



SENATE STANDING COMMITTEE

FOR THE

SCRUTINY OF BILLS

TWELFTH REPORT

OF

2000

6 September 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

TWELFTH REPORT OF 2000

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

Protection of the Sea (Civil Liability) Amendment Bill 2000

Veterans' Affairs Legislation Amendment Bill (No. 1) 2000

Protection of the Sea (Civil Liability) Amendment Bill 2000

Introduction

The Committee dealt with this bill in *Alert Digest No 10 of 2000*, in which it made various comments. The Minister for Transport and Regional Services has responded to those comments in a letter dated 4 September 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. 10 of 2000

This bill was introduced into the House of Representatives on 28 June 2000 by the Minister for Agriculture, Fisheries and Forestry. [Portfolio responsibility: Transport and Regional Services]

The bill proposes to amend the *Protection of the Sea (Civil Liability) Act 1981* to:

- require all ships of 400 gross tons or more entering or leaving an Australian port to maintain insurance to cover the cost of a clean up resulting from the spillage of bunker fuel or other oil;
- clarify the liability of a shipowner where the Australian Maritime Safety Authority (AMSA) has incurred expenses in exercising its powers under the *Protection of the Sea (Powers of Intervention) Act 1981*;
- clarify the ability of AMSA to recover costs and expenses incurred through the performance of its pollution combating function in the marine environment; and
- convert all penalties from dollar amounts to penalty units.

Strict liability offences

Proposed new subsection 19C(5)

Schedule 1 to this bill proposes to insert a new Part IIIA in the *Protection of the Sea (Civil Liability) Act 1981*. This Part makes provision for proof of the possession of adequate insurance cover by certain ships.

Proposed new subsection 19C create a number of offences. These include:

- entering or leaving a port in Australia without carrying a relevant insurance certificate;
- refusing to produce a relevant insurance certificate when requested; and
- leaving port without having been released from detention.

Subsection 19C(5) states that strict liability applies to these offences. In referring to this, the Explanatory Memorandum states that “for a strict liability offence, fault elements are not taken into account. That is, for a successful prosecution there is no need to consider intention, knowledge, recklessness or negligence. The only defence to a strict liability offence is mistake or ignorance of facts”.

While this describes the nature of strict criminal liability in these circumstances, it does not explain why it should be imposed in relation to these offences. The Committee, therefore, **seeks the Minister’s advice** as to why strict liability has been imposed in relation to these specific offences.

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 new section creates the following offences:

- entering or leaving a port in Australia without carrying a relevant insurance certificate
- refusing to produce a relevant insurance certificate when requested
- leaving port without having being released from detention.

The decision to include strict liability offences in the new section 19C was based on the aim of the section to offer increased protection to the Australian marine environment. Ensuring that ships that enter Australian ports have adequate insurance to cover their liabilities in the event of an oil spill will offer two levels of protection. Firstly, it will mean that poorly maintained ships at obvious risk of an oil spill should not make trips to Australia because they won’t be able to gain the appropriate insurance. Secondly, if there is an oil spill, liability for the clean up can be quickly established. The potential environmental consequences of a breach of the new section 19C justifies making the offences strict liability.

The offences in the new section 19C are modelled on the existing provisions in Part III of the Act and in particular section 15. Section 15 is already a strict liability

offence. The explicit statement of strict liability in the new section 19C as compared to the existing section 15 reflects current drafting practices.

The Committee thanks the Minister for this response which indicates that the bill is intended to minimise risks to the marine environment. The Committee recognises that oil spills may have grave consequences for the marine environment, and ensuring that ships that enter Australian waters have adequate insurance to cover their liabilities in such an event is a significant matter. However, serious consequences, of themselves, are rarely an issue in the imposition of strict liability. Were they so, then murder would be an offence of strict liability.

It is often argued that strict liability is appropriate where it would be too difficult or too expensive to require the prosecution to prove particular matters, or where it is important to discourage careless non-compliance as well as intentional and reckless breaches. The Committee would, therefore, **appreciate the Minister's further advice** as to whether reasons such as these are applicable to the provisions in this bill.

