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Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 [No. 2]

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I N F O R M A T I O N A N D R E S E A R C H S E R V I C E S

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No. 149 2002–03

Migration Legislation Amendment (Further Border
Protection Measures) Bill 2002 [No. 2]

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13 May 2003

Contents

Purpose.	1
Background.	1
Overview	1
Main Provisions	2
Concluding Comments.	3
The Committee Report	3
Recommendations	3
The Excision Issue	3
The Excision of the Mainland?	5
Observations	6
Double Dissolution Triggers	7
The Circumstances	7
The Period	8
The Bill as finally Sent to the Senate	8
Summary	9
Endnotes.	9

Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 [No. 2]

Date Introduced: 26 March 2003

House: House of Representatives

Portfolio: Immigration and Multicultural and Indigenous Affairs

Commencement: Royal Assent

Purpose

To amend the *Migration Act 1958* to extend the 'excision of the migration zone' to include islands across the North of Western Australia, Northern Territory and Queensland.

Background

This Bill effectively reintroduces the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 that was rejected by the Senate in December 2002

Overview

On 7 June 2002, the Governor-General signed the Migration Amendment Regulations 2002 (No. 4). These effectively extend the range of 'excised offshore places' to include:

- Coral Sea Islands Territory, Queensland islands north of latitude 12 degrees south
- Western Australian islands north of latitude 23 degrees south, and
- Northern Territory islands north of latitude 16 degrees south.

The Regulations commenced on gazettal (7 June 2002). However, as Regulations, they were disallowable instruments under the *Acts Interpretation Act 1901*. As readers will be aware, the Regulations were disallowed in the Senate on 19 June 2002. One effect of disallowance is that, subject to certain exceptions, the Government cannot make a new Regulation which is the same in substance as the disallowed Regulation for a period of 6 months after disallowance. Any regulation made in contravention of this prohibition has no effect.

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On 20 June 2002, the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 was introduced and passed in the House of Representatives.

On 24 June 2002 the Bill was introduced in the Senate and was referred, along with the broader 'excisions' policy, to the Senate Legal and Constitutional References Committee for report on 29 August. This date was extended to 26 September and later to 21 October.

The terms of reference for the Committee were to examine the 'excisions' policy, including the implications for border security, financial impact and effect on local communities, and the legislation itself, particularly its consistency with Australia's international obligations.

After the Report, *Migration Zone Excision: An examination of the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 and related matters* (the Committee Report),¹ the Bill was negatived in the Senate on 9 December 2002.

The present Bill is the same as the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 introduced into the House of Representatives on 20 June 2002.

Main Provisions

The provisions in the Bill almost exactly replicate the terms of the disallowed Migration Amendment Regulations 2002 (No. 4). The only real addition is section 4 which clarifies the operation of section 46A in relation to the commencement of the new excisions.²

The *Migration Amendment (Excision from Migration Zone) Act 2001* (the Excision Act) created a separate visa application regime applying to persons who arrive irregularly at certain places that are 'excised' from Australian territory for the purposes of the *Migration Act 1958*. The Act itself made Christmas Island, Ashmore Reef and the Cocos (Keeling) Islands 'excised offshore places'. It provided for the excision of other islands by regulation.

Schedule 1, item 1 adds the following places to the definition of 'excised offshore place':

- Coral Sea Islands Territory
- Queensland islands north of latitude 12 degrees south
- Western Australian islands north of latitude 23 degrees south, and
- Northern Territory islands north of latitude 16 degrees south.

Schedule 1, item 2 applies for these places an 'excision time' of 2pm on 19 June 2002.

As indicated above, the Migration Amendment Regulations 2002 (No. 4) commenced on 7 June 2002 and were disallowed on 19 June 2002. So, the extension of the excision regime

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was effective for the period 7 June – 19 June. The focus of attention for these provisions is therefore the period commencing on 19 June 2002. Given that, the provisions in **Schedule 1** would not commence until Royal Assent, it is necessary to amend the definition of 'excision time' to allow the extensions to commence from this date. This is done by **item 2**.

Concluding Comments

The Bill is situated within a wider context of excisions and offshore border protection arrangements. Background to these issues can be found in [Bills Digest No. 176 2001-02](#).

The key issues discussed here are those raised by the Committee and in the Senate.

