draws the attention of the Senate under principle 1(a)(i) to proposed sections 125(6) and (7) in that they might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

INCOME TAX ASSESSMENT AMENDMENT BILL 1983

13. This Bill was introduced by the Minister for Finance in the House of Representatives on 18 May 1983. The purpose of the Bill is to introduce from 1 September 1983 a system of tax deductions at source in respect of certain payments for contract work; to introduce, with effect from 20 July 1982, a new system of depreciation allowances for plant; to introduce, with effect from 20 July 1982, a new basis of deduction for capital expenditure incurred in developing a mining property or oil field; to modify, with effect from 13 January 1983, the operation of the special income tax concessions for investment in the production of Australian films; to introduce a scheme of depreciation allowances in respect of the construction cost of non-residential income-producing buildings; to facilitate the collection of tax payable by non-resident beneficiaries of trust estates; to specifically provide in the law that interest paid by the Commissioner of Taxation under the proposed Taxation (Interest on Overpayments) Act 1983 will be assessable income of the recipient in the income year in which it is paid.
14. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 54 - Proposed section 124ZJ

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

INCOME TAX ASSESSMENT AMENDMENT BILL 1983 (Cont. 2)

16. While the Committee is aware of the existence of avenues of internal review and rights of appeal to the Taxation Boards of Review, it looks forward to the early completion by the Administrative Review Council of its current inquiry into "Income Tax Objections and Appeal Procedures". The Committee reserves final comment on these examples of new discretionary power being vested in the Commissioner, and more specifically on the most appropriate form of external review on the merits of these discretionary powers. However, while awaiting the Administrative Review Council report, the Committee draws this clause to the attention of the Senate under principle 1(a)(iii) in that it might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative decisions.

PARLIAMENTARY CONTRIBUTORY SUPERANNUATION AMENDMENT BILL 1983

17. This Bill was introduced by the Minister for Finance in the House of Representatives on 19 May 1983. The purpose of the Bill is to amend the Parliamentary Contributory Superannuation Act 1948 to provide that:-

- (a) no more than 50% of a parliamentary retiring allowance can be commuted to a lump sum;
- (b) a spouse's annuity be related to the member's residual retiring allowance and not the retiring allowance that would have been payable had the member not commuted;
- (b) the retiring allowance payable to a former member or the annuity payable to the spouse of a former member be reduced by the amount of any salary or pension derived from an office or profit under the Crown.

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

Clause 22 - Regulations

19. This clause amends section 28 of the Principal Act concerning the making of regulations. Under this clause, regulations made for the purposes of the definition of "allowance by way of salary" or "office" as proposed in clause 3 of the Bill may be given retrospective effect for a period up to 3 months before the making of the regulations.
20. The Committee adopts the practice of drawing the attention of the Senate under principle 1(a)(i) to retrospective provisions which might be regarded as trespassing unduly on personal rights and liberties.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 1) 1983

21. This Bill was introduced by the Attorney-General in the Senate on 18 May 1983. The purpose of the Bill is to make various amendments of the statute laws of the Commonwealth, to repeal certain Acts, and for related purposes.

General Comment

22. The Committee accepts the statement in the Minister's second reading speech that such Statute Law (Miscellaneous Provisions) Bills should be confined to matters of "minor policy significance" and "routine administrative changes" - up-dating, correcting and so on. The Committee also agrees that matters which are "contentious, or ... closely related to a contentious matter" and matters which "involve substantial policy issues (including legal policy issues)" should not be included.
23. The Committee can accept the need for speedy passage of such Bills only where it is certain that matters that the Minister states should not be in such Bills are not in fact included. The Committee draws attention to a number of provisions in this Bill so that the Senate may decide on the appropriateness of the Minister's stated guidelines, insofar as they relate to the Committee's terms of reference.
24. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 7 -- Increased Penalty Rates

25. Clause 7(5) deals with those provisions in the Schedule that increase the rates of a penalty, understood as a percentage of the charge or levy due, for outstanding

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (No. 1) 1983
(Cont. 2)

or late payments of a charge or levy. Clause 7(5) provides that all such increased rates of penalty will be applicable to penalties already incurred, although the increased rates will operate only from the date of commencement under Clause 2(1) - 28 days after the Bill receives the Royal Assent. The Schedule to the Bill proposes to increase the penalty rate from 10 per cent to 20 per cent in respect of a great many Acts - viz: Apple and Pear Export Charge Collection Act 1976; Apple and Pear Levy Collection Act 1976; Barley Research Act 1980; Canned Fruits Levy Collection Act 1979; Cotton Research Act 1982; Dairy Industry Stabilization Act 1977; Dairy Products (Export Inspection Charge) Collection Act 1982; Dairying Industry and Promotion Levy Collection Act 1972; Dried Fruit (Export Inspection Charge) Collection Act 1981; Dried Fruits Levy Collection Act 1971; Dried Fruits Equalization Act 1978; Edible Oils (Export Inspection Charge) Collection Act 1982; Eggs (Export Inspection Charge) Collection Act 1982; Fish (Export Inspection Charge) Collection Act 1981; Grain (Export Inspection Charge) Collection Act 1979; Honey Export Charge Collection Act 1973; Honey Levy Collection Act 1962; Live-Stock Export Charge Collection Act 1977; Live-Stock Slaughter (Export Inspection Charge) Collection Act 1979; Live-Stock Slaughter Levy Collection Act 1964; Meat Chicken Levy Collection Act 1969; Oilseeds Levy Collection and Research Act 1977; Pig Slaughter Levy Collection Act 1971; Poultry Industry Levy Collection Act 1965; and Wine Grapes Levy Collection Act 1979.

26. The Committee is concerned that these increases apply to existing overdue charges as from the date of commencement of these amendments, and draws these provisions to the attention of the Senate under principle 1(a)(v) in that their inclusion and relative obscurity in such an omnibus Bill might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 1) 1983
(Cont. 3)

Schedule 1 - Air Navigation Act 1920

27. Included in Schedule 1 at p.8 are a series of proposed amendments to penalties applying to offences against the Air Navigation Act 1920 or contraventions against regulations made pursuant to that Act. Sub-section 22(4) of the Principal Act states the punishments for offences against the Act. This provision of the Schedule proposes to increase substantially the maximum amount for fines, while making no change to the maximum prison terms.
28. The Committee both notes the substantial increase in the amounts involved and also draws attention to the relative obscurity of the proposed amendment within such an omnibus Bill. The Committee draws this provision to the attention of the Senate under principle 1(a)(v) as an example of the difficulties posed by such a Statute Law (Multiple Provisions) Bill, which itself might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

Schedule 1 - Navigation Act 1912

29. Schedule 1 at p.35 proposes to substitute a new section 187BA relating to the approval by the Minister (or delegate, as under clause 9(1) of the Principal Act) of survey authorities and classification certificates. The new section empowers the Minister (or delegate) to approve (a) bodies for the survey of shipping and (b) a standard of classification certificate to be issued by approved survey authorities. Consistent with many other Ministerial discretions vested by sections of the Principal Act, this proposed discretion is not subject to any review on the merits. The Committee draws this clause to the attention of the Senate under

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 1) 1983
(Cont. 4)

principle 1(a)(iii) in that it might be regarded as making rights, liberties or obligations unduly dependent upon non-reviewable administrative powers.

Schedule 1 - Wool Industry Act 1972

30. Schedule 1 at p.52 proposes to insert in the Principal Act a new sub-section 42J(5A) concerning refunds of moneys paid into the Market Support Fund. Existing sub-section 42J(5) and proposed new sub-section (5A) both deal with conditions in which a refund is not payable. The proposed new sub-section duplicates the existing provision by which the regulations may amend the sum specified in the Act. It is stated at the end of the proposed sub-section (5A) that refunds are not payable for amounts of \$25 "or such other amounts as is prescribed from time to time by the regulations". The Committee acknowledges that the purpose of this flexible arrangement is to overcome the need to refund small sums of money. However, the Committee also notes that the regulations could be used to increase, perhaps substantially, the non-refundable sum. There is an important difference between a provision that, through regulation, gives effect to an Act, and one that, through regulation, effectively amends an Act. Although a like provision already exists in the Principal Act, the Committee draws this provision to the attention of the Senate under principle 1(a)(iv) in that it might be regarded as inappropriately delegating legislative power.

TAXATION (UNPAID COMPANY TAX) ASSESSMENT AMENDMENT
BILL 1983

31. This Bill was introduced by the Minister for Finance in the House of Representatives on 18 May 1983. The purpose of the Bill is to recover personal tax avoided by former owners of companies that were the subject of "Bottom of the Harbour" Schemes.

General Comment

32. The Committee draws the attention of the Senate to a range of provisions in the Bill which markedly alter the taxation liability of persons as established by the Principal Act. The Committee notes in particular the removal by clause 5(g) of the so-called "innocence clause", (section 3(12) of the Principal Act) the removal of which however is a matter of clearly stated government policy.
33. The Committee draws the attention of the Senate to the following Clauses of the Bill:

Clause 17 - Retrospective Repeal

34. This clause repeals an existing right under the Principal Act and, by virtue of sub-clause 2(2), the repeal is to have retrospective effect and be deemed to have come into operation on 13 December, 1982. The Explanatory Memorandum circulated by authority of the Minister explains, at p. 38-39, the effect of the repeal of sections 16 and 17 of the Principal Act in consequence of the insertion of provisions to recover personal income tax on after-tax accumulated profits of stripped companies. The Committee adopts the practice of drawing the attention of the Senate under principle 1(a)(i) to all retrospective provisions which might be regarded as trespassing on personal rights and liberties.

TAXATION (UNPAID COMPANY TAX) ASSESSMENT AMENDMENT
BILL 1983

Clause 23 - Evidence

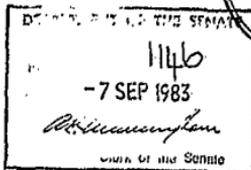
35. This clause proposes to amend section 23 of the Principal Act by providing separate evidentiary status for certificates dealing with (a) an amount of company tax due and payable; and (b) the date from which the amount remained unpaid. The proposed amendment removes the conclusive evidentiary rule in respect of the date of the amount remaining unpaid. Proposed paragraph 23(1)(b) states that an official certificate as to the amount that remains unpaid at a particular time is only to be taken as prima facie evidence in objection or appeal proceedings against an assessment. Proposed paragraph 23(1)(a) states that an official certificate of liability to pay "an amount" is still conclusive evidence - although not in objection or appeal proceedings against an assessment.
36. The combined effect of the proposed changes is to render a person unable to dispute an assessment except by way of an official objection proceeding before the Taxation Review Board. The Committee acknowledges that, upon such review, official certificates of liability lose their conclusive evidence status. However, the Committee notes that the onus is on the person served with a notice of liability to institute a formal challenge or review, and it therefore draws the initial reversal of the evidentiary burden to the attention of the Senate under principle 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.

Michael Tate
Chairman

1 June 1983



AUSTRALIAN SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIFTH REPORT

7 SEPTEMBER 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIFTH REPORT

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ISSN 0729-6258

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- (b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

ANZAC DAY BILL 1983

1. This Bill was introduced by Senator Lewis in the Senate on 31 May 1983. The purpose of the Bill is to establish Anzac Day as a national day of remembrance and to provide for observances in the Australian Capital Territory to mark Anzac Day.
2. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 5 - Function of the President

3. One of the chief objects of this Bill is to place the care and responsibility for the conduct of the Anzac Day national services in the Australian Capital Territory in the hands of the National President of the Returned Services League. Clause 5(1) states that for the purposes of this legislation the function of the R.S.L. National President is to "arrange appropriate observances" to mark Anzac Day. Clause 5(2) grants the National President very wide discretion in the performance of that function, when it states that he "shall not be subject to any directions of any person or body, but may consult with any person or body as he thinks fit."
4. Although it should be noted that clause 6 requires the National President to publish in the Gazette the arrangements he has determined for observance 90 days prior to the observance, the Committee is concerned that extraordinary power is vested in the National President. The Committee has a general duty to draw to the attention of Senators matters in which there is a potential for undue trespass on personal rights and liberties. To clothe the National President of this organisation with such vast powers might be regarded as an undue trespass;

and to leave the conduct of the powers with no more than general guidance might be regarded as administratively unsound. The Committee draws the attention of the Senate to this clause under principle 1(a)(ii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 12 - Review by Court

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

6. The Committee supports statements made by Senators in the past that notice of rights and avenues of appeal should accompany all relevant administrative decisions. The Committee draws this clause to the attention of the Senate under principle 1(a)(ii) in that it might be regarded as making rights, liberties, and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 14 - Offences

7. Clause 14(c) makes it an offence for a person without permission to enter the designated area of an observance. It is quite possible that the designated area could include an area wider than that used for the actual Anzac Day procession; the area would almost certainly include the wreath-laying site. The effect of this clause could be to make it an offence for a member of the general public to attend an Anzac Day service, either as an observer or as a private wreath-layer. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.

ARCHIVES BILL 1983

8. This Bill was introduced by the Attorney-General in the Senate on 2 June 1983. The purpose of the Bill is to provide the Archives with a statutory basis for its operations and for the proper disposition of all Government records.
9. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clauses 20 and 21 - Regulations

10. These clauses permit the making of regulations which not merely give effect to the legislation but could also alter the operations of the Archives Act. These clauses provide a mechanism by which a wider range of documents - from Parliament and the courts - can be brought within the scope of the Act. Although the Committee ventures no opinion on the policy

question as to whether such documents should be made subject to the Act, it is as concerned as ever that Acts should not be effectively amended by way of regulation. The Committee adopts the practice of drawing the attention of the Senate to such "Henry the Eighth" provisions under principle 1(a)(iv) in that they might be regarded as inappropriately delegating legislative power.

Clause 31 - Documents withheld

11. This clause states the basic requirement that the Archives shall make all non-exempt records available for public access. Under 31(4), the Archives may withhold a record or class of records from public access "for a reasonable time" to facilitate the classification of exempt records. The Committee is concerned that this grant of "reasonable time" might allow the Archives even greater time than the maximum of 90 days in which it must respond to an applicant seeking access to an exempt record, as provided for in sub-clause 40(3). The Committee accepts the Minister's statement in the second reading speech that some exemptions "in the interests of personal privacy, good government and security" will necessarily arise. However, the Committee also expects the Bill to provide in the words of the Minister, a system with "a clear statement of rights and objectives both of agencies and the public." However, it is not clear what function clause 31(4) serves in relation to clause 40(3). The Committee therefore draws the attention of the Senate to this clause under principle 1(a)(ii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 37 - Custody and preservation of records

12. This clause complements the power of the Director-General given by clause 36(4)(c) to deny access or to permit conditional access to records which, in his opinion, require safe custody and proper preservation. The Committee is aware that the intention of this grant of discretionary power is to enable the Director-General to exercise his specialist skill in pursuit of statutory functions of the Archives as specified in clause 5(2). However, to the extent that this power could be used to deny access unreasonably or to impose unreasonable conditions, the Committee is concerned that there is no avenue of appeal by an aggrieved applicant. The Committee draws this clause to the attention of the Senate under principle 1(a)(iii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 40 - Regulations

13. This clause establishes the procedure for applications and the granting of access to records referred to in clause 31. Clause 40(3) requires the Archives to notify an applicant of its decision within a maximum of 90 days. However, clause 40(4) provides for the alteration of this period by way of regulation. The Committee notes that the regulation may only shorten and not lengthen the period of 90 days. Although it is difficult to imagine that an applicant's interest would be adversely affected by any such shortening, the Committee adopts the practice of drawing attention to all examples of "Henry the Eighth" provisions in which the substance of an Act can be amended by way of regulation. The Committee draws the attention of the Senate to this clause under principle 1(a)(iv) in that it might be regarded as inappropriately delegating legislative power.

FAMILY LAW AMENDMENT BILL 1983

14. This Bill was introduced by the Attorney-General in the Senate on 1 June 1983. The purpose of the Bill is to amend the Family Law Act 1975 to implement the majority of the recommendations of the Joint Select Committee on the Family Law Act and other recommendations made by the Family Law Council, the Law Council of Australia and the judiciary.
15. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 5 - Counselling

16. This clause amends section 15 of the Principal Act to make it mandatory for a Court officer to arrange counselling should one of the parties so request. The proposed amendment does not, of itself, make attendance at such a counselling session compulsory. However, clause 68 proposes a new section covering Rules of Court, in which the Judges are empowered, under proposed section 123(1)(s) to regulate the proceedings of, and mandatory attendance at, counselling sessions, once requested by either party. Onerous penalties are provided for offences against the Rules - see section 123(1)(u).
17. The Committee acknowledges the Minister's statement of policy in the second reading speech: that when "marriages break down, for whatever reason, every effort must be made to ensure speedy resolution of differences with the minimum of trauma and expense and the maximum possible benefit to all parties." The Committee appreciates the difficulty of implementing a scheme that tries to achieve the maximum benefit

in Australia of the owner, charterer or agent or by sending it by registered post addressed to that principal place of business. The obligation imposed by the section is expressed to be that the person concerned shall not, 'without reasonable excuse', permit the child to leave Australia. It would be a defence, in fact, for the person served to show that he had not received the declaration, but the obligation would be on him to show this. This represents a reversal of the onus of proof.

21. In addition, no express provision is included in the section as to the manner of service on the master of a vessel. Presumably this means that the service has to be effected personally, but this is not spelt out in the section. The Committee has noted that the existing provisions of the Migration Act are in the same form in this respect as the proposed provisions of the Family Law Act, but draws these matters to the attention of the Senate under principles 1(a)(i) and 1(a)(ii) in that they might be regarded as trespassing unduly on personal rights and liberties, and as making obligations unduly dependent upon insufficiently defined administrative powers.