Where a bill creates an offence of strict liability, the Committee considers that, as a matter of general principle, the reasons for its imposition should be set out in the Explanatory Memorandum that accompanies the bill.

Veterans' Affairs Legislation Amendment Bill (No. 1) 2000

Introduction

The Committee dealt with this bill in *Alert Digest No 10 of 2000*, in which it made various comments. The Minister for Veterans' Affairs has responded to those comments in a letter dated 24 August 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. 10 of 2000

This bill was introduced into the House of Representatives on 29 June 2000 by the Parliamentary Secretary to the Minister representing the Minister for Finance and Administration. [Portfolio responsibility: Veterans' Affairs]

Schedule 1 of the bill proposes to amend the *Veterans' Entitlements Act 1986* to:

- increase benefits under the Military Compensation Scheme to members of the Australian Defence Forces who are severely injured and to the dependants of those members killed in compensable circumstances;
- clarify the powers of the Repatriation Medical Authority in relation to the conduct of formal reviews of Statements of Principle (SPOs);
- increase the Commission's flexibility in granting claims for travel expenses incurred obtaining treatment;
- reinstate provisions to protect financial institutions from any claims following the institution making certain amounts of pension paid into the account of a person who has died available to a surviving partner;
- improve the flexibility and efficiency of the Veterans' Review Board's operations; and the flexibility in the delegation of the Repatriation Commission's powers;
- appropriate money for special assistance provided under section 106 of the Act;
- remove from the Act outdated references to hospitals and other institutions operated by the Commission;

- enable improved efficiencies in the provision of medical or other treatment to veterans and their dependents; and to
- make consequential amendments to the Act as a result of the *A New Tax System (Compensation Measures Legislation Amendment) Act 1999*.

Schedule 2 of the bill proposes an amendment to the *Defence Service Homes Act 1918* to allow for certain subsidised advances to be made by credit providers other than the Westpac Banking Corporation which administers the Defence Service Homes Scheme.

Wide power of delegation

Schedule 1, Part 6

The amendments proposed by Part 6 of Schedule 1 to this bill will substantially increase the range of persons and office-holders to whom the Repatriation Commission and the Secretary to the Department may delegate their powers.

The Explanatory Memorandum notes that the reason for this provision is the considerable amount of outsourcing by both the Commission and the Department. However, the Committee remains concerned about provisions which delegate widely, and **seeks the advice of the Minister** as to why the class of potential delegates under these provisions should not be limited in some way, whether by reference to appropriate attributes or qualifications.

Pending the Minister's advice, the Committee draws Senators' attention to these provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the Committee's terms of reference.

Relevant extract from the response from the Minister

The proposed amendments do not allow for an unrestricted delegation of power. To better understand why this is so, I would like to explain that the main area in which such delegated powers will be granted is in relation to treatment under Part V of the *Veterans' Entitlements Act 1986* (VEA). The Treatment Principles cover a wide range of matters including medical care, counselling, dental care, pharmaceutical benefits, nursing, optometrical services, physiotherapy, podiatry, chiropractic, osteopathic, nursing home care, residential care, respite care, rehabilitation appliances, etc.

Accordingly, the range of persons, their attributes and qualifications, is extremely wide and difficult to define in legislation. However, this diversity can be

accommodated through the individual contracts the Repatriation Commission may enter into with suitably qualified persons to provide specified services. Such contracts will stipulate the standards of service and codes of conduct of such persons to ensure that appropriate levels of service are provided.

Should the committee wish to discuss this, or any other issue, further, please feel free to contact me.

The Committee thanks the Minister for this response which indicates that a wide power of delegation is seen as necessary to accommodate the wide range of matters to which delegation may apply. While it may be difficult to limit the class of potential delegates in such circumstances, the Committee nevertheless prefers to see some fetter imposed. Unduly wide delegations of power run the risk of becoming inappropriate delegations of power.

Barney Cooney
Chairman



The Hon John Anderson MP
Deputy Prime Minister
Minister for Transport and Regional Services
Leader National Party of Australia

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4 SEP 2000

Senate Standing C'ttee
for the Scrutiny of Bills

- 4 SEP 2000

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

Dear Senator Cooney

I refer to the letter of 17 August 2000 from Mr James Warmenhoven, the Secretary of the Standing Committee for the Scrutiny of Bills (the Committee), concerning the Protection of the Sea (Civil Liability) Amendment Bill 2000 (the Bill).