The Committee Report

Recommendations

The key recommendations from the Committee Report were that the Bill,³ and the wider offshore processing policy,⁴ should not proceed. In the alternative, the procedures and 'declared countries' in the offshore processing regime should be subject to greater controls.

Under the alternative regime, standards would be set for processing, either in the *Migration Act 1958*⁵ or in international agreements with 'declared countries'.⁶ The initial assessments of refugee status would be reviewed by the Refugee Review Tribunal or the Federal Magistracy.⁷ Moreover, each of the 'declared countries' would be assessed on matters such as, for example, their compliance with international asylum law, human rights standards and their willingness to allow refugees to stay pending a durable solution.⁸ The assessment would be tabled in Parliament in the form of a Ministerial Statement.

Significantly, if the Bill was to proceed, it was recommended that it not be retrospective.⁹

The Excision Issue

As noted above, the terms of reference included the 'implications for border security'. The Committee Report identified 'border security' as relating 'mainly to control of migration'.¹⁰ Noting the number and range of islands and their proximity to Australia, it sought to identify the major objectives of the proposed excisions in terms of migration control.

The general objective was to address implications from the first round of excisions. In the Second Reading Speech, and in evidence to the Committee, the Government stated that the excision of Christmas Island, Ashmore Reef and the Cocos (Keeling) Islands might cause people smugglers to change their focus and target islands closer to the mainland, the mainland itself or even New Zealand and, indirectly, the islands en route to New Zealand.

The arguments associated with this issue were threefold.

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One of the implicit arguments was that the excisions would protect the safety of life at sea. In the first round of excisions, it was argued that the excisions, and the *Operation Relex* powers,¹¹ would reduce incentives to people smugglers to undertake hazardous journeys:

[The first round of excisions] will significantly reduce incentives for people to make hazardous voyages to Australian territories. It will help ensure that life is made as difficult as possible for those criminals engaged in the people smuggling trade.¹²

In the second round of excisions, it was argued that the change in focus described above 'would have disastrous consequences ... for those people being smuggled'. The Minister observed that '[o]ur intelligence suggests that some of the boats are poorly equipped'.¹³

A more explicit argument was that the excisions would require people smugglers to bring their vessels closer to the mainland, increasing the chance of detection and prosecution:

The Bill, by extending excised offshore places to islands off the northern coast of Australia, and therefore requiring people smugglers to bring their vessels closer to mainland Australia will make it harder for these people smugglers to escape detection and remove themselves without being caught and prosecuted.¹⁴

The most explicit argument appeared to be that the excisions would reduce the prospect of people smugglers targeting islands closer to the mainland, particularly in the Torres Strait. But, it seemed unclear as to whether these islands would be targeted intentionally, as an alternative to landfall on the mainland of Australia, or accidentally, as an incident of an attempted landfall in New Zealand. In the debate on the regulations, Senator Hill said:

[I]ntelligence was building that ... instead of talking the traditional short cuts across to Christmas Island or Ashmore Reef, ... boats would move along the Indonesian archipelago and basically get into the Torres Strait. Once there, of course, they would be able to deposit their customers on islands within the Australian jurisdiction ...¹⁵

In the Second Reading Speech in 2002, the Minister referred to 'reports of a boat which is believed to be currently attempting a journey towards Australia with the reported aim of sailing through the Torres Strait to New Zealand'.¹⁶ In evidence the Department said '[t]he intelligence we have suggests that New Zealand remains the primary target at this point'.¹⁷

The intelligence that we are gathering suggests that smugglers are now changing their tactics, not necessarily to target the mainland but to bypass the mainland on the way to New Zealand. ... It is that change in tactics that we are noting from the smugglers that this bill—and the regulations that were disallowed—is seeking to prevent.¹⁸

The Senate Committee explored the possibility of ad hoc landfall in Australia by boats en route to New Zealand and the effect of the excisions in the Bill. There are many 'push and pull factors' determining attempts to reach New Zealand. The major factors determining ad hoc landfall were the length of the journey, the pressures on passengers and the difficulty of navigating the Torres Strait. The Senate Committee appeared to be concerned that while

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the excisions would deal with ad hoc landfalls in Australia, they would not deal with the underling and more significant push and pull factors in relation to New Zealand:

Aside from the risk of apprehension if a people-smuggling vessel strays into Australian territorial waters or is forced by its passengers to divert to the mainland, it is difficult to see how the Bill would prevent any vessel from attempting to pass through the sea channels of the Torres Strait on its way to New Zealand. It is not clear how excising Australian islands has any connection with that goal.¹⁹