INDUSTRIAL DEMOCRACY BILL 1983

22. This Bill was introduced by Senator Jack Evans in the Senate on 24 May 1983. The purpose of the Bill is to establish an Industrial Democracy Board with the aim of encouraging employee share ownership and participation in management by providing a reduction in the tax payable by enterprises which satisfy the criteria required for registration in the Register of Industrial Democracy Enterprises.
23. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 25 - Unreviewable decisions by Board

24. This clause is in like terms to clause 25 of the Industrial Democracy Bill 1981 upon which the Committee commented in its First Report (February 1982 paragraph 19). The effect of this clause is to make a decision by the Industrial Democracy Board to list an enterprise in the register or to remove the name of an enterprise from the register final and conclusive and not subject to any form of challenge or appeal at all. As registration by the Board is crucial to the obtaining by an industry of the benefits provided for under the Bill, the Committee draws the attention of the Senate to this clause under principle 1(a)(iii) in that it might be regarded as making rights, liberties, and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 29 - Board guidelines

25. This clause empowers the Board to make and publicise in the Gazette guidelines on its interpretation and application of the criteria set out in clause 20 paragraphs (1)(a)-(d). The Committee notes that the Board's own guidelines must be "not inconsistent" with those criteria established by Parliament in proposed section 20. However, the Committee is concerned at the potential in the Board's criteria under clause 29 to alter or amend the Act. The Bill provides a separate grant of power under clause 31 for regulations covering all matters necessary or convenient for carrying out or giving effect to the legislation. Such regulations would, as with all regulations, be subject to parliamentary disallowance procedures. To the extent that clause 29 may authorize even more substantial matters than is traditionally

the case with regulations, it may be useful to have some form of parliamentary scrutiny of these guidelines. The Committee draws this clause to the attention of the Senate under principle 1(a)(v) in that it might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny. .

MIGRATION AMENDMENT BILL 1983

26. This Bill was introduced by the Minister for Immigration and Ethnic Affairs in the House of Representatives on 26 May 1983. The purpose of the Bill is to remove the distinction between aliens and immigrants in relation to entry and deportation controls and to put all non-Australian citizens on the same footing in relation to those controls.
27. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 8(2) - Cancellation, expiration and renewal of entry permits

28. Clause 8 of this Bill was amended in the House of Representatives. The purpose of the amendment was, in the words of the Minister to "... repeal section 7(4) of the Act which at present prevents the deportation of overstayers five years after the expiry of their entry permits simply because they succeed in evading detection during that time". The effect of the amendment will be to render visitors to Australia who overstay the period set down in their entry visa liable to deportation.

Bill does not propose to amend the existing appeal system in the Principal Act, which grants persons the right to request that their case be considered by a Commissioner, specially appointed to investigate and report to the Minister whether the ground specified in the deportation notice "has been established"(14(6)). Where there is a Commissioner inquiry, the Minister shall not order deportation unless the ground specified in the notice has been so established - see section 14(8)(c).

33. The Committee is drawn to consider the existing review mechanism in the Principal Act because of its effect on the operation of clause 11(1) which is being amended by this Bill. The Committee notes the marked discrepancy in review mechanisms between different types of deportation orders.
- Section 66E of the Principal Act grants the right to review by the Administrative Appeals Tribunal in certain types of deportation - where the ground is related to offences other than national security (see sections 12 and 13). However, in cases related to national security, a specially appointed Commissioner replaces the Administrative Appeals Tribunal.
- It may well be that the power of such a Commissioner to stay a groundless deportation order is actually greater than that enjoyed by the Administrative Appeals Tribunal which, under section 66(E)(3) of the Principal Act, is confined either to the affirmation of the Minister's decision or to the remittal of the matter to the Minister for reconsideration. In contrast, an adverse report by a Commissioner can, if other minor conditions are met, render a deportation order void. Despite this, the Committee is concerned that the review mechanism for decisions under proposed new section

14(1) may not be the most suitable procedure for reviewing deportation orders relating to national security. It may be that the Administrative Appeals Tribunal has the capacity for more effective and equitable review because of its proven expertise in reviewing the decision-making process. In order therefore to alert the Senate to this difficult issue, the Committee draws attention to this clause under principle 1(a)(iii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 11 - Prescribed offences

34. This clause amends section 14 of the Principal Act dealing with the deportation of persons convicted of offences against national security. The Committee notes that the Minister's second reading speech cites two important safeguards in the operation of this section: first, proposed sub-section 14(2) generally specifies the relevant offences, as distinct from the existing provision which leaves the range of relevant offences subject to the discretion of the Minister; and second, the Minister has promised to consider further improvements in the appeal system against s.14 deportations, notwithstanding the actual reduction in areas of ministerial discretion effected by this Bill.
35. However the Committee also notes that included in the range of offences created by this clause is proposed section 14 (2)(c)(iii), which refers to prescribed offences against a State or Territory law. Section 67(1) of the Principal Act provides for regulations "prescribing all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed

for carrying out or giving effect to this Act..." Thus, a list of offences against State or Territory laws may be made or prescribed by regulation. The proposed amendment contains no limit on the breadth of this prescription and, in theory, it would be possible to include among the grounds for deportation convictions for quite minor State or Territory offences. While it is true that regulations are subject to parliamentary scrutiny and disallowance, the Committee is concerned at the wide discretion given to the Minister to determine "prescribed offences." Discretionary power is often inevitable in procedures such as deportation. However, the Committee is concerned that the delegation of discretion is in this case insufficiently defined, with only minimal guidelines or criteria to govern the exercise of the discretion. The Committee draws this clause to the attention of the Senate under principle 1(a)(iii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

SEX DISCRIMINATION BILL 1983

36. This Bill was introduced by the Minister for Education and Youth Affairs in the Senate on 2 June 1983. The purpose of the Bill is to make unlawful discrimination on the grounds of sex, marital status and pregnancy in the areas of employment, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs. The Bill also provides for a prohibition on sexual harassment in the workplace and in educational institutions.

in the legislation, the Committee is concerned that in this instance the legislation might not be as useful as it could be to the parties involved. Therefore the Committee draws this clause to the attention of the Senate under principle 1(a)(ii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 19 - Single gender schools

41. This clause prevents schools from discriminating (as defined in clauses 5, 6 and 7) in admissions policy and related practices. Clause 19(3) grants an exception in the case of single gender schools - schools that are "conducted solely for students of the opposite sex to the sex of the applicant" or aggrieved person. The Committee is concerned about the situation of those schools that are primarily single gender but operate on a co-educational basis at junior or the most senior levels. It would seem that such schools are not exempted from the anti-discrimination requirements of clause 19, the operation of which might have a considerable effect on the admission policy of these schools. In light of the possible uncertainties surrounding this important area of education, the Committee draws the attention of the Senate to this clause under principle 1(a)(ii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 47 - Inquiries by Commissioner

42. This clause provides for the Commission to direct the Sexual Discrimination Commissioner to inquire into matters of discrimination and under clause 47(1)(b), to "endeavour, by conciliation, to effect

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

However, there are respectable counter-arguments in favour of a review provision. The Committee draws the attention of the Senate to this clause under principle 1(a)(iii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

43. This clause provides general guidelines for the conduct of anti-discrimination inquiries by the Commission. The Committee commented in similar terms on a like provision in the Sex Discrimination Bill 1981 in its First Report (February 1982, paragraph 24). Paragraph 1(a) requires the Commission to give a party to an inquiry "such notice in such manner as the Commission determines of the time and place at which it intends to hold the inquiry."

44. This provision, by investing the Commission with the power to determine when and where the inquiry is to be held, could have the effect of empowering the Commission to determine a brief period of notice and to fix an unsuitable place for the holding of the inquiry, actions which would not be subject to review by a court.
45. The Committee draws this clause to the attention of the Senate under principle 1(a)(iii) in that it might be regarded as making rights, liberties and/or obligations dependent upon non-reviewable administrative decisions.

Clause 82 - Self-incrimination

46. This clause contains the now quite standard self-incrimination provision: it states that, for the purposes of clauses 80 and 81, it is not a reasonable excuse for failing to comply with an official inquiry for a person to hold that such compliance might be self-incriminating. The Committee also notes the presence of the equally standard provision that answers or evidence produced are not admissible in evidence against a person in any other civil or criminal proceedings. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.

Clause 94 - Delegation

47. This clause also contains a now quite standard provision, in this case relating to the delegation of the powers of the Commission. This clause empowers both the Commission and the Sexual

Discrimination Commissioner to delegate their statutory powers of inquiry to other Commission officers or indeed to "any other person or body of persons". This power of delegation is not limited by reference to the qualifications of persons who may exercise the relevant powers. The Senate had occasion to debate a similar delegation provision during the passage of the World Heritage Properties Conservation Bill 1983 (see Senate Hansard 18 May 1983, pages 597-8). In light of this earlier Senate concern over powers of delegation, the Committee draws this clause to the attention of the Senate under principle 1(a)(ii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Michael Tate
Chairman

7 September 1983



AUSTRALIAN SENATE



DEPARTMENT OF THE SENATE	
PAPER No.	
DATE	1247
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<i>W. J. ...</i>	

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTH REPORT

14 SEPTEMBER 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTH REPORT

14 SEPTEMBER 1983

ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTH REPORT

The Committee has the honour to present its Sixth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Broadcasting Stations Licence Fees Amendment Bill
1983

Industrial Democracy Bill 1983

Liquid Fuel Emergency Bill 1983

Sales Tax (Exemptions and Classifications) Amendment
Bill 1983

Taxation (Unpaid Company Tax) Assessment Amendment
Bill 1983

Television Stations Licence Fees Amendment Bill
1983

BROADCASTING STATIONS LICENCE FEES AMENDMENT BILL 1983
TELEVISION STATIONS LICENCE FEES AMENDMENT BILL 1983

1. These Bills were introduced into the House of Representatives by the Minister for Communications on 24 August 1983. The purpose of the Bills is to revise the formulae used to calculate annual licence fees payable by the larger commercial broadcasting and television stations and to increase the present ceiling on those fee rates.
2. The Committee draws the attention of the Senate to the following clause of the Bills:

Clause 2 - Commencement

3. This clause would implement the proposed increase in licence fees from 1 September 1983. No explanation is offered in the Explanatory Memorandum accompanying the Bills of the need for this retrospective operation. The Committee adopts the practice of drawing the attention of the Senate under principle 1(a)(i) to all retrospective provisions which might be regarded as trespassing on personal rights and liberties.

INDUSTRIAL DEMOCRACY BILL 1983

4. This Bill was introduced by Senator Jack Evans in the Senate on 24 May 1983. The purpose of the Bill is to establish an Industrial Democracy Board with the aim of encouraging employee share ownership and participation in management by providing a reduction in the tax payable by enterprises which satisfy the criteria required for registration in the Register of Industrial Democracy Enterprises.

5. In its Fifth Report, the Committee drew the attention of the Senate to the following clauses of the Bill:

Clause 25 - Unreviewable decisions by Board

6. This clause is in like terms to clause 25 of the Industrial Democracy Bill 1981 upon which the Committee commented in its First Report (February 1982 paragraph 19). The effect of the clause is to make a decision by the Industrial Democracy Board, to list an enterprise in the register or to remove the name of an enterprise from the register final and conclusive and not subject to any form of challenge or appeal at all. As registration by the Board is crucial to the obtaining by an industry of the benefits provided for under the Bill, the Committee drew the attention of the Senate to this clause under principle 1(a)(iii) in that it might have been regarded as making rights, liberties, and/or obligations unduly dependent upon non-reviewable administrative decisions.
7. In response to the Fifth Report of the Committee, Senator Jack Evans has written to the Committee Chairman and indicated that the Bill will be amended to meet the Committee's criticism. In fact the proposed clause 25 is to be left out and replaced by a new clause providing for review of Industrial Democracy Board decisions by the Administrative Appeals Tribunal.
8. The new clause reads:

Review of decisions

"25. (1) An application may be made to the Administrative Appeals Tribunal for a review of a decision by the Board under sub-section 20(6) or 22(2), or section 23.

"(2) Where the Board makes a decision of a kind referred to in sub-section (1) and notifies the enterprise whose interests are affected by the decision of the making of the decision, that notification shall include a statement to the effect that, subject to the Administrative Appeals Tribunal Act 1975, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates, by or on behalf of the enterprise whose interests are affected by the decision.

"(3) Any failure to comply with the requirements of sub-section (2) in relation to a decision shall not be taken to affect the validity of the decision.

"(4) In sub-section (1), 'decision' has the same meaning as it has in the Administrative Appeals Tribunal Act 1975."

Clause 29 - Board guidelines

9. This clause empowers the Board to make and publicise in the Gazette guidelines on its interpretation and application of the criteria set out in clause 20 paragraphs (1)(a)-(d). The Committee notes that the Board's own guidelines must be "not inconsistent" with those criteria established by Parliament in proposed section 20. However, the Committee is concerned at the potential in the Board's criteria under clause 29 to alter or amend the Act. The Bill provides a separate grant of power under clause 31 for regulations covering all matters necessary or convenient for carrying out or giving effect to the legislation. Such regulations would, as with all regulations, be subject to parliamentary disallowance procedures. To the extent that clause 29 may authorize even more substantial matters than is traditionally

the case with regulations, it may be useful to have some form of parliamentary scrutiny of these guidelines. The Committee drew this clause to the attention of the Senate under principle 1(a)(v) in that it might be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

10. Senator Jack Evans has prepared an amendment to the Bill which has the effect of making guidelines under clause 29(i) regulations within the meaning of sections 48, 49 and 50 of the Acts Interpretation Act 1901. Guidelines under clause 29(1) are thus subject to the normal processes of Parliamentary review or regulations. This amendment meets the Committee's criticism of clause 29.
11. The Committee thanks Senator Jack Evans for his response to its concern in relation to this Bill.

LIQUID FUEL EMERGENCY BILL 1983

12. This Bill was introduced into the House of Representatives by the Minister Representing the Minister for Resources and Energy on 24 August 1983. The purpose of the Bill is to provide the Commonwealth Government with the powers to enable it, in consultation with the State and Territory Governments, to co-ordinate effectively the management of a national liquid fuel emergency.

General Comment

13. Clauses 30, 31 and 32 in Part IV of the Bill form the core of the enforcement provisions of the legislation. Some of these provisions may be seen as trespassing unduly on individual rights and

liberties; most particularly clause 31(5) which allows an authorized person to enter land, premises, buildings, ships, etc. without a warrant. The clauses only come into force after the proclamation of an emergency by the Governor-General under clause 16 of the Bill.

14. These powers are clearly justified by the policy intention of the Bill - to provide the Commonwealth Government with the powers to enable it to co-ordinate effectively the management of a national liquid fuel emergency - and are limited to the period of a proclaimed emergency. However the Committee believes that the Senate ought to be fully aware of the extent of these powers when considering the Bill.
15. The Committee also draws the attention of the Senate to the Explanatory Memorandum accompanying this Bill. The Memorandum is particularly useful in that it provides details of the review and appeals provisions in the Bill that are relevant to clauses providing for Ministerial directions, delegations and discretions. This approach is of considerable assistance to this Committee and to the Senate, and is to be commended.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT
BILL 1983

16. This Bill was introduced into the House of Representatives by the Minister Assisting the Treasurer on 23 August 1983. The purpose of the Bill is to alter the sales tax classification of certain goods, principally to correct a number of anomalies and inconsistencies, and to make certain structural changes in the classification of goods between the various tax-rate categories.

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

Clause 2(3) - Commencement

18. Clause 29 of the schedule to this Bill abolishes sales tax on tourist vessels as from the time the tax was imposed, i.e. it is made retrospective to 19 August 1981. Since the clause is reducing the tax burden its retrospectivity is not a matter for concern. However the Bill makes no provision for repayment of the sales tax already collected. If the amount of sales tax collected is merely reimbursed to the taxpayer without any compensation for the effect of inflation on the value of money, then the taxpayer will still suffer a loss. The Committee draws the attention of the Senate to this clause under principle 1(a)(i) because it might be considered that such an outcome of clause 2(3) of the Bill and clause 29 of the schedule would trespass unduly on personal rights and liberties.

Clause 3

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

20. The Committee draws the attention of the Senate to this clause under principle 1(a)(iii) in that it may be considered to be making personal rights and liberties unduly dependent upon non-reviewable administrative decisions.

TAXATION (UNPAID COMPANY TAX) ASSESSMENT AMENDMENT
BILL 1983

21. This Bill was introduced into the House of Representatives by the Minister Assisting the Treasurer on 23 August 1983. The purpose of the Bill is to amend the company tax recoupment law to extend the scope of the legislation so that personal income tax avoided by former owners of companies stripped of pre-tax profits will be subject to recoupment, but only in relation to revenue profits of years in respect of which company tax was evaded; to ensure that liability for recoupment tax will not be escaped by reason of an ultimately unsuccessful post-sale or pre-sale tax avoidance scheme; to authorise the Commissioner of Taxation to name in his annual report persons who fail to pay an assessed recoupment tax liability in respect of unpaid company tax; to remove the test which requires that an arrangement which rendered a company unable to pay its tax must be identified before a recoupment tax liability can be established; to vary the evidentiary provision to ensure constitutional validity of the legislation; and to correct minor technical defects.
22. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 22 - Evidence

23. Clause 21 of the Bill, which will come into force when the Bill receives the Royal Assent, substitutes a new section 23 in the Principal Act. This substitution, in the words of the Explanatory Memorandum, is necessary "... in the light of some doubt of a constitutional kind that has arisen about the legislation, and of technical deficiencies in the existing section 23 ... A feature of the new section will be that the certificate for which it provides will in all circumstances be prima facie, rather than conclusive, evidence."
24. Clause 22 provides for the Principal Act to be amended to revert to the original position where a certificate is conclusive evidence in section 23, presumably when the doubts about the legislation have been resolved. Clause 22 is to come into force on a date to be fixed by Proclamation. Thus Clause 22 in effect provides a means for amending an act by Proclamation. The Committee draws this clause to the attention of the Senate under principle 1(a)(iv) in that it may be considered an inappropriate delegation of legislative power.



