

SCRUTINY OF BILLS ALERT DIGEST

No. 1 of 1985

20 March 1985

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF
BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator B. Cooney
Senator R.A. Crowley
Senator J. Haines
Senator the Hon. D.B. Scott

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 prepared to the Senate.

D1/85

BILLS RESTORED TO THE NOTICE PAPER

On 22 February 1985 eighteen Bills, introduced into the Senate in previous sessions, were restored to the Notice Paper by Resolution of the Senate.

The Committee made comments on the following Bills, relevant comments have been included in Report No. 1 of 1985.

Australian Capital Territory
Smoking and Tobacco Products
Advertisements Prohibition
Bill 1983 [1985]

Australian Waters (Nuclear-
Powered Ships and Nuclear
Weapons Prohibition) Bill 1984
[1985]

Horticultural-Plant Variety
Rights Bill 1984 [1985]

Property Rights Protection Bill
1984 [1985]

The Committee made no comment on the following Bills:

Commission of Inquiry
(Chamberlain Convictions)
Bill 1984 [1985]

Constitution Alteration
(Appropriation Bills) Bill
1983 [1985]

D1/85

Constitution Alteration (Electors' Initiative) Bill 1982 [1983] [1985]

Constitution Alteration (External Affairs) Bill 1984 [1985]

Customs Amendment Bill (No. 2) 1981 [1983] [1985]

Flags Amendment Bill 1984 [1985]

Income Tax Assessment Amendment Bill (No.2) 1981 [1983] [1985]

Liquor Advertising Tax Assessment Bill 1981 [1983] [1985]

Liquor Education Fund Bill 1981 [1983] [1985]

Rainforest Preservation Agreements Bill 1982 [1983] [1985]

Sales Tax Assessment (Rebate for Transport Costs) Bill 1981 [1983] [1985]

Sales Tax (Exemptions and Classifications) Amendment Bill 1984 [1985]

Taxation (Unpaid Company Tax) Assessment Amendment Bill 1983 [1985] (No.3)

Trade Practices Amendment Bill 1984 [1985]

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

D1/85

The Committee has considered the following Bills:

AUSTRALIAN INSTITUTE OF MULTICULTURAL AFFAIRS
AMENDMENT BILL 1985

BOUNTY (COMMERCIAL MOTOR VEHICLES) AMENDMENT
BILL 1985

HONEY LEVY LEGISLATION AMENDMENT BILL 1985

JUSTICES (LONG LEAVE PAYMENTS) AMENDMENT BILL
1985

MARRIAGE AMENDMENT BILL 1985

QUARANTINE AMENDMENT BILL 1985

SOCIAL SECURITY & REPATRIATION (ABOLITION OF
ASSETS TEST) BILL 1985

SUGAR AGREEMENT BILL 1985

TRUST RECOUPMENT TAX ASSESSMENT BILL 1985

TRUST RECOUPMENT TAX BILL 1985

TRUST RECOUPMENT TAX (CONSEQUENTIAL
AMENDMENTS) BILL 1985

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

DI/85

AUSTRALIAN INSTITUTE OF MULTICULTURAL AFFAIRS AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 22 February 1985 by the Minister for Immigration and Ethnic Affairs.

The purpose of the Bill is to give the Australian Institute of Multicultural Affairs a more effective role in Australian society by expanding the objects and functions of the Institute; to increase the membership of the governing Council of the Institute; and to eliminate sex specific terms and make technical amendments to the Principal Act.

The Committee has no comments on this Bill.

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

D1/85

BOUNTY (COMMERCIAL MOTOR VEHICLES) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 22 February 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

The purpose of the Bill is to continue the bounty assistance to the production of certain components for heavy commercial motor vehicles until 30 June 1985.

The Committee has no comments on this Bill.

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

D1/85

HONEY LEVY LEGISLATION AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 27 February 1985 by the Minister for Primary Industry.

The purpose of the Bill is to allow honey producers who sell honey other than to or through a dealer, or who use honey in the production of other goods to pay honey levies and lodge levy returns annually rather than monthly as now required.

The Committee has no comments on this Bill.

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

JUSTICES (LONG LEAVE PAYMENTS) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 22 February 1985 by the Attorney-General.