Moreover, in relation to Australia, the Senate Committee was concerned that the excisions would simply encourage people smugglers to target the mainland directly:

[B]ecause of the excision of the outer islands and ... the change of destination, boats may come closer to the mainland. If this happens, the likelihood of landings on the mainland increases. Accordingly, the legislation is likely to be self defeating.²⁰

The Senate Committee considered the argument to be stronger in relation to other islands:

There is little evidence to support assertions that the excision of islands close to the mainland is likely to deter asylum seekers. In fact, some evidence was received that the likely effect of the Bill would be to drive asylum seekers closer to the mainland, either with the intent of landing there, or incidentally. Either may increase the likelihood of landings on the mainland. There is also evidence that far from reducing incentives for people to make hazardous journeys to Australian territories, the Bill will increase the likelihood of asylum seekers embarking on increasingly hazardous journeys, either through the dangerous waters of the Torres Strait or across Southern Australia. Accordingly, the Bill must be considered as self-defeating.²¹

The Excision of Parts of the Mainland?

In dealing with border protection, and the need to address the *intentional* targeting of the 'inner and outer' islands, the Senate Committee examined the hypothetical prospect of excising parts of the mainland. It referred to an answer to a question by the Leader of the Opposition, where the Government said 'there is no intention, and there never has been, to excise any part of the Australian mainland. That is an absolutely ludicrous proposition.'²²

While the proposition that parts of the mainland could be 'excised from the migration zone' may not be government policy, such a step would not relieve Australia of its legal obligations under international human rights or refugee law.

As a party to the 1951 *Convention relating to the Status of Refugees*, as amended by the 1967 *Protocol relating to the Status of Refugees*, Australia is obliged not to expel or return, in any manner whatsoever, a person who has a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion to a place in which their life or freedom would be threatened on account of one of these reasons.²³ The obligation of *non-refoulement* applies regardless of whether the asylum seeker has entered legally or illegally the territory of Australia.²⁴

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International human rights treaties are also relevant as they apply to all persons, aliens and citizens, in the territory of or subject to the jurisdiction of the State party.²⁵

It appears that Australia once had an arrangement whereby the mainland was effectively, 'excised from the migration zone', at least for certain unauthorised arrivals. The *Migration Act 1958* once deemed unauthorised sea arrivals,²⁶ and air arrivals,²⁷ not to have entered Australia when they arrived at ports or airports and were detained onshore. The genesis of these provisions was a provision in the *Immigration Act 1901-1949*.²⁸ These deeming provisions were eventually removed, but not until the change over from entry permits to visas and mandatory detention of unlawful non-citizens in the *Migration Reform Act 1992*.

While the provisions only applied to persons detained on vessels in port, they were viewed by government as an essential tool in the treatment of onshore refugees. In 1989, in a Second Reading Speech on a related Bill, the then Minister for Immigration said:

[t]he Government will not be amending s.36A ... which allows for undocumented arrivals to be deemed not to have entered Australia. Removing this provision, which halts refugee claimants at Australia's frontier, would, on the experience of other countries such as Canada, the Federal Republic of Germany and Switzerland, attract to Australia tens of thousands of frontier claimants, many of them dubious. It would thereby effectively shift our major refugee effort from overseas to onshore.²⁹

The practice of detaining border arrivals, on the basis that they are deemed not to have entered a country, appears to have been common practice in relation to air arrivals. It was based on the view that an 'international zone' declared within an airport was not part of the territory of the country or had an 'extraterritorial status' for the purpose of domestic law. This created a legal fiction that the person is not in the territory of Australia but, it did not relieve Australia of its obligations under international law.³⁰

This point has been reinforced recently by a number of cases in the European Court of Human Rights. In *Amuur v. France*³¹ the Court held that while the France's deeming provisions were valid in domestic law, holding unauthorised arrivals in the international zone of an airport made them subject to the law and jurisdiction of the relevant country and that 'despite its name, the international zone does not have extraterritorial status'.³² This was reaffirmed in *D v. United Kingdom*³³ where the Court stated that 'regardless of whether or not [the applicant] ever entered the United Kingdom in the technical sense ... he has been physically present there and thus within the jurisdiction of the respondent'.³⁴ Consequently, the European Convention on Human Rights and Fundamental Freedoms applied to those physically present on the territory.