Michael Tate
Chairman

14 September 1983



AUSTRALIAN SENATE

DEPARTMENT OF THE SENATE	
PAPER No.	1298
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<i>John Curran</i>	
Clerk of the Senate	



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SEVENTH REPORT

21 SEPTEMBER 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SEVENTH REPORT

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-

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SEVENTH REPORT

The Committee has the honour to present its Seventh Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a) (i) to (v) of the Resolution of the Senate of 22 April 1983:

Australian Capital Territory Smoking and Tobacco
Products Advertisements Prohibition Bill 1983

Health Legislation Amendment Bill 1983

Home Deposit Assistance Amendment Bill 1983

Meat Inspection Bill 1983

AUSTRALIAN CAPITAL TERRITORY SMOKING AND TOBACCO PRODUCTS
ADVERTISEMENTS PROHIBITION BILL 1983

1. This Bill was introduced into the Senate by Senator Jack Evans on 6 September 1983. The purpose of the Bill is to prohibit advertisements relating to smoking and tobacco products in the Australian Capital Territory.
2. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 4 - Advertisements Prohibited

3. Sub-clause (1) of this clause establishes the offence of "... publishing or causing to be published any advertisement" in relation to tobacco products. Sub-clause (2) states that if any advertisement contains the name of a tobacco product then that will be prima facie evidence that the advertisement contains an implied inducement to purchase and use tobacco products. This clause is objectionable on two grounds. Firstly it creates an absolute offence without any express provision that a person must knowingly or intentionally publish the offending advertisement. Secondly sub-clause (2) reverses the burden of proof in that any advertisement is presumed to be an implied inducement to smoke.
4. The possible application of this clause may be seen from the following example:

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

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

HEALTH LEGISLATION AMENDMENT BILL 1983

6. This Bill was introduced into the House of Representatives by the Minister for Health on 6 September 1983. Its purpose is to amend the National Health Act 1953 and the Health Insurance Act 1973 to establish a health insurance scheme, to be known as Medicare, which will provide benefits in respect of medical, optometrical, dental and pathology services to all Australian residents; to enter into arrangements with the States for the provision of public hospital services without charge to eligible Australians; and to amend the Health Insurance Commission Act 1973 to authorise the Commission to plan and operate that scheme relating to the payments of Medicare medical benefits.
7. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 12 - Entitlement to Medicare Benefit

8. This clause was amended in the House of Representatives on 14 September 1983. The clause as amended introduces a new section 10 in the Principal Act which provides, inter alia, for an upper limit on patient contribution to the cost of professional medical services of \$150 in any financial year. The purpose of this amendment is to protect contributors, particularly the chronically ill, against "episodes of substantial medical costs." Sub-section (6) of the proposed new section allows the limit of \$150 to be increased by regulation.

9. The Committee acknowledges that the power to increase the upper limit on patient contributions by regulation reflects the need to make periodic adjustments for inflation. However, to the extent that this clause enables the Minister to alter the intention of the Parliament by regulation it may be considered to be a "Henry VIII" clause. The Committee draws the attention of the Senate to the clause under principle 1(a)(iv) in that it might be regarded as an inappropriate delegation of legislative power.

Clause 43 - Power to obtain information

10. This clause inserts a new section 36 into the Principal Act. Sub-section (3) states that "A person is not excused from furnishing information in pursuance of this section on the ground that the information might tend to incriminate the person ...". This sub-clause applies only to proceedings under the Act. Information so obtained may not be used in any other criminal proceedings. Such clauses are not uncommon; for example, section 155(7) of the Trade Practices Act 1974 is in a similar form. It has been argued in relation to that section that it would be impossible to obtain information if protection against self-incrimination was preserved.
11. While the Committee acknowledges the force of this argument, nonetheless it draws the attention of the Senate to this clause under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.

Clauses 85 and 134

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

13. Similarly clause 134 of the Bill provides for the amendment of the Health Insurance Act 1973 and the National Health Act 1953 by regulation. Amendments made under this clause would be transitional measures to accommodate existing practices within the proposed Medicare scheme. The Committee has adopted the practice of drawing all such "Henry VIII" clauses to the attention of the Senate under principle 1(a)(iv) in that the power to amend Acts of Parliament by regulation is considered to be an inappropriate delegation of legislative authority.

HOME DEPOSIT ASSISTANCE AMENDMENT BILL 1983

14. This Bill was introduced in the House of Representatives by the Minister for Housing and Construction on 7 September 1983. The purpose of the Bill is to provide that, for persons who contract to buy or build their homes, or commence the construction of their homes (the prescribed

date of an application) on or after 1 August 1983, the requirements of the Home Deposit Assistance Act 1982 in relation to acceptable savings, are not to apply; and to provide for the termination of the operation of the Act on 30 September 1983.

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

Clause 5 - Interpretation

16. Clause 5(e) of this Bill inserts a new section 4(5)(a)(i) in the Principal Act which defines the purposes relevant to the Act for which land is developed. Section 4(5)(a)(ii) allows those purposes to be added to by regulation. Thus the scope and intent of the Act can be altered by regulation. The Committee has adopted the practice of drawing all such "Henry VIII" clauses to the attention of the Senate under principle 1(a)(iv) in that they might be considered an inappropriate delegation of legislative power.

MEAT INSPECTION BILL 1983

17. This Bill was introduced into the House of Representatives by the Minister for Primary Industry on 8 September 1983. The purpose of the Bill is to provide for the Commonwealth to undertake domestic meat inspection in NSW, and any other State which subsequently refers the power of inspection of meat to the Commonwealth.

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

Clause 25 - Powers of authorized officers

19. This clause provides in sub-sections (c) to (k) extensive powers to authorized officers to enter premises; to stop or detain vehicles; to break open, inspect, search or secure premises, vehicles, etc; to seize samples of any matter and to copy any document. These powers may be exercised without a warrant. The breadth of these powers is further extended by clause 25(2) which defines "an offence against this Act" as including offences against sections 7 and 7A of the Crimes Act. Offences under these sections include "attempting inciting aiding or encouraging the commission of an offence". In order to exercise his powers under clause 25(3), an authorized officer need merely believe, in good faith, that a person was encouraging the commission of a breach of this Bill.
20. Whilst these powers are consonant with the policy of the Bill, the Committee nonetheless draws this clause to the attention of the Senate under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.

Clause 29 - Indictable offences

21. This clause creates a number of offences in sub-section (i) which impose strict liability, not requiring any proof of a particular state of mind, such as knowledge/intent on the part of the offender, and not to require any guilty intent. Whilst it may be clear that the offences have been so framed

in order to achieve the policy objective of the Bill, and indeed it may be uncommon for such acts to be committed without such an accompanying mental state, nonetheless given the broad range of offences which the clause creates the Committee draws the attention of Senators to this clause in that it may be held to trespass unduly on personal rights and liberties.

Clause 36 - Regulations

22. Sub-clause 3 of this clause states that, "A power conferred by this Act to make modifications by regulation includes the power to omit any matter or add any new matter". The purpose of this sub-section is to reconcile existing State or Territory and Commonwealth meat inspection legislation, where a State or Territory refers its power of inspection of meat to the Commonwealth under this Bill. However, it is the Committee's view that the scope of the regulation making power as set out in this clause is such that the proposed Act could in effect be amended by regulation. The Committee has adopted the practice of drawing all such "Henry VIII" clauses to the attention of the Senate under principle 1(a)(iv) in that they might be considered inappropriate delegations of legislative power.



Michael Tate
Chairman

21 September 1983



AUSTRALIAN SENATE

DEPARTMENT OF THE SENATE	
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

EIGHTH REPORT

5 OCTOBER 1983

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THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

EIGHTH REPORT

5 OCTOBER 1983

ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
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- (b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

EIGHTH REPORT

The Committee has the honour to present its Eighth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bill, which contains provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Income Tax (International Agreements) Amendment
Bill 1983

INCOME TAX (INTERNATIONAL AGREEMENTS) AMENDMENT BILL 1983

1. This Bill was introduced into the House of Representatives on 15 September 1983 by the Minister Assisting the Treasurer. The purpose of the Bill is to provide legislative authority for the entry into force of new and revised comprehensive double taxation agreements with various countries, and of a limited airline profits agreement with the Republic of India.
2. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clauses 7, 9, 10 and 11

3. There are various provisions of this Bill which have retrospective effect, in that they permit the Commissioner of Taxation to amend assessments of income made before this Bill comes into operation. Such power of amendment of assessments is given by clauses 7(2), 9(2), (3) and (4) and 10(5), (6) and (7). However, in making this provision the Government is complying with its international obligations under the various double-tax conventions it has entered into. Further, the amendments of assessment under clauses 7(2) and 9(2), (3) and (4) are likely to result in a decrease in income tax paid under Australian law. Although the amendment of assessments under clauses 10(5), (6) and (7) may result in an increase in Australian income tax, such increase is limited to the amount of a corresponding decrease in foreign tax - see clauses 10(2), (3) and (4). The retrospective operation of these provisions is therefore unlikely to prejudice taxpayers unduly.

4. The Committee nonetheless draws the attention of the Senate to these clauses under principle 1(a)(i) in that any disparity in the time taken by tax authorities in the various countries to revise the assessments involved may result in tax payers being disadvantaged, albeit temporarily. Thus these clauses may be considered to trespass unduly on personal rights and liberties.



Michael Tate

Chairman

5 October 1983



AUSTRALIAN SENATE



DEPARTMENT OF THE SENATE	
PAPER No.	1466
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

NINTH REPORT

12 OCTOBER 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

NINTH REPORT

12 OCTOBER 1983

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

NINTH REPORT

The Committee has the honour to present its Ninth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Dairy Industry Legislation Amendment Bill 1983

Meat Inspection Bill 1983

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

DAIRY INDUSTRY LEGISLATION AMENDMENT BILL 1983

1. This Bill was introduced into the House of Representatives on 21 September 1983 by the Minister for Primary Industry. The purpose of the Bill is to amend the Dairy Industry Stabilization Act 1977 and the Dairying Industry Research and Promotion Levy Collection Act 1972 to bring up to date provisions relating to offences and penalties; and to amend the Dairy Produce Act 1924 to bring up to date the Corporation's powers over contracts for the carriage of dairy products by sea to places beyond Australia, to provide a legislative basis for the manner in which the Corporation administers certain provisions of the export return pooling scheme and to make other minor adjustments to the scheme, to provide that the Corporation must credit any surplus or debit any deficit incurred by it in respect of its export sales of dairy produce to accounts maintained under the export return pooling scheme, and to bring into line with current levels the penalties for offences under the Act.
2. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 4 - Contracts for shipment of dairy produce

3. This clause proposes to enact a new section 19 of the Dairy Produce Act 1924. The proposed new section gives the Corporation extensive powers to "... approve conditions relating to contracts for the cartage of dairy products by sea ...". The Corporation is required only to inform the licensee of the conditions so approved.

There is no other limit placed on the Corporation's powers nor is there any provision for review of such contract conditions. In view of the impact which either unduly onerous or lenient conditions could have on the interests of dairy produce exporters it might be considered that the discretion vested in the Dairy Corporation should be subject to review. Thus the Committee draws the attention of the Senate to this clause under principle 1(a)(iii) in that it might be considered to make the rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

MEAT INSPECTION BILL 1983

4. This Bill was introduced into the House of Representatives by the Minister for Primary Industry on 8 September 1983. The purpose of the Bill is to provide for the Commonwealth to undertake domestic meat inspection in New South Wales, and any other State which subsequently refers the power of inspection of meat to the Commonwealth.
5. The Committee commented on the Bill in its Seventh Report of 21 September 1983. A response to its comments has been received from the Minister Representing the Minister for Primary Industry in the Senate. In keeping with the Committee's policy, the Minister's response is incorporated in this Report.

Clause 25 - Powers of Authorized Officers

6. The Committee drew this clause to the attention of the Senate in that it gave extensive powers of authorized officers to enter premises; to stop or detain vehicles; to break open, inspect, search or secure premises, vehicles, etc; to seize samples of any matter and to copy any document.

7. The Minister has responded in the following terms:

"Warrants are not required for entry to 'prescribed premises'. This term is given the special meaning in sub-clause 3(1) of 'abattoir, knackery, meat processing plant or animal food processing plant'. These are the places where the meat inspection function, which is central to the purpose of the Bill, takes place.

If a warrant were required for entry by an authorized officer in the absence of the consent of the occupier of these particular premises, the inspection function would be confined by cumbersome procedural prerequisites. Where an activity or operation, such as the slaughter of animals or the processing of meat, is regulated under legislation access without warrant to places where the activity or operation is carried out by persons administering the legislation is a normal incident of the statutory regulation of the activity or operation.

Paragraphs 25(3)(c) and (d) refer to vehicles, ships and aircraft, not premises which are defined in sub-clause 3(1) to include -

'(a) any part of a building or structure;
and

(b) an area of land'.

It is considered in a wide range of legislation of a regulatory nature, Commonwealth, Territory and State, necessary for effective law enforcement that properly authorized persons should be able to enter vehicles, ships and

aircraft without the safeguards which apply to their entry to premises. Vehicles, ships and aircraft are not, other than in exceptional circumstances, places where personal privacy is as highly valued by the community at large as in premises, for example, premises used for residential or commercial purposes. They are moreover mobile and for this reason the delay which could be caused by obtaining a warrant may allow a vehicle, ship or aircraft to avoid entry being made under the warrant.

Indeed, because of the structure of the industry sought to be regulated by the Bill infringements are often detected in the carriage of product between plants or from plants to markets. The structure of the Bill reflects this aspect of the industry, for example, in clauses 10, 12, 16 and 18 and Part III. The movement of animals, meat and processed meat are hence features of the industry at which controls are directed.

Paragraphs 25(3)(e), (g) and (h) provide for an authorized officer to take action, having gained entry to premises by virtue of paragraph 25(3)(a) or (b) to vehicles, ships or aircraft by virtue of paragraph 25(3)(c) or (d). There is very little reason to be able to enter premises or stop, detain and board or enter a vehicle, ship or aircraft unless the authorized officer concerned may search the premises, vehicle, ship or aircraft or inspect or examine a matter or thing found to be there and secure the premises, vehicle, ship or aircraft having entered therein or boarded thereon, as the case may be.

Paragraph 25(3)(f) similarly avoids the possibility that a power of entry may be rendered ineffective should a hold, compartment, container or receptacle be found by an authorized officer to be closed.

Paragraphs 25(3)(j) and (k) provide for the gathering of evidence in relation to whether an offence against the Act has been committed. The effect of the preceding powers granted to authorized officers would likewise be negated were these powers not also conferred on them.

It should be noted that 'offence against this Act' has been defined in sub-clause 3(1). It is important that the inchoate offences specified in that definition as being offences against the Meat Inspection Act should be able to be investigated by authorized officers with the same powers as other offences against the Act.

Sub-clause 25(3) provides for interrelated powers, each element of which is necessary for ascertaining whether the provisions of the Act have been complied with. Without such powers the giving of effect to purpose of the Act could be frustrated. The object of the Bill is to make provision with respect to the inspection of meat that is intended for human consumption or for use as animal food. As a result the effect of any provision of the bill has to be read in this light.

It should be noted that provisions to the same effect as paragraphs 25(3)(c) to (k) of the Bill are included in the Export Control Act 1982, namely paragraphs 10(3)(c) to (k). That Act is also legislation administered by the Minister for Primary Industry which deals with the inspection of primary products.

Clause 29 - Indictable Offences

8. In commenting on this clause the Committee was concerned that the offences specified in sub-clause (1) imposed strict liability, not requiring any proof of guilty intent. The Minister has responded to the Committee's comments as follows:

"This clause does not create offences. It does provide however that the offences specified in sub-clause 29(1) shall be indictable except in specified circumstances and provides for penalties in relation to the offences where conviction is either on indictment or on a summary basis.

In respect of offences where the penalties both incarceratory and pecuniary, are of the magnitude provided for by clause 29 the prosecution would today be required to prove beyond reasonable doubt that the action which the accused person is charged with having committed was accompanied by the appropriate mens rea. In these circumstances the inclusion of the word 'knowingly' in or in relation to the offences created by sub-clause 29(1) would be legislative surplusage. Such an amendment could also cast doubt on this

interpretation of similar existing offences and provide an argument that such offences displaced the presumption that the Parliament intended a guilty intent appropriate to the nature of the offence to be an ingredient of the offence."

9. The Committee draws the Minister's comments to the attention of the Senate and thanks the Minister for his comments.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2)
1983

10. This Bill was introduced into the House of Representatives on 21 September 1983 by the Minister Representing the Attorney-General. The purpose of the Bill is to make various amendments of the statute law of the Commonwealth, to repeal an Act, and for related purposes.
11. The Committee draws the attention of the Senate to the schedule of the Bill:

Amendment of the Patents Act 1952

12. It is proposed to insert a new section 58 into the Patents Act which will, inter alia, render the Commonwealth, the Commissioner of Patents and officers of the Patents Office immune from civil liability for furnishing information in accordance with section 30 of the Principal Act. At present there may be liability at common law for any negligence in the supply of such information.

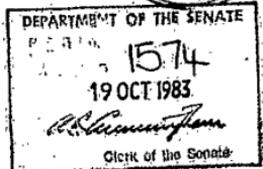
The Committee draws the attention of the Senate to this clause under principle 1(2)(i) in that it may be considered that, by removing any liability in common law, the proposed amendment if enacted will trespass on personal rights and liberties.

Michael Tate
Chairman

12 October 1983



THE SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TENTH REPORT

19 OCTOBER 1983

ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TENTH REPORT

The Committee has the honour to present its Tenth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Appropriation Bill (No. 1) 1983-84

Bounty (Tractor Cabs) Bill 1983

Companies and Securities Legislation (Miscellaneous Amendments) Bill 1983

Sex Discrimination Bill 1983

Social Security Legislation Amendment Bill 1983

APPROPRIATION BILL (NO. 1) 1983-84

1. This Bill was introduced into the House of Representatives on 23 August 1983 by the Treasurer. Its purpose is to appropriate money from the Consolidated Revenue Fund for the ordinary annual services of Government provided for in the 1983-84 Budget.
2. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 7 - Expenditure under Division 312

3. This clause empowers the Minister of Finance to charge expenditure under Division 312 of Schedule 2 of Appropriation Bill (No. 1) to such heads as the Minister sees fit. Division 312 provides for a special fund which may be expended at the discretion of the Minister of Finance for "... the commencement, continuation or expansion of Government programs". This special discretionary fund has not been appropriated in the past and its creation as a relatively obscure part of a major piece of fiscal legislation may be regarded as insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.
4. Control over the exercise of this discretion is limited. The Minister is required to submit particulars of expenditure from the special funds to Parliament "... as soon as practicable" after expenditure is authorised. Thus it is possible that significant sums could be expended on the commencement of a program with little opportunity for effective parliamentary scrutiny or control of that expenditure and may be considered an inappropriate delegation of legislative power.