The purpose of this Bill is to amend the High Court Justices (Long Leave Payments) Act 1979 and the Judges (Long Leave Payments) Act 1979 to provide for pro rata payment in lieu of long leave to Judges of the High Court and other federal courts, who retire with entitlement to a pension under the Judges' Pension Act 1978 although not having served for ten years, and to exclude Judges of the Northern Territory Supreme Court from the scope of the Judges (Long Leave Payments) Act 1979.

General comment.

The Attorney-General, in his Second Reading Speech, (House of Representatives Hansard, 22 February 1985, pp.83-84) drew attention to the origins of the Principal Acts now being amended. In this context he stated that the two Acts were "enacted following Parliamentary pressure for legislation to regulate payments to retiring Judges in lieu of long leave." In clarifying this statement the Committee draws the attention of Senators to a resume of the background to the passing of the Principal Acts.

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

DL/85

JUSTICES (LONG LEAVE PAYMENTS) AMENDMENT BILL 1985 (Cont. 2)

During the examination of proposed Additional Expenditure for the Attorney-General's Department by Estimates Committee F in April - May 1977, material presented in response to questions by Senators Wright, Wheeldon and James McClelland revealed conclusively that there was no statutory provision for judges of federal courts, including the High Court, to take long service leave or to receive payment in lieu of such leave and that arrangements for such leave or payments were based on convention and were at the discretion of the government of the day. This matter had previously been raised in the course of hearings by Estimates Committee B in April 1971 and by Estimates Committees A and B in October 1973.

Estimates Committee F reported to the Senate, on 5 May 1977, that "in no circumstances should such payments to Justices of the High Court and Judges of the various federal courts be seen to be dependent upon favourable government decision, but rather upon statutory authority. [This] would enable the Parliament to exercise its historical and proper function of openly scrutinising all actions of the Executive." The then Attorney-General, Mr R.J. Ellicott, Q.C., agreed with this principle and undertook to give early consideration to recommending appropriate amendments to the relevant legislation.

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

D1/85

JUSTICES (LONG LEAVE PAYMENTS) AMENDMENT BILL 1985 (Cont. 3)

In introducing the necessary legislation in 1979, the then Attorney-General, Senator P.D. Durack, reminded the Senate of the undertaking given to Estimates Committee F and restated the principle that such payments should depend not upon the exercise of Executive discretion, but on legislation. During the ensuing debate it was pointed out that the Bills did not include a provision for pro rata payment of long service leave in the event of a Judge leaving the bench prior to the completion of ten years of service. By providing for this eventuality the current Bill completes the package of legislation which was identified by Senate Estimates Committee F in 1977 as being fundamentally important in further improving parliamentary scrutiny of executive action and in reinforcing the independence of the judiciary.

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

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D1/85

MARRIAGE AMENDMENT BILL 1985

This Bill was introduced into the Senate on 22 February 1985 by the Minister Representing the Attorney-General.

The purpose of the Bill is to give effect to the Hague Convention on Celebration and Recognition of the Validity of Marriage (1978).

The Committee has no comments on this Bill.

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

D1/85

QUARANTINE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 22 February 1985 by the Minister for Health.

The purpose of the Bill is to provide for the dual administration of the Quarantine Act 1908 by the Minister for Health and the Minister for Primary Industry.

The Committee has no comments on this Bill.

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

D1/85

SOCIAL SECURITY AND REPATRIATION (ABOLITION OF ASSETS TEST)
BILL 1985

This Bill was introduced into the Senate on 28 February 1985 by
Senator Messner.

The purpose of the Bill is to abolish the assets test on Social
Security and Repatriation pensioners and beneficiaries enacted
in September 1984.

The Committee has no comments on this Bill.

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

SUGAR AGREEMENT BILL 1985

This Bill was introduced into the Senate on 22 February 1985 by the Minister Representing the Minister for Primary Industry.

The purpose of this Bill provides for the continuation of the prohibition of the import of sugar and certain sugar products into Australia.

The Committee has no comments on this Bill.

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

D1/85

TRUST RECOUPMENT TAX ASSESSMENT BILL 1985

This Bill was introduced into the House of Representatives on 22 February 1985 by the Treasurer.