Observations

While these cases related to the issue of detention, they have broader implications for the way in which a country deals with refugees and underscore the argument raised above.

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Once a person has entered Australian territory, Australia's international legal obligations under the *Refugees Convention* and the *International Covenant on Civil and Political Rights* apply and continue to apply at least until those persons have left the territory of Australia. Excising certain parts of Australia for the purpose of removing access to refugee determination procedures and/or to the courts generally does not alter that position.³⁵ That said, the *Refugees Convention* is silent on the question of domestic procedures to determine refugee status although, as a matter of practice, domestic procedures are required in order to discharge the obligation under Article 33. Similarly, whether Article 14 of the *International Covenant on Civil and Political Rights* entitles asylum seekers to any procedural rights in the determination of their status is an open question.

Double Dissolution Triggers

Double dissolutions are provided for in section 57 of the Constitution:

If the House of Representatives passes any proposed law, and the Senate rejects or fails to pass it, or passes it with amendments to which the House ... will not agree, and if after an interval of three months the House ..., in the same or the next session, again passes the proposed law with or without any amendments which have been made, suggested, or agreed to by the Senate, and the Senate rejects or fails to pass it, or passes it with amendments to which the House ... will not agree, the Governor-General may dissolve the Senate and the House ... simultaneously.

The following summary is drawn from a Bills Digest in 1999:

A section 57 disagreement between the Houses in essence arises where the Senate:

- rejects a proposed law, or
- passes a proposed law but with amendments which are unacceptable to the House, or
- 'fails to pass' a proposed law.

One 'disagreement' is, however, not enough to prime the double dissolution trigger, and the Senate must for a second time either reject the Bill, fail to pass the Bill, or pass the proposed law with amendments that prove unacceptable to the House of Representatives.³⁶

The Circumstances

It is not always easy to identify bills that fall within the ambit of section 57.

The case of rejection by the Senate is fairly clear and apparent from the terms of any Message from the Senate. The case of 'failure to pass' is more complex. The Bills Digest above states, citing *Victoria v. Commonwealth*,³⁷ that '[i]n very general terms, what amounts to a 'failure to pass' for the purposes of section 57 depends on the particular circumstances including the history and nature of the Bill and normal Senate practice and procedure at the time'.

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Whether, in any particular case, the Senate has made amendments 'to which the House of Representatives will not agree' has been the subject of some debate. It has been argued that this involves circumstances where there is a single disagreement between the House of Representatives and the Senate.³⁸ However, it was the opinion of the Clerk of the Senate in 1998 that the Senate must be able to reconsider its amendments and change its mind:

The condition prescribed by section 57 ... is that the Senate passes the bill concerned "with amendments to which the House of Representatives *will not agree*" [emphasis added]. This expression indicates that there must be an ongoing unwillingness by the House of Representatives to accept amendments made by the Senate ... It is therefore not sufficient for the House of Representatives to disagree once with the Senate amendments; it must indicate its ongoing disagreement after providing the Senate with an opportunity to change its mind and withdraw its amendments.³⁹

The Period

As noted, a Bill must be reintroduced and passed by the House after 3 months. This period is not measured from the date on which it was originally introduced in the House.⁴⁰

In the case of a Bill that the Senate rejects, it is measured from the date of the rejection.⁴¹

In the case of a Bill that the Senate fails to pass, it is measured from the date of failure.⁴²

In the case of a Bill that is passed with amendments that are unacceptable to the House, it *may* be measured from the date when the House has considered the amendments:

The expression in s. 57 is 'passes it with amendments to which the House of Representatives will not agree'. Those words would not, in my opinion ... necessarily be satisfied by the amendments made in the first place by the Senate. At the least, the attitude of the House of Representatives to the amendments must be decided and, I would think, must be made known before the interval of three months could begin. But the House of Representatives, having indicated in messages to the Senate why it will not agree, may of course find that the Senate concurs in its view so expressed, or there may be some modification thereafter of the amendments made by the Senate which in due course may be acceptable to the House of Representatives. It cannot be said, in my opinion, that there are amendments to which the House of Representatives will not agree until the processes which parliamentary procedure provides have been explored.⁴³

But, this view, expressed by Barwick CJ in *Victoria v. Commonwealth*, is only an opinion.