5. The Committee first commented on this clause in its Seventh Digest on 7 September 1983. While the Committee has received no direct response to that comment the question of the Special Appropriation has been raised in a number of Senate Estimates Committees. Questioning of Departmental officers led Estimates Committee B to conclude in its report to the Senate that:

"... funds should not be sought without comprehensive details being available as to their likely use. Programs should be comprehensively costed before funding is sought ...".

6. Estimates Committee B went on to

"... question the practice of seeking funds [for proposed programmes] under the vote for the ordinary annual services of government which is not subject to amendment by the Senate".

7. Estimates Committee E expressed concern that:

"... a new category of contingency fund appears to have been established with little or no prior consultation with other Departments and with no prior discussion in the Parliament".

8. The Committee noted that the purpose of the existing advance to the Minister of Finance was designed to provide flexibility in expenditure and queried the need for an additional special fund.

9. Both Estimates Committees drew attention to the previous practice that,

"... expenditure on new policies not previously authorised by legislation is, on the first appearance of such expenditure in the Appropriation Bills, shown in Appropriation Bill (No. 2). This practice ... is designed to give the Senate the opportunity to make amendments in relation to new expenditure initiatives ...". (Estimates Committee E, Report to the Senate, October 1983, p. 3.)

10. In response to the concern expressed in Estimates Committee hearings the Minister for Finance provided an explanatory paper on the Special Appropriation to a number of Estimates Committees (see Estimates Committee F, Report to the Senate, October 1983, Appendix A). This paper summarizes the main factors giving rise to the need for the Special Appropriation as

"the transition from disparate treatment of staff ceiling issues to integration in the budgetary processes of human resources budgeting;

the development of new programs for which a global amount for salaries and related costs had been determined;

inability in the available time to allocate that global amount to departments and to specific appropriation items within (provisions for) departments;

reluctance to utilise the Advance to the Minister for Finance and desire to disclose fully to Parliament in the budget context the costs of administering new programs approved in the budget context".

11. While the Committee acknowledges both the need to move away from "disparate treatment" of the budgeting for staffing matters and the desire of the Government to maintain the "integrity of the budget estimates" by providing Parliament with a "global amount" for new programs it does not view the new fund as a desirable development.
12. There appears to be no great gain in Parliamentary scrutiny to be had from providing Parliament with a "global" figure for expenditure on new programs when spending Departments are vague in the extreme about their allocation from that "global" fund. It may also be considered that the requirement to submit particulars of expenditure to Parliament "... as soon as practicable" after it is authorized does not meet the needs of effective Parliamentary control of expenditure.
13. The Committee draws the attention of the Senate to Clause 7 and Division 312 of Schedule 2 under principles 1(a)(iv) and (v) in that they might be considered to be both an inappropriate delegation of legislative power and insufficiently subjecting the exercise of legislative power to parliamentary scrutiny.

BOUNTY (TRACTOR CABS) BILL 1983

14. This Bill was introduced into the House of Representatives on 5 October 1983 by the Minister Assisting the Minister for Industry and Commerce. Its purpose is to provide temporary assistance by way of a bounty on the production in Australia of cabs for fitting to imported tractors.

General Comment

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

Clause 6 - Unreviewable Decisions

17. Clause 6(3) requires the Comptroller-General to be satisfied of certain facts with respect to the product in question before a bounty is payable. Although the Comptroller-General's decision to refuse bounty under clause 9 may be reviewed by the Administrative Appeals Tribunal (see clause 20(1)(b)) his decision under clause 6(3) is not explicitly stated to be so reviewable. In the Committee's Third Report, para. 4 quotes the advice of the Attorney-General's Department that the decision of the Comptroller-General under clause 6(3)(d) of the Bounty (Room Air Conditioners) Bill is reviewable:

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

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

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

19. The Committee awaits the outcome of that examination and in the interim draws the attention of the Senate to clause 6 of the Bill under principle 1(a)(iii) in that it might be considered to make rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

Clause 10 - Unreviewable Decisions

20. Clause 10(5) and (8) empowers the Minister to make decisions about the registration of manufacturing premises. These decisions are not reviewable. These sub-clauses are in the same form as clause

11(5) and (8) of the Bounty (Room Air Conditioners) Bill. In the Third Report, para. 7, it appears that the decision not to allow a review of these discretions is a matter of Government policy.

21. The Committee nevertheless draws the attention of the Senate to this clause under principle 1(a)(iii) in that it may be considered to make personal rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

Clause 15 - Powers of Officers

22. Sub-clause (4) of this clause provides penalties for those persons who produce false or misleading documents to an officer of the Department of Industry and Commerce who is an authorized officer under clause 13(1) of this Bill without revealing them to be so.
23. Sub-clause (6) is a standard self-incrimination provision providing that a person may not refuse to produce documents, etc., or answer questions on the grounds that such action might tend to incriminate him.
24. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.
25. Clause 15(4) and (6) of the current Bill is in exactly the same terms as clause 16(3) and (5) of the Bounty (Room Air Conditioners) Bill, upon which the Committee commented in its Third Report, para. 12. The Minister advised that appropriate amendments would be made to the latter Bill at the earliest possible date (see para. 13). The Committee looks forward to the introduction of these amendments.

COMPANIES AND SECURITIES LEGISLATION (MISCELLANEOUS
AMENDMENTS) BILL 1983

26. This Bill was introduced into the Senate by the Attorney-General on 5 October 1983. Its purpose is to make various amendments to the Commonwealth Acts under the Co-operative Companies and Securities Scheme.
27. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 31 - Personal Rights and Liberties

28. This clause inserts a new subdivision into the Principal Act which includes, inter alia, proposed new section 30H. Sub-section 3 creates an absolute offence of giving false or misleading evidence. There is no requirement to demonstrate guilty intent.
29. Sub-section 4 undermines legal professional privilege by requiring a legal practitioner to provide the name and address of a person with whom the practitioner has had privileged communication. That person may then be required by section 30H(1) to appear at a hearing and produce documents as required.
30. Sub-section (5) removes the normal protection against self-incrimination. It is expressed in a standard form for such clauses.
31. The Committee draws the attention of the Senate to these proposed sub-sections under principle 1(a)(i) in that they may be considered to trespass unduly on personal rights and liberties.

Clause 68 - Exemptions

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

Clause 76 - Abrogation of a Common Law Rule

33. This clause proposes, inter alia, to insert a new section 261A(4) into the Principal Act. It is a general rule of common law that a person seeking an interim injunction may in some circumstances be required to give an undertaking as to damages which may be suffered if the interim injunction is subsequently lifted. Proposed sub-section (5) states that where the Court proposes to grant an interim order to the Commission or any other person the Court shall not require any undertakings as to damages. As the proposed legislation stands it is unclear whether a person whose interests were prejudiced by an interim order could, on the lifting of that order, recover damages for the prejudice suffered.
34. The Committee draws the attention of the Senate to this clause under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.

Clause 93 - Personal Rights and Liberties

35. This clause proposes to insert a new section 324D(4) into the Principal Act. This sub-section removes the protection against self-incrimination and is in the form standard for such sections. The Committee nevertheless draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

SEX DISCRIMINATION BILL 1983

36. This Bill was introduced by the Minister for Education and Youth Affairs in the Senate on 2 June 1983. The purpose of the Bill is to make unlawful discrimination on the grounds of sex, marital status and pregnancy in the areas of employment, accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs. The Bill also provides for a prohibition on sexual harassment in the workplace and in educational institutions.
37. The Bill establishes a Sex Discrimination Commissioner whose function will be to conciliate complaints of discrimination made under the legislation and to attempt to reach an amicable settlement. Where the process of conciliation is unsuccessful the Human Rights Commission can inquire into the complaint and may make determinations as to future conduct. These determinations may be enforced by action in the Federal Court.

38. The Committee first commented on this Bill in its Fifth Report on 7 September 1983. The Attorney-General has since responded to the Committee's comments and has also foreshadowed a number of amendments to the Bill.
39. The Committee draws the attention of the Senate to the following clauses and proposed amendments of the Bill:

Clauses 5,6 and 7 - Meaning of discrimination

40. These three clauses define the meaning of discrimination under this legislation, with reference to three categories of discrimination: those based on the grounds of sex (clause 5), marital status (clause 6), or pregnancy (clause 7). Each of these clauses contains a like provision defining indirect discrimination (to adopt the language of the Explanatory Memorandum) by reference, inter alia, to an act in which a person must comply with a requirement or condition "which is not reasonable having regard to the circumstances of the case" - see clauses 5(2)(b), 6(2)(b) and 7(2)(b).
41. Although these paragraphs in each instance constitute only one of three grounds each of which is necessary for there to be indirect discrimination, the Committee expressed concern as to the standpoint or perspective from which reasonableness is to be judged by the Sex Discrimination Commissioner or the Human Rights Commission. In view of the wide variation of social attitudes on these matters and in the absence of any guide as to the meaning of reasonableness

in the legislation, the Committee was concerned that in this instance the legislation might not be as useful as it could be to the parties involved. Therefore the Committee drew this clause to the attention of the Senate under principle 1(a)(ii) in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

42. The Minister's response states that

"The words 'not reasonable' in regard to the circumstances of the case were included as a limiting factor which was considered necessary to avoid complaints being brought concerning actions which the community would regard as unobjectionable. The words, of course, involve use of an objective test and the Commissioner and the Commission in hearing the arguments of both parties to a complaint would receive the relevant information necessary to determine both what the circumstances were and what the parties considered was reasonable. Ultimately a party dissatisfied with the Commission's decision could test the issue before the Federal Court".

43. The Committee conveys the Minister's response to the Senate for its guidance in considering this Bill. The Committee also notes that a decision of the Commission can, ultimately, be tested before the Federal Court, thus providing for judicial review of a decision where a party is dissatisfied.

Clause 19 - Single Gender Schools

44. The Committee expressed doubts about the application of this clause to schools which were primarily single gender but operated co-educationally at some levels.

45. The Committee's concern has been met by the proposed new paragraph 19(3)(b) proposed by the Attorney-General which exempts educational institutions of the type described above from the working of the Act.

Clause 47 - Inquiries by Commissioner

46. The Committee expressed concern that a decision by the Commissioner under clause 47(2)(a) not to investigate a complaint on the grounds that he was satisfied that the act was not unlawful, was not reviewable under clause 47(4). The Attorney-General has proposed an amendment which includes clause 47(2)(a) within the review provision of clause 47(4).

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

47. This clause provides general guidelines for the conduct of anti-discrimination inquiries by the Commission. The Committee commented in similar terms on a like provision in the Sex Discrimination Bill 1981 in its First Report (February 1982, paragraph 24). Paragraph 1(a) requires the Commission to give a party to an inquiry "such notice in such manner as the Commission determines of the time and place at which it intends to hold the inquiry."
48. This provision, by investing the Commission with the power to determine when and where the inquiry is to be held, could have the effect of empowering the Commission to determine a brief period of notice and to fix an unsuitable place for the holding of the inquiry, actions which would not be subject to review by a court.

49. The Committee drew this clause to the attention of the Senate under principle 1(a)(iii) in that it might be regarded as making rights, liberties and/or obligations dependent upon non-reviewable administrative decisions.
50. The Attorney-General, in commenting, has noted that should the Commission act in the way that the Committee has suggested then such an action could be considered an improper exercise of its power and, as such, subject to review by the Federal Court under the Administrative Decisions (Judicial Review) Act.

Clause 82 - Self-incrimination

51. This clause contains the now quite standard self-incrimination provision: it states that, for the purposes of clauses 80 and 81, it is not a reasonable excuse for failing to comply with an official inquiry for a person to hold that such compliance might be self-incriminating. The Committee also notes the presence of the equally standard provision that answers or evidence produced are not admissible in evidence against a person in any other civil or criminal proceedings. The Committee drew this clause to the attention of the Senate under principle 1(a)(i) in that it might be regarded as trespassing unduly on personal rights and liberties.
52. The Attorney-General has responded to the Committee's comments in the following terms:

"As the Committee has noted this clause contains the now quite standard self-incrimination provision and also contains a safeguard against the use of information obtained in evidence in proceedings before a court. A further safeguard is contained in sub-clause 52(2) of the Bill".

53. In principle the Committee is opposed to any erosion of protection against self-incrimination. Thus the Committee continues to draw the attention of the Senate to clause 82.

Clause 94 - Delegation

54. This clause also contains a now quite standard provision, in this case relating to the delegation of the powers of the Commission. This clause empowers both the Commission and the Sexual Discrimination Commissioner to delegate their statutory powers of inquiry to other Commission officers or indeed to "any other person or body of persons". This power of delegation is not limited by reference to the qualifications of persons who may exercise the relevant powers. The Attorney-General's response states that,

"In view of the variety of functions which might be delegated, it would be impractical to list all the persons or bodies who or which might conceivably at any time in the future be considered able to exercise functions under the Bill or attempt to define the qualifications such persons or bodies should have".

55. The Committee acknowledges the response of the Attorney-General which answers satisfactorily the concern it expressed in relation to clause 94.

Amendments

56. The Government has foreshadowed a number of amendments to the Sex Discrimination Bill. The Committee draws the attention of the Senate to the following proposed amendments:

Amendment 37 - Clause 33(2)

57. This amendment amends sub-clause 33(2) of the Bill to provide for the two year exemption period provided for acts done in direct compliance with an Act or other law or various other legal determinations, to be repealed or extended by regulation. The Committee adopts the practice of commenting on all such "Henry VIII" clauses and draws this amendment to the attention of the Senate under principle 1(a)(iv) in that it might be considered an inappropriate delegation of legislative power.

Amendment 40 - Clause 34

58. This amendment inserts a new clause 34 into the Bill. The purpose of the clause is to exempt the terms and conditions relating to a provident fund or superannuation scheme from the makings of the Bill. The exemption is for a minimum period of two years. However the term of the exemption is to be determined by regulation. The Committee adopts the practice of commenting on all such "Henry VIII" clauses, and draws this clause to the attention of the Senate under principle 1(a)(iv) in that it might be considered an inappropriate delegation of legislative power.

SOCIAL SECURITY LEGISLATION AMENDMENT BILL 1983

59. This Bill was introduced into the House of Representatives on 5 October 1983 by the Minister Representing the Minister for Social Security. Its purpose is to amend five Acts administered by the Minister for Social Security to give effect to the 1983-84 Budget decisions.
60. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 38 - Self-Incrimination/Retrospectivity

61. This clause proposed to insert a new section 135TG into the Principal Act removing the protection against self-incrimination. It is in a standard form for such clauses. The Committee draws the attention of the Senate to this clause under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.

Michael Tate
Chairman

19 October 1983



AUSTRALIAN SENATE



DEPARTMENT OF THE SENATE	
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

ELEVENTH REPORT

2 NOVEMBER 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

ELEVENTH REPORT

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

ELEVENTH REPORT

The Committee has the honour to present its Eleventh Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Bounty (Tractor Cabs) Bill 1983

Radiocommunications Bill 1983

Radiocommunications (Frequency Reservation Certificate Tax) Bill 1983

*Radiocommunications (Receiver Licence Tax) Bill 1983

*Radiocommunications Taxes Collection Bill 1983

*Radiocommunications (Temporary Permit Tax) Bill 1983

*Radiocommunications (Test Permit Tax) Bill 1983

Radiocommunications (Transitional Provisions and Consequential Amendments) Bill 1983

*Radiocommunications (Transmitter Licence Tax) Bill 1983

*See Radiocommunications (Frequency Reservation Certificate Tax) Bill 1983

BOUNTY (TRACTOR CABS) BILL 1983

1. This Bill was introduced into the House of Representatives on 5 October 1983 by the Minister Assisting the Minister for Industry and Commerce. Its purpose is to provide temporary assistance by way of a bounty on the production in Australia of cabs for fitting to imported tractors.

General Comment

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

Clause 6 - Unreviewable Decisions

4. Clause 6(3) requires the Comptroller-General to be satisfied of certain facts with respect to the product in question before a bounty is payable. Although the Comptroller-General's decision to refuse bounty under clause 9 may be reviewed by the Administrative Appeals Tribunal (see clause 20(1)(b)) his decision under clause 6(3) is not explicitly stated to be so reviewable. In the Committee's Third Report, para. 4 quotes the advice of the Attorney-General's Department that the decision of the Comptroller-General under clause 6(3)(d) of the Bounty (Room Air Conditioners) Bill is reviewable:

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

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

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

6. The Minister for Industry and Commerce in responding to the Committee's Eleventh Digest has provided the Committee with thorough discussion of this issue prepared by the Attorney-General's Department. For the information of the Senate that advice is here reproduced in full.

"In view of the Senate Committee's reference to this provision as an unreviewable decision it would appear necessary to set out in detail the Department's conclusion that the decisions are reviewable by the Tribunal.

Sub-clause 6(1) of the Bill provides that 'bounty is payable in accordance with this Act on the production in Australia of bountiable cabs'. Sub-clause 6(3) of the Bill provides that a manufacturer of a bountiable cab is not entitled to receive a payment of bounty in respect of the cab unless the Comptroller-General is satisfied as to the matters set out in paragraphs 6(3)(a) to (d). Paragraph 9(1)(a) provides that the Comptroller-General shall, if he is satisfied that bounty is payable in respect of that bountiable cab, approve the payment of the bounty. Paragraph 9(1)(b) provides that if he is not so satisfied that bounty is payable he shall refuse to approve payment of the bounty. Clause 20(1)(b) enables applications to be made to the Administrative Appeals Tribunal for review of decisions of the Comptroller-General under section 9 approving, or refusing to approve, payment of bounty. The Comptroller-General can only decide whether to approve or refuse to approve the payment of bounty under sub-clause 9(1) where he is satisfied that bounty is or is not payable. Whether that is the case depends on whether or not the Comptroller-General is satisfied of the matters set out in sub-clause 6(3). There is in this Department's view, no doubt that the Administrative Appeals Tribunal in reviewing a decision of the Comptroller-General under clause 9 of the Bill will need to be satisfied of the matters set out in sub-clause 6(3). To that extent it will be reviewing the decision of the Comptroller-General under that sub-clause that he is or he is not satisfied of the matters set out in that provision.

