



SENATE STANDING COMMITTEE

FOR

THE SCRUTINY OF BILLS

SECOND REPORT

OF

2000

15 March 2000

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MEMBERS OF THE COMMITTEE

Senator B Cooney (Chairman)
Senator W Crane (Deputy Chairman)
Senator T Crossin
Senator J Ferris
Senator B Mason
Senator A Murray

TERMS OF REFERENCE

Extract from **Standing Order 24**

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

SECOND REPORT OF 2000

The Committee presents its Second Report of 2000 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 1(a)(v) of Standing Order 24:

Dairy Industry Adjustment Bill 2000

Dairy Industry Adjustment Bill 2000

Introduction

The Committee dealt with this bill in *Alert Digest No. 2 of 2000*, in which it made various comments. The Minister for Agriculture, Fisheries and Forestry has responded to those comments in a letter dated 14 March 2000. A copy of the letter is attached to this report. An extract from the *Alert Digest* and relevant parts of the Minister's response are discussed below.

Extract from Alert Digest No. 2 of 2000

This bill was introduced into the House of Representatives on 16 February 2000 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Agriculture, Fisheries and Forestry]

The bill proposes the framework for the implementation of the Dairy Industry Adjustment Program. The main object of the program is to assist the dairy industry to deregulate by providing for:

- dairy structural adjustments payments, made under the *Dairy Produce Act 1986*, as amended by Schedule 1; and
- dairy exit payments, made under Part C of the *Farm Household Support Act 1992*, as amended by Schedule 2.

The bill also proposes transitional provisions and consequential amendments to the *Bankruptcy Act 1966*, the *Income Tax Assessment Act 1997*, the *Remuneration Tribunal Act 1973*, and the *Social Security Act 1991*.

Reversal of the onus of proof

Subclause 42(3)

Clause 42 restricts what a person may do with protected information or protected documents that he or she has obtained in the course of official employment. Under subclause 42(2) it is an offence to record or disclose its information. However, subclause 42(3) states that is not an offence if:

- the information is recorded or disclosed for the purposes of the Dairy Structural Adjustment Program Scheme;
- the recording or disclosure happens in the course of the person's official duties;

- the disclosure is not likely to enable the identification of a particular entity;
- the disclosure is to an entity which, at the relevant time, had an eligible interest in a dairy farm enterprise and the information relates to that enterprise; or
- the recording or disclosure is in connection with the administration of a scheme under the Dairy Exit Program.

A Note to subclause 42(3) states that a defendant bears an evidential burden in relation to a matter in this subclause. The usual reason for imposing an evidential burden in these circumstances is that the matter to be raised is peculiarly within the knowledge of the defendant. While some of the matters in this subclause are peculiarly within the defendant's knowledge, others (for example, disclosure to an entity with an interest in a dairy farm enterprise, or disclosure that is unlikely to enable the identification of a particular entity) would not seem to be. The Committee, therefore, **seeks the Minister's advice** as to why the defendant bears an evidential burden of raising all of the matters set out in subclause 42(3).

Pending the Minister's advice, the Committee draws Senators' attention to these provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

Relevant extract from the response from the Minister

The Committee sought advice in relation to subclause 42(3) of the Bill and refers to a Note which states that a defendant bears an evidential burden in relation to a matter in the subclause.

I have accepted the advice of the Attorney-General's Department and intend to move an amendment to the Bill dealing with the application of section 13.3(3) of the *Criminal Code* to the matters in clause 42(3). In particular, a subclause (3A) will be inserted which states that the evidential burden in relation to a matter in paragraph (3)(c) or (d) will not be borne by the defendant, despite section 13.3(3) of the *Criminal Code*. The Note to subclause 42(3) will also be amended accordingly.

I believe this proposed amendment addresses your concerns in relation to placing the evidential burden on a defendant where the matter may not be peculiarly within the knowledge of the defendant.

Thank you for bringing this matter to my attention.

The Committee thanks the Minister for this prompt and positive response and notes that an amendment will be moved.

Barney Cooney
Chairman



RECEIVED

14 MAR 2000

Senate Standing C'ttee
for the Scrutiny of Bills

HON WARREN TRUSS MP
Minister for Agriculture, Fisheries and Forestry

Senator B Cooney
Chairman
Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator

Thank you for the comments of the Standing Committee for the Scrutiny of Bills contained in the Scrutiny of Bills Alert Digest No 2 of 2000 concerning the *Dairy Industry Adjustment Bill 2000* (the Bill).

In particular, the Committee sought advice in relation to subclause 42(3) of the Bill and refers to a Note which states that a defendant bears an evidential burden in relation to a matter in the subclause.

I have accepted the advice of the Attorney-General's Department and intend to move an amendment to the Bill dealing with the application of section 13.3(3) of the *Criminal Code* to the matters in clause 42(3). In particular, a subclause (3A) will be inserted which states that the evidential burden in relation to a matter in paragraph (3)(c) or (d) will not be borne by the defendant, despite section 13.3(3) of the *Criminal Code*. The Note to subclause 42(3) will also be amended accordingly.

I believe this proposed amendment addresses your concerns in relation to placing the evidential burden on a defendant where the matter may not be peculiarly within the knowledge of the defendant.

Thank you once again for bringing this matter to my attention.

Yours sincerely

WARREN TRUSS