It is also important to note that the period ends when the Bill is passed by the House. It may be reintroduced at any time, but may not be *passed* until 3 months after rejection, etc.

The Bill as finally sent to the Senate

Another question relates to the extent of amendments that the House may make to a Bill prior to its final re-introduction into the Senate after the 3 month interval required by

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section 57. As noted, section 57 allows the House to pass a Bill at this juncture 'with or without any amendments which have been made, suggested, or agreed to by the Senate'. Harris suggests that the House may not make any other amendments such as amendments in lieu of Senate amendments: '[t]he Bill which is again passed by the House and sent to the Senate after the three month interval must be *the original Bill modified only by amendments made, suggested or agreed to by the Senate*'.⁴⁴ Odgers notes that this issue has not been judicially considered, referring to a paper,⁴⁵ where it was said:

The application of section 57 in respect of a particular proposed law at each stage depends on the retention of the identity of the proposed law as the proposed law originally introduced by the House of Representatives, or that proposed law with such amendments only as have been made, suggested or agreed to by the Senate. This would seem to preclude any alteration of the text of the proposed law (other than such amendments).⁴⁶

Summary

In summary, bills may become 'double dissolution triggers', if:

- they originate in the House; **and**
- they are introduced into the Senate, and:
 - are rejected by the Senate; **or**
 - are amended by the Senate in an unacceptable way and laid aside by the House; **or**
 - 'fail to pass' the Senate; **and**
- they are reintroduced in the House and passed by the House 3 months after the rejection, etc, *provided they are not amended in any new way – it must be the old disagreement between the House and the Senate and not a new disagreement based on amendments by the House*; **and**
- they are again reintroduced into the Senate and are rejected, etc.

Endnotes

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- 1 Senate Legal and Constitutional References Committee, *Migration Zone Excision: An examination of the Migration Legislation Amendment (Further Border Protection Measures) Bill 2002 and related matters*, October 2002.
 - 2 Section 46A is the formal mechanism by which an 'offshore entry person' is prohibited from making a valid visa application whilst they are in Australia and remain an unlawful non-citizen (a person in the migration zone without a visa).

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- 3 Recommendation 1.
- 4 Recommendation 3.
- 5 Recommendation 5.
- 6 Recommendation 6.
- 7 Recommendation 2.
- 8 Recommendation 4. It was recommended that the *Migration Act 1958* 'incorporate similar requirements as those that apply to safe third countries under section 91D'. The requirements above are drawn from subsection 91D(3).
- 9 Recommendation 10.
- 10 Senate Legal and Constitutional References Committee, p. 17.
- 11 That is, the powers to control the movement of vessels, and their passengers, offshore.
- 12 Philip Ruddock MP, Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, Second Reading Speech, House of Representatives, *Debates*, 18 September 2001, p. 30869.
- 13 Philip Ruddock MP, Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, Second Reading Speech, House of Representatives, *Debates*, 20 June 2002, p. 4017.
- 14 Department of Immigration and Multicultural and Indigenous Affairs, Answers to Questions on Notice to the Senate Legal and Constitutional References Committee, 21 August 2002, p. 5.
- 15 Senator Robert Hill, Migration Amendment Regulations 2002 (No. 4): Motion for Disallowance, Senate, *Debates*, 19 June 2002, p. 2167.
- 16 Philip Ruddock MP, Migration Legislation Amendment (Further Border Protection Measures) Bill 2002, Second Reading Speech, House of Representatives, *Debates*, 20 June 2002, p. 4018.
- 17 Killesteyn, Evidence to the Senate Legal and Constitutional References Committee, 6 August 2002, L&C p. 6.
- 18 Killesteyn, Evidence to the Senate Legal and Constitutional References Committee, 6 August 2002, L&C p. 6.
- 19 Senate Legal and Constitutional References Committee, p. 20.
- 20 Senate Legal and Constitutional References Committee, p. 20.
- 21 Senate Legal and Constitutional References Committee, p. 25.
- 22 The Hon John Howard, Answer to Question on Notice, 'Immigration: Border Protection', House of Representatives, *Debates*, 17 June 2002, p. 3432.
23. This specific obligation (against 'refoulement') is contained in the *Convention relating to the Status of Refugees*, Article 33(1). Australia ratified the Convention on 22 January 1954.