Specification in clause 20 of the Bill that the AAT may review each of the matters about which the Comptroller-General is required to be satisfied in sub-clause 6(3) is not only unnecessary but

would, in this Department's view, be counterproductive because it would enable a person to seek review of the decision of the Comptroller-General under sub-clause 6(3) in isolation of the real decision which needs to be reviewable - that is the decision to approve or refuse to approve payment of bounty under clause 9. It would be pointless to provide for separate review of decisions under sub-clause 6(3) when the finding of the Tribunal on any of those decisions would have no particular consequence unless it were made in the context of reviewing a decision under clause 9.

This result is further emphasised by sub-section 43(1) of the Administrative Appeals Tribunal Act 1975. Sub-section 43(1) provides in part that 'for the purpose of reviewing a decision, the Tribunal may exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision'. It is clear that to make a decision whether or not to pay bounty the Comptroller-General must have regard to the matters set out in sub-clause 6(3) of the Bill. For the purpose of reviewing a decision of the Comptroller-General under clause 9 of the Bill the Tribunal may therefore exercise all the powers and discretions that are conferred on the Comptroller-General by the enactment. Those powers and discretions include the discretions exercisable by him under sub-clause 6(3). There is therefore no doubt that the jurisdiction conferred on the Tribunal by clause 20 of the Bill is adequate to enable it to fully review a decision of the Comptroller-General to pay or refuse to pay bounty."

7. The Committee notes that, if the Administrative Appeals Tribunal or the Federal Court of Australia were to interpret this Bill or other similar bounty legislation to exclude review of the decisions, the Minister has undertaken to introduce appropriate amendments. The Ministerial response meets the Committee's concerns in relation to this clause.

Clause 10 - Unreviewable Decisions

8. Clause 10(5) and (8) empowers the Minister to make decisions about the registration of manufacturing premises. These decisions are not reviewable. These sub-clauses are in the same form as clause 11(5) and (8) of the Bounty (Room Air Conditioners) Bill. In the Third Report, para. 7, it appears that the decision not to allow a review of these discretions is a matter of Government policy. This view is confirmed in the Minister's most recent response on this Bill.
9. The Committee nevertheless draws the attention of the Senate to this clause under principle 1(a)(iii) in that it may be considered to make personal rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

Clause 15(4) - False or Misleading Information

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

11. The Committee notes that this sub-clause has been amended in response to the Committee's comments on a similar clause in the Bounty (Room Air Conditioners) Bill. In that Bill a person who in compliance with the relevant clause revealed to an inspector that documents were false would have rendered himself liable to prosecution under another clause of the Bill. The effect of the amendment is to remove any element of self-incrimination from the operation of sub-clause (4).

Clause 15(6) - Self-Incrimination

12. Sub-clause (6) is a standard self-incrimination provision providing that a person may not refuse to produce documents, etc., or answer questions on the grounds that such action might tend to incriminate him.
13. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.
14. The Committee thanks the Minister for his response to its comments on the Bounty (Tractor Cabs) Bill.

RADIOCOMMUNICATIONS BILL 1983

15. This Bill was introduced into the House of Representatives by the Minister for Communications on 22 September 1983. Its purpose is to replace the Wireless Telegraphy Act 1905 to control the use of the Australian radio frequency spectrum at a time of rapidly developing technical change by making provision for:

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

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

Clause 12 - Compliance statements

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

18. Under sub-clause (8) the Minister may decide that the "adequate examination of a device ,.. cannot be made without causing damage to, or destruction of, the device ...". If the applicant for a compliance statement does not authorize such "examination" his application is deemed to have been withdrawn. The Minister's initial decision that examination requires damage to, or destruction of, the device is not subject to review.
19. The Committee drew this clause to the attention of the Senate under principle 1(a)(iii) in that it might be considered to make individual rights unduly dependent on non-reviewable administrative decisions.
20. The Committee's concern at this clause related to the possibility of such destructive testing being applied to a very high cost prototype of a radiocommunications device, which might discourage the developer from submitting such a device because he could not afford to have the prototype destroyed. The Committee notes by the Minister's response that the testing process is relevant "... only for goods produced in commercial quantities". The Committee also notes that within the administration of the proposed Act there will be scope for an applicant "... to query the technical basis for such a test".

Clause 46 - Conciliation.

21. This clause provides that, where a complaint has been made to the Minister claiming that interference with radiocommunications is occurring, or is likely to occur as a result of the actions of another

person, and is, or is likely to, affect the interests of the complainant, the Minister may refer the matter to a conciliator. If the Minister does not refer the complaint to a conciliator he is merely required to inform the complainant of his decision and his reasons. That decision is not subject to review by the Administrative Appeals Tribunal.

22. The Minister's response in relation to this clause notes that,

"The decision would, in fact, be reviewable under the Administrative Decisions (Judicial Review) Act if there was any suggestion that it was not made according to law. The whole scheme of conciliation is intended to be non-coercive and as informal as possible. However, I believe you will agree that the Minister must have a discretion to reject frivolous or vexatious demands. I think that AAT appeal rights would open these arrangements to abuse by individuals doggedly pursuing personal vendettas".

23. The Committee is reassured by the Minister's view that a discretion to reject frivolous or vexatious demands is necessary.

Clause 63 - Witnesses

24. The purpose of this clause is to protect the rights of witnesses appearing before a Commissioner appointed under this legislation to inquire into matters relating to radiocommunications. Sub-clause (2) creates a number of offences relating to an employer's

treatment of any employee who appears as a witness before an inquiry conducted under this Act. It is an offence for an employer to dismiss or threaten to dismiss any employee or to otherwise prejudice an employee in his employment because he has given, or intends to give evidence before an inquiry.

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

"A witness giving evidence adverse to his employer would be in an extremely precarious position. It is very difficult to prove that a person has been dismissed for a particular reason and my strong view, therefore, is that without a reversal of the onus of proof the Government's intention to protect witnesses would completely lack credibility".

27. While the Committee adopts the practice of commenting on all clauses which reverse the burden of proof and thus draws the attention of the Senate to this clause under principle 1(a)(i), it nevertheless finds the Minister's explanation of the policy considerations underlying this clause to be persuasive.

RADIOCOMMUNICATIONS (FREQUENCY RESERVATION CERTIFICATE
TAX) BILL 1983

28. This Bill was introduced into the House of Representatives by the Minister for Communications on 22 September 1983. The purpose of the Bill is to impose a tax on the grant of a frequency reservation certificate as authorised by clause 21 of the Radiocommunications Bill.
29. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 7 - Amount of tax

30. By clause 7(1) of the Bill the amount of tax to be imposed on the grant of certificates is to be determined in accordance with regulations, but no upper or lower limits are set by the Bills.
31. The Minister, in responding to the Committee's comments on this and other similar clauses, has made a number of points:
- (a) that there are a large number of classes of licence and of fee categories;
 - (b) that radiocommunications fees are more varied and complex than broadcasting and television licence fees; and
 - (c) that new services and appropriate licence fees should be authorised promptly.

32. In view of these factors the Minister is of the opinion that the use of regulations to set those charges is the only efficient way of managing a complex problem.
33. The Committee acknowledges the force of these considerations. The Committee nevertheless adopts the practice of commenting on all "Henry VIII" clauses, and thus draws the attention of the Senate to this clause under principle 1(a)(iv) in that it may be considered an inappropriate delegation of legislative power.
34. The substantive provisions in clause 7(1) of each of the following Bills are in virtually identical terms to the above Bill and thus the comments on the above Bill also apply to these Bills:

Radiocommunications (Receiver Licence Tax)
Bill 1983

Radiocommunications (Temporary Permit Tax)
Bill 1983

Radiocommunications (Test Permit Tax) Bill
1983

Radiocommunications (Transmitter Licence
Tax) Bill 1983

35. The comments also apply to clause 8 of the Radiocommunications Taxes Collection Bill 1983 which empowers the Minister to grant exemptions from paying tax by regulation.

RADIOCOMMUNICATIONS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1983

36. This Bill was introduced into the House of Representatives by the Minister for Communications on 22 September 1983. The purpose of the Bill is to make transitional provisions and consequential amendments to bring the general scheme of the Radiocommunications Bill 1983 into force.
37. The Committee draws the attention of the Senate to the Schedule of the Bill:

Consequential amendments - Crimes Act 1914

38. It was proposed to repeal the existing section 30F.B of the Crimes Act and substitute a new section. The proposed new section gave the Minister the power to cancel radiocommunications transmitter licences or temporary permits on the grounds that the transmitter has been used to broadcast seditious material for example encouraging the violent overthrow of the constitution of the Commonwealth or the established government of any country, or to broadcast any other seditious matter.
39. Powers contained in the Crimes Act are not reviewable by the Administrative Appeals Tribunal whereas Ministerial discretions to cancel licences given by the Radiocommunications Bill are so reviewable.
40. The Committee considered that the grounds provided by the proposed amendment to the Crimes Act, particularly publishing "... any seditious matter", were capable of wide and subjective interpretation, and thus might be considered to make personal rights and liberties unduly dependent on non-reviewable administrative decisions.

41. The Minister for Communications has indicated that this proposed new section will be deleted: "Consequently any future cancellation of licences will occur under the Radiocommunications Bill and will therefore be subject to AAT review". The Committee thanks the Minister for his response to this comment and indeed for his prompt response to all the Committee's comments on the various Radiocommunications Bills.

Michael Tate
Chairman

2 November 1983



AUSTRALIAN SENATE

DEPARTMENT OF THE SENATE
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TWELFTH REPORT

9 NOVEMBER 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TWELFTH REPORT

The Committee has the honour to present its Twelfth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Australian Shipping Commission Amendment Bill
1983

Transfer of Prisoners Bill 1983

Transfer of Prisoners (Consequential Amendments)
Bill 1983

AUSTRALIAN SHIPPING COMMISSION AMENDMENT BILL 1983

1. This Bill was introduced into the House of Representatives by the Minister for Transport on 20 October 1983. Its purpose is to amend the Australian Shipping Commission Act 1956:
 - (a) to improve the management of the Australian Shipping Commission and to provide it with more autonomy in its day to day control over the operations of the Australian National Line;
 - (b) to make a number of amendments to the Act which are of a machinery nature; and
 - (c) to repeal some sections of the Act which are redundant.
2. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 5; Proposed s. 14A - Delegation

3. This section, to be inserted by clause 5 of the Bill, enables the Commission to delegate all or any of its powers, other than the power of delegation. The Commission may delegate its powers to "any person". Sub-section 14A(1) does not provide any guide as to the attributes of the person to whom the delegation is made. In view of the wide powers that could be exercised by the delegate and particularly the commercial implications of his actions the Committee draws the attention of the Senate to this clause under principle 1(a)(iv) in that it may be considered to be an inappropriate delegation of legislative power.

Proposed Section 16 - Regulations

4. New sub-section 16(3)(a) sets the upper limit for the value of contracts which the Commission may enter into without Ministerial approval. However, the limit of \$2 m. may be increased by regulation. It is clear that such a provision is intended to accommodate the effects of inflation, but it should be noted that the existing section 16(3)(a) of the Act has a similar provision for varying the current limit of \$500,000. This power has not been used since 1956. The Committee draws the attention of the Senate to this "Henry VIII" clause under principle 1(a)(iv) in that it might be considered an inappropriate delegation of legislative power.

TRANSFER OF PRISONERS BILL 1983

5. This Bill was introduced into the House of Representatives by the Minister Representing the Attorney-General on 19 October 1983. Its purpose is to permit the transfer within Australia for welfare purposes or trial of prisoners who have been sentenced to terms of imprisonment under Commonwealth laws and laws of certain territories. This Bill is part of a uniform scheme of legislation involving the Commonwealth and State Governments.
6. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clause 6(1) - Ministerial Discretion

7. This clause grants to the Minister a discretion to authorize the transfer of a prisoner from one State or Territory to another State or Territory where a prisoner has applied for such a transfer. The merits of a decision made by the Minister in exercising his discretion are not reviewable.
8. The Committee draws the attention of the Senate to this clause under principle 1(a)(iii) in that it may be considered to make individual rights and liberties unduly dependent on non-reviewable administrative decisions.

Clause 31 - Orders

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

"... where an A.C.T. prisoner is transferred to Queensland pursuant to this legislation. Pursuant to clause 18 he becomes a Queensland prisoner. Assume he is returned to the A.C.T.

to prosecute an appeal pursuant to clause 16 and is acquitted. Without this clause the court in the A.C.T. would be unable to order his discharge as he is a Queensland prisoner."

11. The Committee nevertheless draws this "Henry VIII" clause to the attention of the Senate under principle 1(a)(iv) in that it may be considered to be an inappropriate delegation of legislative power.

TRANSFER OF PRISONERS (CONSEQUENTIAL AMENDMENTS) BILL
1983

12. This Bill was introduced into the House of Representatives by the Minister Representing the Attorney-General on 19 October 1983. Its purpose is to amend certain Commonwealth legislation to remove the possibility of conflict between the Transfer of Prisoners Bill 1983 and that legislation.
13. The Committee draws the attention of the Senate to the following clauses of the Bill:

Clauses 5 and 8 - Delegation

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

15. Neither proposed sub-section defines or limits the person to whom these powers may be delegated. Thus the Committee draws these clauses to the attention of the Senate under principle 1(a)(iv) in that they might be considered an inappropriate delegation of legislative power.

Michael Tate
Chairman

9 November 1983



AUSTRALIAN SENATE



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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

THIRTEENTH REPORT

16 NOVEMBER 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

THIRTEENTH REPORT

16 NOVEMBER 1983

ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
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- (b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

THIRTEENTH REPORT

The Committee has the honour to present its Thirteenth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Australian Shipping Commission Amendment Bill
1983

Commonwealth Electoral Legislation Amendment Bill
1983

Inter-State Commission Amendment Bill 1983

Sex Discrimination Bill 1983

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

AUSTRALIAN SHIPPING COMMISSION AMENDMENT BILL 1983

1. This Bill was introduced into the House of Representatives by the Minister for Transport on 20 October 1983. Its purpose is to amend the Australian Shipping Commission Act 1956:
 - (a) to improve the management of the Australian Shipping Commission and to provide it with more autonomy in its day to day control over the operations of the Australian National Line;
 - (b) to make a number of amendments to the Act which are of a machinery nature; and
 - (c) to repeal some sections of the Act which are redundant.
2. The Committee in its Twelfth Report, on 9 November 1983, drew the attention of the Senate to the following clauses of the Bill:

Clause 5; Proposed s. 14A - Delegation

3. This section, to be inserted by clause 5 of the Bill, enables the Commission to delegate all or any of its powers, other than the power of delegation. The Commission may delegate its powers to "any person". Sub-section 14A(1) does not provide any guide as to the attributes of the person to whom the delegation is made. In view of the wide powers that could be exercised by the delegate and particularly the commercial implications of his actions the Committee drew the attention of the Senate to this clause under principle 1(a)(iv) in that it may be considered to be an inappropriate delegation of legislative power.

4. The Minister for Transport has responded to this comment. The relevant part of the response argues that:

"... it would be difficult to define the persons to whom delegations should be made to cover all possible circumstances. The Commission could be commercially constrained if the definition was too narrow. Moreover as the Commission is charged with the efficient conduct of its affairs I would envisage that it would exercise its power of delegation with discretion.

Further, the fact that the Commission is accountable to the Parliament for the exercise of its powers, would also ensure that it used the power of delegation properly".

5. The Committee notes the Minister's response, and accepts that the considerations outlined therein meet the concern expressed by the Committee.

Proposed Section 16 - Regulations

6. New sub-section 16(3)(a) sets the upper limit for the value of contracts which the Commission may enter into without Ministerial approval. However, the limit of \$2 m. may be increased by regulation. It is clear that such a provision is intended to accommodate the effects of inflation, but it should be noted that the existing section 16(3)(a) of the Act has a similar provision for varying the current limit of \$500,000. This power has not been used since 1956. The Committee drew the attention of the Senate to this "Henry VIII" clause under principle 1(a)(iv) in that it might be considered an inappropriate delegation of legislative power.

7. The Minister has argued that the exercise of the power to vary the sum of \$2 million by regulation is subject to Parliamentary scrutiny:

"As you are aware all regulations must lie on the table of both Houses for 15 days. Within that period either House may move to disallow the regulation. Any proposal to increase the limit of \$2 million for Minister's approval of contracts would therefore be subject to Parliamentary scrutiny".

8. The Committee notes the need to provide the Commission with a degree of flexibility to enable it to operate in a commercial environment and also that the Australian Shipping Commission is, ultimately, answerable to Parliament for all aspects of its operations.

COMMONWEALTH ELECTORAL LEGISLATION AMENDMENT BILL 1983

9. This Bill was introduced into the House of Representatives by the Special Minister of State on 2 November 1983. The purpose of the Bill is to establish an Australian Electoral Commission, provide for public funding of election campaigns and disclosure of donations and electoral expenditure, amend the existing Commonwealth Electoral Act, and consolidate all relevant existing legislation.
10. The Committee draws the attention of the Senate to the following clauses of the Bill:

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

11. This clause provides a Divisional Returning Officer and an Australian Electoral Officer respectively with an unreviewable administrative discretion. Each officer is empowered to decide on the eligibility of individuals within certain classes of persons to be placed on the Electoral Roll. His only obligation is to "... notify the applicant in writing of that decision or opinion ...". While in some circumstances, decisions under these proposed sections may have to be made with some speed and review would in consequence be impractical, in other cases, speed of decision making is not essential. Proposed new Part IX of the Act provides for judicial review before courts of summary jurisdiction of a number of other similar decisions.
12. The Committee draws the attention of the Senate to this clause under principle 1(a)(iii) in that it might be considered to make individual rights, liberties and obligations unduly dependent upon non-reviewable administrative decisions.