In Scrutiny of Bills Alert Digest No. 10 of 2000 (16 August 2000), the Committee has sought my advice as to why strict liability applies to offences under new section 19C which is to be inserted into the *Protection of the Sea (Civil Liability) Act 1981* by Schedule 1 of the Bill. The new section creates the following offences:

- entering or leaving a port in Australia without carrying a relevant insurance certificate
- refusing to produce a relevant insurance certificate when requested
- leaving port without having being released from detention.

The decision to include strict liability offences in the new section 19C was based on the aim of the section to offer increased protection to the Australian marine environment. Ensuring that ships that enter Australian ports have adequate insurance to cover their liabilities in the event of an oil spill will offer two levels of protection. Firstly, it will mean that poorly maintained ships at obvious risk of an oil spill should not make trips to Australia because they won't be able to gain the appropriate insurance. Secondly, if there is an oil spill, liability for the clean up can be quickly established. The potential environmental consequences of a breach of the new section 19C justifies making the offences strict liability.

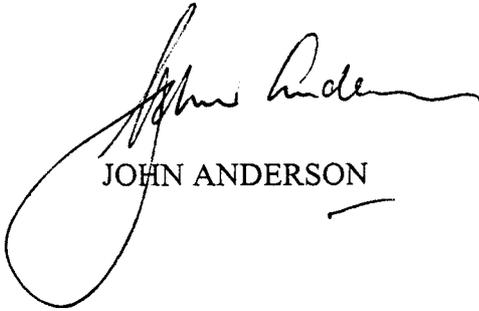


Centenary of Federation

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The offences in the new section 19C are modelled on the existing provisions in Part III of the Act and in particular section 15. Section 15 is already a strict liability offence. The explicit statement of strict liability in the new section 19C as compared to the existing section 15 reflects current drafting practices.

Yours sincerely



JOHN ANDERSON



MINISTER FOR VETERANS' AFFAIRS
MINISTER ASSISTING THE MINISTER FOR DEFENCE

PARLIAMENT HOUSE
CANBERRA ACT 2600

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29 AUG 2000

Senate Standing C'ttee
for the Scrutiny of Bills

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

Dear Senator Cooney

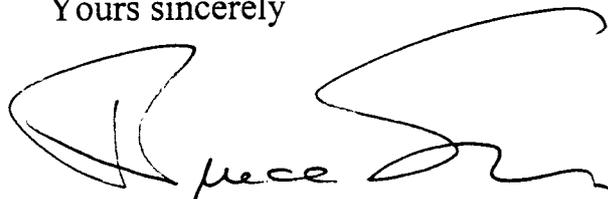
In your Alert Digest (No. 10) of 16 August 2000, you sought my advice as to why the class of potential delegates, as proposed in Schedule 1, Part 6, of the Veterans' Affairs Legislation Amendment Bill (No. 1) 2000, should not be limited in some way.

The proposed amendments do not allow for an unrestricted delegation of power. To better understand why this is so, I would like to explain that the main area in which such delegated powers will be granted is in relation to treatment under Part V of the *Veterans' Entitlements Act 1986* (VEA). The Treatment Principles cover a wide range of matters including medical care, counselling, dental care, pharmaceutical benefits, nursing, optometrical services, physiotherapy, podiatry, chiropractic, osteopathic, nursing home care, residential care, respite care, rehabilitation appliances, etc.

Accordingly, the range of persons, their attributes and qualifications, is extremely wide and difficult to define in legislation. However, this diversity can be accommodated through the individual contracts the Repatriation Commission may enter into with suitably qualified persons to provide specified services. Such contracts will stipulate the standards of service and codes of conduct of such persons to ensure that appropriate levels of service are provided.

Should the committee wish to discuss this, or any other issue, further,
please feel free to contact me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bruce Scott', with a large, sweeping flourish extending to the right.

BRUCE SCOTT MP

24 AUG 2000