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- 24 Whether the Refugee Convention has extraterritorial application or provides for a right of non-rejection at the frontier is an issue which turns on the interpretation of the phrase 'any manner whatsoever'. This issue falls outside the scope of the current Digest.
- 25 See for example, article 2 of the International Covenant on Civil and Political Rights (ICCPR).
- 26 A person who arrived at a port aboard a vessel as a stowaway or in circumstances where they might become a 'prohibited immigrant' (ie without an entry permit) could be detained in Australia. Such a person was 'not deemed to have entered Australia by reason only of his having been taken ashore': *Migration Act 1958–1989*, [section 88](#). This provision appeared as section 36 of the original *Migration Act 1958*. It was repealed by section 19 of the *Migration Reform Act 1992*.
- 27 *Migration Act 1958–1994*, [section 89](#). This provision was inserted by section 21 of the *Migration Amendment Act 1979*.
- 28 *Immigration Act 1901-1949*, subsection 13C(3), inserted by Act No. 86 of 1948: '[a] stowaway shall not, for the purposes of this Act, be deemed, by reason only of his having been taken ashore in pursuance of this section to have entered the Commonwealth or to have been given permission to land'.
- 29 The Hon Clive Holding, Second Reading Speech Migration Legislation Amendment Bill 1989, House of Representatives, *Debates*, 1 June 1989, p. 3447.
- 30 International treaties apply to the whole of the territory of the State, including external territories and apply to all persons within the territory or subject to the jurisdiction of the State party, see for example, Article 2 of the *International Covenant on Civil and Political Rights*.
- 31 *Amuur v. France*, European Court of Human Rights, Strasbourg (judgment of 25 June 1996) [22 EHRR \(1996\) 533](#).
- 32 At [52].
- 33 *D v. United Kingdom*, Judgment of 2 May 1997; (1997) 24 EHRR 423.
- 34 At [48].
- 35 Australia has no reservations in place limiting the application of these treaties to persons on the mainland. In any event, reservations of this nature would arguably be contrary to the object and purpose of the treaties and therefore of doubtful validity.
- 36 Bob Bennett, Workplace Relations Legislation Amendment (Youth Employment) Bill 1998 [No. 2], *Bills Digest No. 46 1999-2000*.
- 37 (1975) 134 CLR 81.
- 38 George Williams, 'The Road to a Double Dissolution', [Research Note No. 29 1997-98](#).
- 39 Harry Evans, 'Constitution, section 57; Native Title Amendment Bill 1997; and Public Service Bill 1997', hc/pap/11732, 28 January 1998.
- 40 *Victoria v. Commonwealth* (1975) 134 CLR 81.

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41. The headnotes to *Victoria v. Commonwealth* describe the majority decision as follows: '[t]he three month interval is measured not from the first passage of a proposed law by the House of Representatives, but from the Senate's rejection or failure to pass it. This interpretation follows both from the language of section 57 and its purpose which is to provide time for the reconciliation of the differences between the Houses; the time therefore does not begin to run until the deadlock occurs'.
42. Clearly, as noted, this may be difficult to quantify.
43. *Victoria v. Commonwealth* (1975) 134 CLR 81, per Barwick CJ at p. 124.
44. Harris, op. cit., p. 447. Harris refers to a case involving the Aboriginal and Torres Strait Islander Commission Amendment (Indigenous Land Corporation and Land Fund) Bill 1994 in which the Government agreed to accept some of the Senate amendments, but changed the short title of the bill.
45. Harry Evans (Ed), *Odgers' Australian Senate Practice*, 10th Edition, p. 86.
46. Comans, 'Constitution, section 57 — further questions', *Federal Law Review*, Vol. 15 No. 3, September 1985, p. 243 at p. 246. Comans suggests that 'identity of text is not necessarily enough' and that section 57 may require an identity in terms of legal operation or effect. He refers to the potential problem that would arise if, in the meantime, other amendments were made to the principal legislation that would vary the legal operation of the bill or would partly enact its provisions or a variation of. The bill would not be the same, *in a legal sense*, as the one originally introduced in the House: 'It would seem that, to keep within the terms of section 57 the twice rejected Bill would have had to be introduced in its original form notwithstanding that that form included some provisions already enacted. However, as these provisions of the reintroduced Bill could not, in the circumstances, have any legal effect, it could have been argued with some force that the Bill was not the same proposed law as that previously twice rejected by the Senate' (at p. 247).

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