Clause 30 - Proposed Section 46A

13. The purpose of this clause is to enable a person to have his address removed from the Roll where the publication could present a threat to his or his family's safety. Paragraph (4)(b) of this section gives to the Divisional Returning Officer a discretion to decide on such a request.
14. The legality of the exercise of this discretion is reviewable under the Administrative Decisions (Judicial Review) Act. However, there is no provision for review of the merits of the decision.

15. The comments on this proposed section also apply to similar discretions in relation to the registration of postal votes granted by clause 62, proposed section 86(9) and (10).
16. The Committee draws these clauses to the attention of the Senate under principle 1(a)(iii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

INTER-STATE COMMISSION AMENDMENT BILL 1983

17. This Bill was introduced into the House of Representatives by the Minister for Transport on 2 November 1983. The purpose of the Bill is to amend a number of provisions in the Inter-State Commission Act 1975 which are necessary to take account of legislative and other developments since 1975.
18. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 8 - Proposed Section 16 - Self-Incrimination

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

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

SEX DISCRIMINATION BILL 1983

21. The Committee has no specific comments to make on this Bill in this Report. However, the Committee advises the Senate that the Bill and all amendments proposed to it are under continuing examination by the Committee.

TAXATION (UNPAID COMPANY TAX) ASSESSMENT AMENDMENT
BILL 1983 (The Hon. P J Keating)

22. This Bill was introduced into the House of Representatives by the Treasurer on 3 November 1983. The purpose of the Bill is to amend the company tax recoupment law to:
- ensure that liability for recoupment tax will not be escaped by reason of an ultimately unsuccessful post-sale or pre-sale tax avoidance scheme;
 - authorise the commissioner of Taxation to name in his annual report persons who fail to pay an assessed recoupment tax liability in respect of unpaid company tax;

- remove the test which requires that an arrangement which rendered a company unable to pay its tax must be identified before a recoupment tax liability can be established;
 - provide relief from liability to vendors recoupment tax in certain anomalous public company cases;
 - vary the evidentiary provision to ensure constitutional validity of the legislation; and
 - correct minor technical defects.
23. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 12 - Evidence

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

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

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

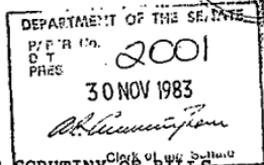
25. The Committee again draws this clause to the attention of the Senate under principle 1(a)(iv) in that it may be considered to be an inappropriate delegation of legislative power.

Michael Tate
Chairman

16 November 1983



AUSTRALIAN SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FOURTEENTH REPORT

30 NOVEMBER 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FOURTEENTH REPORT

30 NOVEMBER 1983

ISSN 0729-6258

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MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FOURTEENTH REPORT

The Committee has the honour to present its Fourteenth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Bank Account Debit Tax Legislation Amendment Bill
1983

Conciliation and Arbitration Amendment Bill (No. 2)
1983

Director of Public Prosecutions Bill 1983

Health Legislation Amendment Bill (No. 2) 1983

National Crime Authority Bill 1983

BANK ACCOUNT DEBIT TAX LEGISLATION AMENDMENT BILL 1983

1. This Bill was introduced into the House of Representatives by the Treasurer on 9 November 1983. Its purpose is to amend the bank account debits tax law to remove certain doubts about the constitutional validity of a provision which authorises banks to recover tax payable by them from account holders and which, if held to be constitutionally invalid, may affect the operative provisions of the Bank Account Debits Tax Administration Act 1982.
2. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 2 - Retrospectivity

3. This clause makes the commencement of this Bill retrospective to 31 December 1982. Representations have been made to the Commonwealth that certain provisions of the Bank Account Debits Tax Administration Act 1982 relating to the recovery of tax by banks from their clients may be unconstitutional. Although the matter is not the subject of litigation, this Bill has been introduced to ensure that the Principal Act is, and was at all times, within the Constitution.
4. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that such retrospectivity may be considered to trespass unduly on personal rights and liberties.

CONCILIATION AND ARBITRATION AMENDMENT BILL (NO. 2) 1983

5. This Bill was introduced into the House of Representatives by the Minister for Employment and Industrial Relations on 9 November 1983. The purpose of this Bill is to amend the Conciliation and Arbitration Act 1904 to:
- achieve greater co-ordination between Commonwealth and State industrial systems;
 - incorporate the jurisdiction of the Public Service Arbitrator within the jurisdiction of the Conciliation and Arbitration Commission;
 - change certain administrative arrangements under the Act.
6. The Committee drew the attention of Senators to clause 14 of this Bill in its Alert Digest No. 14 of 16 November 1983. The Committee expressed concern that sub-section 70A(1) to be inserted by clause 14 permitted various authorities to be excluded from the operation of the Act by regulation.
7. The Minister for Employment and Industrial Relations has provided a response to the Committee's comments.
- "The definitions in proposed sub-section 70A(1) are qualified by its opening words which, in effect, provide that the terms defined in the provision (including "Commonwealth authority") are to have their defined meaning for the purposes of new Division 1A of Part

III of the Act. In other words, where a Commonwealth authority is excluded from the definition of that term in Division 1A either specifically or by regulation, it will come within the jurisdiction of the Australian Conciliation and Arbitration Commission under Division 1 or some other Part of the Act.

The result is that the scope of the Commission's jurisdiction under the proposed arrangements will be no less than the existing combined jurisdiction of the Commission and the Public Service Arbitrator.

Accordingly, certain specified Commonwealth authorities have been expressly excluded from the definition of "Commonwealth authority" under paragraph (c) of proposed sub-section 70A(1) of the Act. These are authorities which under their enabling legislation have been excluded from the jurisdiction of the Public Service Arbitrator and come within the Commission's general jurisdiction."

8. The Minister's response concludes that,

"Since what is involved therefore is effectively a transfer from one Division of the Act to another, I consider that it is entirely appropriate to provide for that to be effected by regulation."

9. The Committee is satisfied that the proposed sub-section gives no cause for concern and thanks the Minister for his comments.

DIRECTOR OF PUBLIC PROSECUTIONS BILL 1983

10. This Bill was introduced into the Senate by the Attorney-General on 10 November 1983. The purpose of this Bill is to establish an office of Director of Public Prosecutions to take over the functions of the Crown Solicitor's Office in regard to prosecution of Commonwealth offences, but a considerable degree of flexibility will be given to the Director as to how and when this will be done.
11. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 6

12. Among the functions given to the Director is that of instituting proceedings "for the recovery of pecuniary penalties under the laws of the Commonwealth" (clause 6(1)(g)).
13. By clause 6(6) the institution of such proceedings is protected from legal challenge if the basis of the challenge is that the proceedings are not proceedings to which paragraph (1)(g) applies, and are thus not authorised by the Attorney-General.
14. Clause 6(7) likewise protects the Director against any legal challenge to his decision to take civil remedies under clause 6(1)(h).
15. In discussing a similar clause in the Special Prosecutors Bill 1982, in its Twelfth Report, 15 September 1982, the Committee expressed concern that the effect of the clause was,

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

16. The Committee draws this clause to the attention of the Senate under principle 1(a)(iii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

HEALTH LEGISLATION AMENDMENT BILL (NO. 2) 1983

17. This Bill was introduced into the House of Representatives by the Minister for Health on 10 November 1983. The purpose of this Bill is to make certain amendments to the Health Insurance Act 1973, the National Health Act 1953, the Nursing Homes Assistance Act 1974 and the Medical Research Endowment Act 1937, the most significant of which relate to the administration of the Government's nursing home program.

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

Clause 2 - Retrospectivity

19. Sub-clauses (10) and (11) make the commencement of clauses 35(1), 62(1) and 61(1) retrospective to 1 January 1975 and 13 December 1974 respectively.

The Explanatory Memorandum justifies this on the grounds of providing legislative authority for past administrative practices. It is not clear whether this retrospectivity will in fact compromise the rights of any individuals. In view of the significant retrospectivity involved the Committee draws the attention of the Senate to this clause under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

NATIONAL CRIME AUTHORITY BILL 1983

20. This Bill was introduced into the Senate by the Attorney-General on 10 November 1983. The purpose of this Bill is to establish a National Crime Authority with the function of investigating certain categories of organised crime and official corruption, with a view to prosecution action where appropriate.
21. The Committee notes that this Bill has been referred to the Senate Standing Committee on Constitutional and Legal Affairs, and draws the attention of that Committee to the following clauses of this Bill:

Clause 14

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

23. The Committee draws this clause to the attention of the Senate under principle 1(a)(iii) in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 21

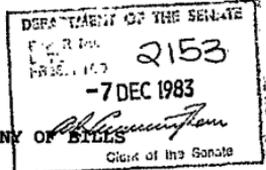
24. At present a fair and accurate report of evidence given in judicial and similar proceedings is a defence in an action for defamation. However, as a result of sub-clause (15) such a defence is not available in cases arising out of proceedings of the Authority. The defence that the substance of evidence given before the Authority was true would still be available in such cases.
25. The Committee notes that this clause provides greater protection for those appearing before the Authority, and thus increases the probability that the Authority will hold hearings in public. However, this potential gain is balanced by the restrictions placed on those wishing to report the proceedings of the Authority by having to demonstrate the truth of any matter that is reported.
26. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

Michael Tate
Chairman

30 November 1983



AUSTRALIAN SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF **BILLS**

FIFTEENTH REPORT

7 DECEMBER 1983

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIFTEENTH REPORT

7 DECEMBER 1983

ISSN 0729-6258

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Senator N Bolkus
Senator R A Crowley
Senator the Hon. P. D Durack
Senator J Haines

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Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIFTEENTH REPORT

The Committee has the honour to present its Fifteenth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Australian National Railways Commission Bill 1983

Inter-State Commission Amendment Bill 1983

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

AUSTRALIAN NATIONAL RAILWAYS COMMISSION BILL 1983

1. This Bill was introduced into the House of Representatives by the Minister for Transport on 16 November 1983. The purpose of this Bill is to repeal the Australian National Railways Act 1917 and replace it with modern legislation more appropriate to the Commission's role as a commercial business undertaking, by:
 - defining precisely the Commission's powers and responsibilities by giving it a clear and distinct charter
 - removing many archaic constraints on ANRC's ability to operate in a commercial manner
 - minimising Ministerial intervention in respect of ANRC's day-to-day activities while maintaining Ministerial oversight in critical areas and by way of reserve powers
 - ensuring ANRC remains accountable to the Government and Parliament for the efficient performance of its functions.
2. The Committee draws the attention of the Senate to the following clauses of this Bill:

Clauses 7 and 8 - Powers of the Commission

3. Clause 7(1)(a) establishes an upper limit of \$2m on the value of contracts (other than contracts for the carriage of passengers or goods) which the Commission may enter into without obtaining ministerial approval. However, the amount of \$2m may be increased by regulation. In as much as

the purpose of the clause is to limit the powers of the Commission to enter into contracts and that purpose can be altered by regulation, this clause might be considered to be a "Henry VIII" clause.

4. The Committee therefore draws these clauses to the attention of the Senate under principle 1(a)(iv) in that they might be considered to be an inappropriate delegation of legislative power.

Clause 74

5. This clause exempts the Commission from any requirement to fence off a railway from adjacent land. In view of the offences relating to endangering the safety of trains established by clause 78(1) a landowner adjacent to a railway, for example, could only protect himself against either loss of livestock or committing an offence under clause 78(1) by fencing off his land. In effect the clause could shift from a public authority to private individuals the financial burden for the fencing of railways.
6. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

INTER-STATE COMMISSION AMENDMENT BILL 1983

7. This Bill was introduced into the House of Representatives by the Minister for Transport on 2 November 1983. The purpose of the Bill is to amend a number of provisions in the Inter-State Commission Act 1975 which are necessary to take account of legislative and other developments since 1975.
8. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 8 - Proposed Section 16 - Self-Incrimination

9. The Committee drew attention to this clause in its Thirteenth Report of 16 November 1983. The clause is in a now standard form for such clauses.
10. The Minister for Transport has responded to the Committee's comments. The proposed amendment is to rectify perceived defects in the Inter-State Commission Act 1975 in relation to the provision of evidence and the protection of witnesses. These defects are:

- "(i) so far as documentary evidence is concerned, the sub-section refers to self-incrimination by reason of what the document contains, whereas it should refer only to self-incrimination by reason of the fact that the document was produced by the witness;
- (ii) a witness is currently immune from prosecution for a perjury committed before the Commission;

(iii) it does not allow for the evidence to be admitted in proceedings against the witness for such offences as 'aiding and abetting' an offence against s.16 of the ISC Act

- these offences are described in the stated sections of the Crimes Act."

11. The Minister has emphasised that:

"... clause 8(b) of the Bill, which is designed to remove these defects, does not remove the protection given to a witness where the self-incrimination concerns offences unrelated to the requirements of Section 16 of the ISC Act. The references to the stated sections of the Crimes Act concern only those offences in relation to the provision of evidence before the Commission, and no other."

12. The Committee notes the views of the Minister and thanks him for his response.

LIVE-STOCK SLAUGHTER (EXPORT INSPECTION CHARGE) VALIDATION
BILL 1983

13. This Bill was introduced into the House of Representatives by the Minister Representing the Minister for Primary Industry on 16 November 1983.

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

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

Clause 3 - Retrospectivity

15. The purpose of this clause is to validate retrospectively the payment and collection of amounts under the Live-stock Slaughter (Export Inspection Charge) Act 1979 and the Live-stock Slaughter (Export Inspection Charge) Collection Act 1979.
16. Subsequent amendments to the first Act altered the definition of "abattoir" and required that premises to be used as abattoirs be prescribed. Such premises were not prescribed. However, fees in relation to abattoirs have continued to be collected since 1 January 1983.
17. Although sub-clause 3(3) provides protection against the imposition of penalties for non-payment of retrospectively validated charges, the Committee nevertheless draws this clause to the attention of the Senate under principle 1(a)(i) in that any such retrospectivity may be considered to trespass unduly on personal rights and liberties.

 Michael Tate
Chairman

7 December 1983



AUSTRALIAN SENATE

DEPARTMENT OF THE PAPER No. <i>2273</i> DATE PRESENTED 14 DEC 1983 <i>W. H. ...</i> CIC.	THE SENATE 14 DEC 1983 <i>W</i> TABLED PAPER
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTEENTH REPORT

14 DECEMBER 1983.

W. H. ...

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTEENTH REPORT

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ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTEENTH REPORT

The Committee has the honour to present its Sixteenth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles 1(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Australian National Railways Commission Bill 1983

Bounty (High Alloy Steel Products) Bill 1983

Bounty (Steel Mill Products) Bill 1983

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

Management and Investment Companies Bill 1983

Prices Surveillance Bill 1983

Sex Discrimination Bill 1983 (No. 2)

Steel Industry Authority Bill 1983

Telecommunications (Interception) Amendment Bill 1983

AUSTRALIAN NATIONAL RAILWAYS COMMISSION BILL 1983

1. This Bill was introduced into the House of Representatives by the Minister for Transport on 16 November 1983. The purpose of this Bill is to repeal the Australian National Railways Act 1917 and replace it with modern legislation more appropriate to the Commission's role as a commercial business undertaking, by:
 - defining precisely the Commission's powers and responsibilities by giving it a clear and distinct charter
 - removing many archaic constraints on ANRC's ability to operate in a commercial manner
 - minimising Ministerial intervention in respect of ANRC's day-to-day activities while maintaining Ministerial oversight in critical areas and by way of reserve powers
 - ensuring ANRC remains accountable to the Government and Parliament for the efficient performance of its functions.

2. The Committee drew the attention of the Senate to the following clauses of this Bill in its Fifteenth Report of 7 December 1983:

Clause 7 - Powers of the Commission

3. Clause 7(1)(a) establishes an upper limit of \$2m on the values of contracts (other than contracts for the carriage of passengers or goods) which the Commission may enter into without obtaining ministerial approval.

However, the amount of \$2m may be increased by regulation. In as much as the purpose of the clause is to limit the powers of the Commission to enter into contracts and that purpose can be altered by regulation, this clause might be considered to be a "Henry VIII" clause.

4. The Committee therefore drew this clause to the attention of the Senate under principle 1(a)(iv) in that it might be considered to be an inappropriate delegation of legislative power.
5. The Minister for Transport has provided a response to this clause, the relevant part of which is quoted here for the information of the Senate.

"As you are aware, all regulations must be on the table of both Houses of Parliament for 15 days. Within that period either House may move to disallow the regulation. Any proposal to increase the limit of \$2 million for Minister's approval of contracts would therefore be subject to Parliamentary scrutiny. As noted in my Second Reading Speech concerning this Bill, I intend to use this provision to vary the \$2 million level by regulation to maintain the current value of this delegation in real terms.

In view of these comments I believe that these Clauses do not involve an inappropriate delegation of legislative power."

6. The Committee notes the Minister's view on this clause.

Clause 74

7. This clause exempts the Commission from any requirement to fence off a railway from adjacent land. In view of the offences relating to endangering the safety of trains established by clause 78(1) a landowner adjacent to a railway, for example, could only protect himself against either loss of livestock or committing an offence under clause 78(1) by fencing off his land. In effect the clause could shift from a public authority to private individuals the financial burden for the fencing of railways.
8. The Committee drew this clause to the attention of the Senate under principle 1(a)(1) in that it might be considered to trespass unduly on personal rights and liberties.
9. The Minister has responded to this comment in the following terms:

"Clause 74, which exempts the Commission from any requirement to fence off land is a long standing provision contained within the present legislation. The cost to the Commission should it be required to fence the whole of its rail network would be prohibitive and would seem unnecessary as much of the Commission's rail network passes through remote areas. Certain sections, particularly in urban areas, are fenced and the Commission maintains its fencing. Where landholders raise with the Commission their requirements relating to fences, the Commission examines each case on its merits

and, as appropriate, is prepared to contribute a reasonable share of construction and maintenance costs.

With respect to clause 78(1) I have received legal advice to the effect that this clause would not apply in circumstances where a person did not take action, for example, where a landowner did not fence off his land. The section relates to circumstances where action is deliberately taken which would endanger safety."

10. The Committee notes that offences would not lie under clause 78 in the circumstances it had envisaged. The Committee thanks the Minister for his detailed response to its comments on this Bill.

BOUNTY (HIGH ALLOY STEEL PRODUCTS) BILL 1983

11. This Bill was introduced into the House of Representatives on 30 November 1983 by the Minister Representing the Minister for Industry and Commerce. The purpose of this Bill is to continue bounty assistance on the production in Australia of certain high alloy steel products.
12. The Committee draws the attention of the Senate to the following clauses of this Bill:

General Comment

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

Clause 3(1) - Inappropriate Delegation

14. Clause 3(1) contains definitions of the products on which bounty may be payable. A number of matters within those definitions relating to production processes are left to be prescribed by regulation.
15. The Committee draws the attention of the Senate to this clause under principle 1(a)(iv) in that it might be considered to be an inappropriate delegation of legislative power.

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

16. These clauses permit the Schedules to the respective Bills to be amended by regulation. Since the Schedules set out the percentages of sales value of various products on which the level of bounty payments will be based, the amount of bounty payable can in effect be altered by regulation.
17. Clause 9(2) [Clause 10(2)] similarly permits the limit of available bounty to be altered by regulation.
18. The Committee draws these clauses to the attention of the Senate under principle 1(a)(iv) in that they might be considered to be an inappropriate delegation of legislative power.

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

19. The bounty schemes are restricted to producers who were engaged in the industry on 7 February 1983. These clauses give to the Minister the discretion to admit producers to the scheme who were not engaged in the industry at that date if such admission is considered likely to promote the development of the industry.
20. The Committee draws these clauses to the attention of the Senate under principle 1(a)(iii) in that they might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

21. These clauses remove protection against self-incrimination in relation to certain specified offences in each Bill. They are in the now standard form for such clauses. The Committee nevertheless draws these clauses to the attention of the Senate under principle 1(a)(i) in that they might be considered to trespass unduly on personal rights and liberties.

Clause 26(2) [Clause 27(2)] - "Henry VIII" Clauses

22. These clauses empower the Minister to make regulations which make substantive alterations to matters already dealt with in the Bill. They are clear examples of "Henry VIII" clauses which go beyond the regulation making power in other recent Bounty legislation.
23. The Committee draws these clauses to the attention of the Senate under principle 1(a)(iv) in that they might be considered to be an inappropriate delegation of legislative power.

BOUNTY (STEEL MILL PRODUCTS) BILL 1983

24. This Bill was introduced into the House of Representatives on 30 November 1983 by the Minister Representing the Minister for Industry and Commerce. Its purpose is to provide bounty assistance on the production in Australia of certain quenched and tempered steel plate, certain pipe and tube and certain cold-rolled steel plate products.
25. The comments on the Bounty (High Alloy Steel Products) Bill 1983 also apply to this Bill.

LIVE-STOCK SLAUGHTER (EXPORT INSPECTION CHARGE) VALIDATION BILL 1983

26. This Bill was introduced into the House of Representatives by the Minister Representing the Minister for Primary Industry on 16 November 1983.
27. The purpose of this Bill is to enact legislation to validate the payment and collection of amounts under the Live-stock Slaughter (Export Inspection Charge) Act 1979 and the Live-stock Slaughter (Export Inspection Charge) Collection Act 1979.
28. The Committee drew the attention of the Senate to the following clause of the Bill in its Fifteenth Report of 7 December 1983:

Clause 3 - Retrospectivity

29. The purpose of this clause is to validate retrospectively the payment and collection of amounts under the Live-stock Slaughter (Export Inspection Charge) Act 1979 and the Live-stock Slaughter (Export Inspection Charge) Collection Act 1979.
30. Subsequent amendments to the first Act altered the definition of "abattoir" and required that premises to be used as abattoirs be prescribed. Such premises were not prescribed. However, fees in relation to abattoirs have continued to be collected since 1 January 1983.
31. Although sub-clause 3(3) provides protection against the imposition of penalties for non-payment of retrospectively validated charges, the Committee nevertheless draws this clause to the attention of the Senate under principle 1(a)(i) in that any such retrospectivity may be considered to trespass unduly on personal rights and liberties.
32. The Minister for Primary Industry has provided the following response:

"The purpose of the Bill is to validate the payment and collection of amounts which were paid and collected on the basis of a mistake.

The Parliament is considering when it considers this Bill whether amounts which would, but for an oversight of a technical nature, have been the charges contemplated by the Charge and Collection Acts and should have that character conferred on them, regardless of a technical deficiency. In

these circumstances, I do not believe that sub-clause 3(2) would unduly trespass upon personal rights and liberties."

33. The Committee notes the Minister's response and draws the attention of the Senate to it.

MANAGEMENT AND INVESTMENT COMPANIES BILL 1983

34. This Bill was introduced into the House of Representatives on 30 November 1983 by the Minister for Science and Technology. The purpose of this Bill is to:

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

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

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

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

36. These clauses relate to definitions of various categories of company. In each case an amount is specified in relation to the share capital or net worth of the company. The specified amount can, in all cases, be changed by regulation, thus varying the classes of company to which the clauses refer.
37. The Committee draws these clauses to the attention of the Senate under principle 1(a)(iv) in that all such "Henry VIII" clauses may be considered to be an inappropriate delegation of legislative power.

Clause 17 - Unreviewable Discretion

38. Clause 17(4) is a privative or ouster clause, designed to prevent even a review by the Federal Court as to some aspects of the legality of a decision of the Board. Were it not for this provision, the general policy or practice of the Board might be regarded as an irrelevant

consideration in arriving at a particular decision, so that reference to that general policy or practice might call in question the legality of the decision.

39. The Committee draws this clause to the attention of the Senate under principle 1(a)(iii) in that it makes rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 21(1) - Review of Decisions

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

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

41. The Committee nevertheless draws this clause to the attention of the Senate under principle 1(a)(iii) in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.
42. The Committee's comments on this clause also apply to decisions of the Board under clause 21(5), to impose conditions on a licence; clause 24(1), to suspend a licence; clause 26, to give directions to a licensee; clause 29, to refuse certification of a business entity; clause 30, to cancel certification and clause 44, to approve the acquisition of shares.

PRICES SURVEILLANCE BILL 1983

43. This Bill was introduced into the House of Representatives on 30 November 1983 by the Treasurer. The purpose of this Bill is to establish a Prices Surveillance Authority as part of the Prices and Incomes Accord.
44. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 21(1) - Unreviewable Decision

45. This clause permits the Minister, or the Authority with the Minister's approval, to declare goods, services and persons to be subject to the Act or to exempt the supply of certain goods and services from the Act. The Minister's, or the Authority's decision, is not subject to Parliamentary scrutiny.
46. In view of the wide ranging powers of the Authority, this clause is drawn to the attention of the Senate under principle 1(a)(iii) in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

SEX DISCRIMINATION BILL 1983 (NO. 2)

47. This Bill was introduced into the Senate on 30 November 1983 by the Minister Assisting the Prime Minister on the Status of Women. The purpose of this Bill is to make unlawful discrimination on the grounds of sex, marital status and pregnancy in the areas of employment,

accommodation, education, the provision of goods, facilities and services, the disposal of land, the activities of clubs and the administration of Commonwealth laws and programs. The Bill also prohibits discrimination involving sexual harassment in the workplace and in educational institutions.

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

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

Clause 40(2) - "Henry VIII" Clause

50. This clause provides for an exemption period of two years from the provisions of this Bill for acts done in direct compliance with an Act, other laws or legal determinations. Sub-clause (2) permits the exemption period of two years to be extended by regulation.
51. The Committee adopts the practice of commenting on all clauses which enable a Bill to be substantially altered by regulation, and thus draws this "Henry VIII" clause to the attention of the Senate under principle 1(a)(iii) in that it might be considered to be an inappropriate delegation of legislative power.

Clause 41(2) - "Henry VIII" Clause

52. This clause exempts discrimination on the grounds of sex or marital status in the terms and conditions pertaining to a superannuation or provident fund scheme. This exemption is for a minimum period of two years. However, the term of the exemption may be determined by regulation.
53. The Committee adopts the practice of commenting on all such "Henry VIII" clauses, and draws this clause to the attention of the Senate under principle 1(a)(iii) in that it might be considered to be an inappropriate delegation of legislative power.

Clause 91 - Self-Incrimination

54. This clause, which withdraws the protection against self-incrimination, is in a standard form for such clauses and is restricted to offences against section 93 of the proposed Act. The Committee nevertheless draws this clause to the attention of the Senate under principle 1(a)(1) in that it might be considered to trespass unduly on personal rights and liberties.

STEEL INDUSTRY AUTHORITY BILL 1983

55. This Bill was introduced into the House of Representatives on 30 November 1983 by the Minister Representing the Minister for Industry and Commerce. The purpose of this Bill is to establish a Steel Industry Authority to monitor the progress of the Steel Industry Plan and to provide advice to the Government on assistance to the steel industry.

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

Clause 30 - Burden of Proof

57. Sub-clause (2) of this clause places the burden of proof on an employer who is the defendant in cases arising out of hearings of the Steel Industry Authority and relating to witnesses at such hearings being prejudiced in their employment.
58. The Committee commented on a similar clause of the Radiocommunications Bill 1983 in paragraph 26 of its Eleventh Report (2 November 1983). The Minister responsible for that Bill justified the clause as being essential if the rights of witnesses are to be protected. The Committee nevertheless draws the attention of the Senate to this clause under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 1983

59. This Bill was introduced into the Senate on 1 December 1983 by the Attorney-General. The purpose of this Bill is to allow the Attorney-General to consider any request from the New South Wales Special Commission of Inquiry for information relating to the commission, or intended commission, of a serious criminal offence which has been obtained by the lawful interception of telecommunications.

60. The Committee drew the attention of Senators to the following clause of this Bill in its Alert Digest No. 16 on 7 December 1983:

Proposed Section 7A(11) - Unreviewable Discretion

61. Proposed new section 7A(11) is a privative or ouster clause, which seeks to prevent, so far as possible, the exercise by the Attorney-General of his discretion under proposed new section 7A(4) and (6) from being called into question in any court. Thus even the legality of such a decision may be unreviewable.
62. The Committee drew this clause to the attention of Senators under principle 1(a)(iii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.
63. In debate on the Bill in the Senate the Minister Assisting the Minister for Communications stated with regard to this clause that:

"It is the Government's view that it would be inappropriate for a court or tribunal to be reviewing a decision of the Attorney-General as it may mean that sensitive information relating to drug investigations, narcotic inquiries and matters of that kind would be discoverable by that court or tribunal in the course of the review process. It is believed that the proper place for that sort of information should be before the court if and when charges are ultimately brought as a result of any investigations by the Federal Police and not as a result of a review procedure in relation to the Attorney-General's discretion under this legislation.

[The Government thinks] that with those considerations, confined as they are to this case - and we would not seek to set any precedent from this situation - in those circumstances this should be so treated as a particular case for a particular purpose."

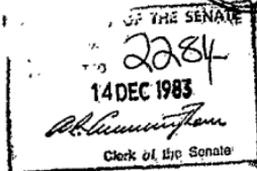
64. The Committee notes the undertaking by the Minister that this clause will not establish a precedent.

Michael Tate
Chairman

14 December 1983



AUSTRALIAN SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SEVENTEENTH REPORT

14 DECEMBER 1983

THE SENATE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
 - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
 - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) That the Committee, for the purpose of reporting upon the clauses of a Bill when the Bill has been introduced into the Senate, may consider any proposed law or other document or information available to it, notwithstanding that such proposed law, document or information has not been presented to the Senate.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SEVENTEENTH REPORT

The Committee has the honour to present its Seventeenth Report to the Senate.

The Committee draws the attention of the Senate to clauses of the following Bills, which contain provisions that the Committee considers may fall within principles i(a)(i) to (v) of the Resolution of the Senate of 22 April 1983:

Bounty (High Alloy Steel Products) Bill 1983

Bounty (Steel Mill Products) Bill 1983

Steel Industry Authority Bill 1983

BOUNTY (HIGH ALLOY STEEL PRODUCTS) BILL 1983
BOUNTY (STEEL MILL PRODUCTS) BILL 1983

1. These Bills were introduced into the House of Representatives on 30 November 1983 by the Minister Representing the Minister for Industry and Commerce. The purpose of these Bills is to continue bounty assistance on the production in Australia of certain high alloy steel products and steel mill products.

General Comment

2. These Bills were first considered by the Committee in its Alert Digest No. 16 of 7 December 1983. The Committee also commented on the Bills in its Sixteenth Report presented to the Senate on 14 December 1983. Subsequent to the preparation of that Report, the Committee has received a response from the Minister for Industry and Commerce. In view of the imminent resumption of the second reading debate of these Bills, the Committee has prepared a further Report to the Senate incorporating the relevant parts of the Minister's response.
3. These Bills are in a similar form. Thus the comments on various clauses apply to both Bills. Where the numbering of comparable clauses differs, the relevant clauses of the Bounty (Steel Mill Products) Bill are indicated in square brackets.
4. The Committee drew the attention of the Senate to the following clauses of the Bills:

Clause 3(1) - Inappropriate Delegation

5. Clause 3(1) contains definitions of the products on which bounty may be payable. A number of matters within those definitions relating to production processes are left to be prescribed by regulation.
6. The Committee drew the attention of the Senate to this clause under principle 1(a)(iv) in that it might be considered to be an inappropriate delegation of legislative power.
7. The Minister for Industry and Commerce has provided a detailed explanation of the need for the clause which is reproduced here for the information of the Senate:

The definitions relate to products and production processes as they exist now. The Steel Industry Plan, however, is to continue in force for five years, until 31 December 1988. During those five years, production processes may change, as may the resulting steel products, with technological advances. Consequently, the definitions may need to be altered to take the changes into account and thus ensure that bounty may be payable on the altered products.

The regulation making power contained in clause 26(27) of the Bounty Bills is drafted in such a way as to ensure that the regulations can only extend the range of products eligible for bounty.

A further justification for having the definitions drafted in this way revolves around clause 31 of the Steel Industry Authority Bill, under which the Authority is to report to the Minister every three months. Changes to methods of production, as a result of the development of new technology, may be reported frequently, and the provision in the definitions for

amendment by regulation provides the necessary flexibility to enable the definitions to be altered following a recommendation by the Authority.

8. The Committee notes the need for flexibility in the administration of the bounty schemes in question and, in as much as the definitions to be prescribed by regulation relate to technical matters in relation to production methods, the Minister's response meets the Committee's concern with regard to this clause.

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

9. These clauses permit the Schedules to the respective Bills to be amended by regulation. Since the Schedules set out the percentages of sales value of various products on which the level of bounty payments will be based, the amount of bounty payable can in effect be altered by regulation.
10. Clause 9(2) [Clause 10(2)] similarly permits the limit of available bounty to be altered by regulation.
11. The Minister's response states that:
- Sub-clauses 8(6) and 9(2) (and the corresponding sub-clauses in the Bounty (Steel Mill Products) Bill) enable adjustment to the amount of bounty and limit of available bounty to take into account any alteration to the price of raw material inputs.
12. While the Committee can see the need for some flexibility in establishing the amount of bounty and the limit of availability of bounty it nevertheless remains concerned that the existing clauses place no restriction on the magnitude of the changes that can be made.

13. Thus the Committee continues to draw these clauses to the attention of the Senate under principle 1(a)(iv) in that they might be considered to be an inappropriate delegation of legislative power.

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

14. The bounty schemes are restricted to producers who were engaged in the industry on 7 February 1983 [11 August 1983]. These clauses give to the Minister the discretion to admit producers to the scheme who were not engaged in the industry at that date if such admission is considered likely to promote the development of the industry.
15. The Committee drew these clauses to the attention of the Senate under principle 1(a)(iii) in that they might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.
16. The Minister's response states:

In establishing the Plan and the two bounty schemes, the Government decided that only firms producing at those dates should be eligible for bounty payments. The provisions of these clauses reflect the Government's policy in this matter.

Assistance of the nature specified in the Bills is designed to assist the producers against import competition. It is essential, therefore, that the assistance not be diverted from the specified purpose.

... in cases such as these, because the considerations before the Minister are related to Government policy, they are not appropriate for review.

17. The Committee notes that the Ministerial discretion in question is exercised if "... in the opinion of the Minister, the registration of those premises ... will promote the orderly development" of the industry and remains concerned that a discretion in such terms is unreviewable.

Clause 26(2) [Clause 27(2)] - "Henry VIII" Clauses

18. The Committee in its Alert Digest No. 16 indicated that it was seeking further clarification of these clauses.
19. The Minister has commented that:

The Office of Parliamentary Counsel has advised my Department that these sub-clauses would not enable the making of regulations that are inconsistent with the terms of the Bills.

The sub-clauses are intended to ensure that the provisions of the Bills do not restrict, by implication, the regulations that may be made under the Bills.

Because of the detailed nature of many of the provisions of the Bills (especially the definitions), there is a substantial risk that the details contained in the provisions of the Bills could be read as restricting, by implication, the regulations that could be made. The sub-clauses would not, however, enable the provisions of the Bills to be overridden or detracted from.

20. The Committee notes the Minister's view that the sub-clauses do not "... enable the provisions of the Bills to be overridden or detracted from". However, it reiterates the concern expressed in its Sixteenth Report that the clauses permit substantive changes to the legislation by

regulation, and continues to draw these clauses to the attention of the Senate under principle 1(a)(iv) in that they might be considered to be an inappropriate delegation of legislative power.

STEEL INDUSTRY AUTHORITY BILL 1983

21. This Bill was introduced into the House of Representatives on 30 November 1983 by the Minister Representing the Minister for Industry and Commerce. The purpose of this Bill is to establish a Steel Industry Authority to monitor the progress of the Steel Industry Plan and to provide advice to the Government on assistance to the steel industry.
22. The Committee drew the attention of the Senate to the following clause of this Bill:

Clause 30 - Burden of Proof

23. Sub-clause (2) of this clause places the burden of proof on an employer who is the defendant in a case relating to witnesses at Steel Industry Authority hearings who are their employees being prejudiced in their employment as a result of their evidence at such hearings.
24. The Minister for Industry and Commerce has provided the following response to this comment:

Because the Authority is essential to the effective implementation of the Government's Steel Industry Plan, it is important that witnesses appearing before the Authority be in a position to give evidence and

answer questions freely, without the fear of dismissal or other action being taken against them by their employers.

The reversal of the onus of proof from plaintiff to defendant is, I believe, necessary to fully protect the rights of those employees. In my opinion, it would be difficult to prove that an employee was dismissed for a particular reason, and even more difficult for the employee to prove that he was dismissed by reason of his appearance before the Authority.

25. The Committee acknowledges the force of the policy considerations underlying this clause and thanks the Minister for Industry and Commerce for his response to the Committee's comments on this Bill and the Bounty Bills discussed earlier.

Michael Tate
Chairman

14 December 1983

THE SENATE

ROLL 14-12-83

SENATORS—

- | | |
|--------------------------------|-----------------------------|
| 1. ARCHER | 33. JESSOP |
| 2. BAUME | 34. JONES |
| 3. BURNS-PETERSEN | 35. MCDONNELL |
| 4. BOWEN | 36. MCDONNELL |
| 5. BOWEN | 37. LEWIS |
| 6. BUTTON | 38. MCCORMACK |
| 7. CARRUTHERS | 39. MACGIBBON <i>LEAVE</i> |
| 8. CHANEY | 40. MCINTOSH <i>LEAVE</i> |
| 9. COOPER | 41. MCGEE |
| 10. GUNN | 42. MCGEE |
| 11. GUNN | 43. MARTIN |
| 12. HARRISON | 44. MASON |
| 13. COLLARD | 45. MASON |
| 14. COLTON | 46. MASON |
| 15. COOK | 47. MUMMER |
| 16. CROMPTON-BROWNE | 48. RAE, Peter |
| 17. CROWLEY | 49. RAY, Robert |
| 18. DUNN | 50. RAY |
| 19. DUNN | 51. RICHOLDS |
| 20. EVANS <i>Orath</i> | 52. RICHARDSON <i>LEAVE</i> |
| 21. EVANS <i>Bank</i> | 53. ROBERTSON |
| 22. FOWLER | 54. ROBERTSON |
| 23. GEORGE | 55. SCOTT |
| 24. GIBBETT | 56. SIBRA |
| 25. GIBB | 57. SIBRA |
| 26. GIBB | 58. TEAGUE |
| 27. GIBB <i>Dine Margaret</i> | 59. THOMAS |
| 28. GIBB | 60. THOMAS |
| 29. GIBB | 61. THOMAS |
| 30. GIBB | 62. WATSON |
| 31. GIBB | 63. WITHERS |
| 32. GIBB | 64. WITHERS |

THE SENATE

ROLL 14-12-83

SENATORS—

- | | |
|---|---------------------------------|
| X1. ARCHER X | X33. JESSOP X |
| 2. BAUME | 34. JONES |
| 3. BJELKE-PETERSEN | 35. KINGARIFF |
| 4. BOKKUS | 36. LAROVIC |
| 5. BOWWELL | 37. LEWIS |
| 6. BUTTON | 38. McCLELLAND |
| 7. CARRISON, Sir John | 39. MACGIBBON LEAVE |
| 8. CHANEY | 40. MCINTOSH LEAVE |
| 9. CHILDS | 41. MACKLIN |
| 10. CHIPP | 42. MAQUIRE |
| 11. COATES | 43. MARTIN |
| 12. COLEMAN | 44. MASON |
| 13. COLLARD | 45. MESSNER |
| 14. COLSTON | 46. MIHSEN |
| 15. COOK | 47. PRUMMER |
| 16. CRICHTON-BROWNE | X48. RAE, Peter X |
| 17. CROWLEY | 49. RAY Robert |
| 18. DURACK | 50. REID |
| 19. ELSTOB | 51. REYNOLDS |
| 20. EVANS, Gareth | 52. RICHARDSON LEAVE |
| 21. EVANS, Jack | 53. ROBERTSON |
| 22. FOWKES | 54. RYAN |
| 23. GEORGES | 55. SCOTT |
| 24. GIEZELT | 56. SHRAK |
| 25. GILES | 57. TATE |
| 26. GRAMES | X58. TEAGUE X |
| 27. GUILFOYLE, Dame Margaret | 59. TOWNLEY |
| 28. HAINES | 60. WASH |
| 29. HAMER | 61. WATERS |
| 30. HARADINE | 62. WATSON |
| 31. HEARN | X63. WITHERS X |
| 32. HILL | 64. ZAKHAROV |

THE SENATE

ROLL

14-12-83

SENATORS—

- | | |
|--------------------------------|--------------------------|
| X1. ARCHERX | X33. JESSOPX |
| 2. BARRE | 34. JONES |
| 3. BENNETT-PETERSON | 35. MCINTOSH |
| 4. BENNETT | 36. SMITH |
| 5. BENNETT | 37. LEWIS |
| 6. BENNETT | 38. MCCORMACK |
| 7. CHAPMAN | 39. MACGIBBON LEAVE |
| 8. CHAPMAN | 40. MCINTOSH LEAVE |
| 9. CHAPMAN | 41. NEWMAN |
| 10. CHAPMAN | 42. NEWMAN |
| 11. CHAPMAN | 43. MARTIN |
| 12. CHAPMAN | 44. NEWMAN |
| 13. CHAPMAN | 45. NEWMAN |
| 14. CHAPMAN | 46. NEWMAN |
| 15. CHAPMAN | 47. NEWMAN |
| 16. CHAPMAN | X48. RAE, Peter ↗ |
| 17. CHAPMAN | 49. NEWMAN |
| 18. CHAPMAN | 50. NEWMAN |
| 19. CHAPMAN | 51. NEWMAN |
| 20. CHAPMAN | 52. RICHARDSON LEAVE |
| 21. CHAPMAN | 53. NEWMAN |
| 22. CHAPMAN | 54. NEWMAN |
| 23. CHAPMAN | 55. NEWMAN |
| 24. CHAPMAN | 56. NEWMAN |
| 25. CHAPMAN | 57. NEWMAN |
| 26. CHAPMAN | X58. TEAGUE ↗ |
| 27. CHAPMAN | 59. NEWMAN |
| 28. CHAPMAN | 60. NEWMAN |
| 29. CHAPMAN | 61. NEWMAN |
| 30. CHAPMAN | 62. NEWMAN |
| 31. CHAPMAN | X63. WITHERS ↗ |
| 32. CHAPMAN | 64. NEWMAN |

14 day of December 1983

①

Question,

Taxation (Unpaid
Company Tax)
Assessment Bill 1983
(No. 4)

~~Senate~~

Committee

That clause 3(a) stand
as printed

NOES

SENATORS—

1. ARCHER
2. BAUME
3. BARKER-PETERSEN
4. BOLKUS
5. BOSWELL
6. BUTTON
7. CARRICK, Sir John
8. CHANEY
9. CHILDS
10. CHURCH
11. COATES
12. COLEMAN
13. COLLINGS
14. COLSTON
15. COOK
16. BRIGHTON-BROWNE
17. CROWLEY
18. DEBRACK
19. ELSTON
20. EVANS, Gareth
21. EVANS, Jack
22. FOREMAN
23. GEORGES
24. GIETZELT
25. GILES
26. GRIMES
27. HARRISON, Dame Margaret
28. HANES
29. HAMER
30. HARRADINE
31. HEARN
32. HINE

33. JESSOP
34. JONES
35. KILGARIFF
36. KILSON
37. LEWIS
38. MCCLELLAND
39. MACGIBBON
40. MCINTOSH
41. MAGINN
42. MAGUIRE
43. MARTIN
44. MASON
45. MESSNER
46. MOSEY
47. PRIMMER
48. RAE, Peter
49. RAY, Robert
50. REID
51. REYNOLDS
52. RICHARDSON
53. ROBERTSON
54. RYAN
55. SCOTT
56. SIBRAA
57. TATE
58. TEAGUE
59. TOMBLEY
60. WALSH
61. WAINERS
62. WATSON
63. WITHERS
64. ZAKHAROV

Teller

Ayes

25

Noes

23

TELLER FOR THE NOES—SENATOR

B. J. J. J. J.

1983

14 day of 1983

Question,

Taxation (Lloyd's
Company Tax) Assessment
Amendment Bill 1983
(No. 43)

Senate

Cl. 3 (para (a), by leave)

Committee

AYESSENATORS—

1. ARCHER
2. BAUME
3. BJELKE-PETERSEN
- ~~4. BULKINS~~
5. BOSWELL
6. BUTTON
7. CARRICK, Sir John
8. CHANEY
- ~~9. CHILDS~~
10. CHIPP
- ~~11. CONEY~~
- ~~12. COLEMAN~~
13. COLLARD
- ~~14. COLSON~~
- ~~15. COOK~~
16. CRICHTON-BROWNE
- ~~17. CROWLEY~~
18. DURACK
19. ELSTON
- ~~20. EVANS, Gareth~~
- ~~21. EVANS, John~~
- ~~22. FOREMAN~~
- ~~23. GEORGES~~
- ~~24. GIBBILT~~
- ~~25. GILES~~
- ~~26. GRIMES~~
27. GUIEFOYLE, Dame Margaret
28. HAINES
29. HAMER
- ~~30. HARRADINE~~
- ~~31. HEARN~~
32. HILL

33. JESSOP
- ~~34. JONES (Teller)~~
35. KILGARIFF
36. LAJOVIC
37. LEWIS
38. MCCLELLAND
39. MACGIBBON
40. MCINTOSH
41. MACKLIN
- ~~42. MADDREY~~
43. MARTIN
- ~~44. MASON~~
45. MESSNER
46. MISSEN
- ~~47. PRIMMER~~
48. RAE, Peter
49. RAY, Robert
50. REID
- ~~51. RENOULDS~~
52. RICHARDSON
53. ROBERTSON
- ~~54. RYAN~~
55. SCOTT
56. SIBRAA
- ~~57. TATE~~
58. TEAGUE
59. TOWNLEY
- ~~60. WALSH~~
61. WALTERS
62. WATSON
63. WITHERS
- ~~64. WYTHORP~~

Ayes, 25Noes, 23

TELLER FOR THE AYES—SENATOR



1983

2

14th day of December

Question,

Taxation (Unpaid
Company Tax)
Assessors
Cl. 3 (b)

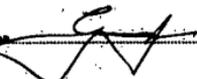
Senate

Committee

AYES

SENATORS—

- | | |
|------------------------------|-------------------------------|
| 1. ARCHER | 33. JESSOP |
| 2. BAUME | 34. JONES (Teller) |
| 3. BJELKE-PETERSEN | 35. KILGARIFF |
| 4. BOLDWIN | 36. LAJOVIC |
| 5. BOSWELL | 37. LEWIS |
| 6. BUTTON | 38. MCCLELLAND |
| 7. CARRICK, Sir John | 39. MACGIBBON |
| 8. CHANEY | 40. MCINTOSH |
| 9. CHILDS | 41. MACKLIN |
| 10. CHIPP | 42. MCGIBBON |
| 11. COATES | 43. MARTIN |
| 12. COLEMAN | 44. MASON |
| 13. COLLARD | 45. MESSNER |
| 14. COLSTON | 46. MISSEN |
| 15. COOK | 47. PRINMER |
| 16. CRICHTON-BROWNE | 48. RAE, Peter |
| 17. CROWLEY | 49. RAY, Robert |
| 18. DURACK | 50. REID |
| 19. ELSTON | 51. REYNOLDS |
| 20. EVANS, Gaiath | 52. RICHARDSON |
| 21. EVANS, Jacky | 53. ROBERTSON |
| 22. FOREMAN | 54. RYAN |
| 23. GEORGE | 55. SCOTT |
| 24. GIBBETT | 56. SIBRAA |
| 25. GIBB | 57. TAYLOR |
| 26. GRIMES | 58. TEAGUE |
| 27. GUILFOYLE, Dame Margaret | 59. TOWNLEY |
| 28. HAINES | 60. WADSON |
| 29. HAMER | 61. WALTERS |
| 30. HARRADINE | 62. WATSON |
| 31. HERN | 63. WITHERS |
| 32. HILL | 64. ZENHAROV |

Ayes, 24Noes, 24TELLER FOR THE AYES—SENATOR 

14 day of Dec 1963

Question,

Taxation (Unpaid
Company Tax Bill
No. 4
that Clause 36
stand as printed

Senate

Committee

NOES

SENATORS—

1. ARCHER
2. BAUME
3. BIELKE-REITERSEN
4. BOLKUS
5. BOSWELL
6. BUTTON
7. GARRICK, Sir John
8. GRANEY
9. CHILDS
10. CHIPP
11. COATES
12. COLEMAN
13. COLLARD
14. COLSTON
15. COOK
16. CRICHTON-BROWNE
17. CROWLEY
18. DUNACK
19. ELSTOB
20. EVANS, Gareth
21. EVANS, Jack
22. FOREMAN
23. GEORGES
24. GIETZELT
25. GILES
26. GRIMES
27. GUILFOWLE, Dame Margaret
28. HAINES
29. HAMER
30. HARRADINE
31. HEARN
32. HILL

33. JESSOP
34. JONES
35. KEDDORFF
36. LAJONGE
37. LEWIS
38. MCCLELLAND
39. MACGIBBON
40. MCINTOSH
41. MACLEAN
42. MAGUIRE
43. MARTIN
44. MASON
45. MESSNER
46. MOSEN
47. PRIMMER
48. RAE, Peter
49. RAY, Robert
50. REID
51. REYNOLDS
52. RICHARDSON
53. ROBERTSON
54. RYAN
55. SCOTT
56. SIBRAA
57. TATE
58. TEAGUE
59. TOWNLEY
60. WALSH
61. WALTERS
62. WATSON
63. WITHERS
64. ZAKHAROV

Teller

Ayes

24

Noes

24

TELLER FOR THE NOES—SENATOR

13 229 ①

1963

14th day of December

3

Question,

Locational (Unpaid
Company Tax)
Reassessment
Amendment.

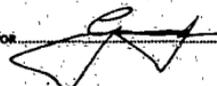
Senate

Committee

Cl. 3 (c)

AYESSENATORS—

- | | |
|------------------------------|-------------------------------|
| 1. ARCHER | 33. JESSOP |
| 2. BAUME | 34. JONES (Fellow) |
| 3. BJELKE-PETERSEN | 35. KILGARIFF |
| 4. BOLD | 36. LAJOVIC |
| 5. BOSWELL | 37. LEWIS |
| 6. BUTTON | 38. McCLELLAND |
| 7. CARRICK, Sir John | 39. MACGIBBON |
| 8. CHANEY | 40. MCINTOSH |
| 9. CHEDD | 41. MACKLIN |
| 10. CHIPP | 42. MACLURE |
| 11. COATES | 43. MARTIN |
| 12. COLEMAN | 44. MASON |
| 13. COLLARD | 45. MESSNER |
| 14. COLTON | 46. MISSEN |
| 15. COOK | 47. FRIMMER |
| 16. CRICHTON-BROWNE | 48. RAE, Peter |
| 17. CROWLEY | 49. RAE, Robert |
| 18. DURACK | 50. REID |
| 19. ELSTON | 51. BENNEDE |
| 20. EVANS, Geoff | 52. RICHARDSON |
| 21. EVANS, Jack | 53. ROBERTSON |
| 22. FORBES | 54. RYAN |
| 23. GEORGES | 55. SCOTT |
| 24. GIBBETT | 56. SIBRAA |
| 25. GIBBS | 57. TAFE |
| 26. GRIBBS | 58. TEAGUE |
| 27. GUILFOYLE, Dame Margaret | 59. TOWNLEY |
| 28. HAINES | 60. WALTON |
| 29. HAMER | 61. WALTERS |
| 30. HARRADINE | 62. WATSON |
| 31. HEART | 63. WITHERS |
| 32. HILL | 64. ZERNHAROV |

Ayes, 24Noes, 24TELLER FOR THE AYES—SENATOR 

14th day of December

Law (Unpaid Company
Law) Amend Bill

Question,

That para. 3(c)
stand as printed~~Senate~~

Committee

NOES

SENATORS—

1. ARCHER
2. BACHOP
3. BILKE, DEERGEN
4. BOLKUS
5. BOWNE
6. BUTTON
7. CARRICK, Sir John
8. CHAMBER
9. CHILDS
10. CHURCH
11. COATES
12. COLEMAN
13. COLLARD
14. COLSTON
15. COOK
16. BRIGHTON-BROWNE
17. CROWLEY
18. DUNN
19. ELSTON
20. EVANS, Gareth
21. EVANS, Jack
22. FOREMAN
23. GEORGES
24. GIETZELT
25. GILES
26. GRIMES
27. GUILFORD, Dame Margaret
28. HAINES
29. HAMER
30. HARRADINE
31. HEARN
32. HILL

33. JESSOP
34. JONES
35. KILGARFF (Teller)
36. KJOVIC
37. LEWIS
38. MCCLELLAND
39. MACGIBBON
40. MCINTOSH
41. MACKENZIE
42. MAGUIRE
43. MARTIN
44. MASON
45. MESSNER
46. MISSON
47. PRIMMER
48. RAE, Peter
49. RAY, Robert
50. REID
51. REYNOLDS
52. RICHARDSON
53. ROBERTSON
54. RYAN
55. SCOTT
56. SIBRAA
57. TATE
58. TEAGUE
59. TOWNLEY
60. WALSH
61. WALTERS
62. WATSON
63. WITHERS
64. ZAKHAROV

Ayes, 24

Noes, 24

TELLER FOR THE NOES—SENATOR