The purpose of the Bill is to impose a tax in respect of incomes of certain 'new generation' trust stripping schemes.

This Bill, apart from minor technical changes, is identical to one introduced by the Treasurer on 9 October 1984 but which lapsed when the House was dissolved following the calling of the 1984 election. As indicated in Alert Digest No. 14 of 1984, 17 October 1984, the Committee draws attention to the following clauses of the Bill:

Clauses 5, 12 & 13 - Retrospectivity

Clause 5 defines "Taxable amounts" which will be subject to the legislation. By paragraph 5(1)(c) the legislation will apply to all trusts entered into for the purpose of tax avoidance on or after 1 July 1980.

Clause 12, sub-sections (1) and (2) seek to impose a retrospective penalty tax from 28 April 1983. The penalty is fixed by reference to movement in the Consumer Price Index and is designed to preserve the real value of the tax assessed by this Bill.

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

D1/85

TRUST RECOUPMENT TAX ASSESSMENT BILL 1985 (Cont 2)

Clause 13 seeks to nullify the effect of any transfers of property that have taken place since 28 April 1983 where the purpose of the transfer was to minimize the collection of tax to be assessed by this Bill.

The Committee notes that it is the clear policy of the Government to use retrospective legislation to put an end to particular tax avoidance schemes. Nevertheless the Committee draws these clauses to the attention of the Senate under principle 1(a)(i) in that such retrospectivity might be considered to trespass unduly on personal rights and liberties.

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

D1/85

TRUST RECOUPMENT TAX BILL 1985

This Bill was introduced into the House of Representatives on 22 February 1985 by the Treasurer.

The purpose of the Bill is to formally impose a tax on the taxable amount determined in accordance with the rules being inserted in the Trust Recoupment Tax Assessment Bill 1985.

The Committee has no comments on this Bill.

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

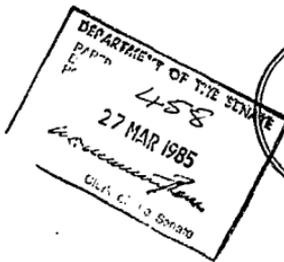
TRUST RECOUPMENT TAX (CONSEQUENTIAL AMENDMENTS) BILL 1985

This Bill was introduced into the House of Representatives on 22 February 1985 by the Treasurer.

The purpose of the Bill is to make certain amendments that are consequential upon the principal legislation to impose trust recoupment tax sought to be avoided under 'new generation' trust stripping schemes.

The Committee has no comments on this Bill.

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



SCRUTINY OF BILLS ALERT DIGEST

No. 2 of 1985

27 MARCH 1985

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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 B. Cooney
Senator R.A. Crowley
Senator J. Haines
Senator the Hon. D.B. Scott

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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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 - (iv) inappropriately delegate legislative power; or
 - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

The Committee has considered the following Bills:

Australian Meat and Live-Stock Legislation
(Consequential Amendments and Transitional
Provisions) Bill 1985

Australian Meat and Live-Stock Research and
Development Corporation Bill 1985

Bankruptcy Amendment Bill 1985

Bounty (Injection-moulding Equipment) Amendment
Bill 1985

Extradition (Commonwealth Countries) Amendment
Bill 1985

Extradition (Foreign States) Amendment Bill 1985

Foreign Ownership and Control Registration Bill
1985

International Development Association (Special
Contribution) Bill 1985

Live-stock Export Charge Amendment Bill 1985

Live-stock Slaughter Levy Amendment Bill 1985

Queensland Rainforests Conservation Bill 1985

Remuneration and Allowances Amendment Bill 1984
[1985]

Soil Conservation (Financial Assistance) Bill
1985

Taxation System Reform Bill 1985

Tax Avoidance Schemes Bill 1985

NOTE: This Digest is circulated to all Honourable
Senators. Any Senator who wishes to draw
matters to the attention of the Committee
under its Terms of Reference is invited to
do so.

D2/85

AUSTRALIAN MEAT AND LIVE-STOCK LEGISLATION (CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 1985

This Bill was introduced into the House of Representatives on 20 March 1985 by the Minister for Primary Industry.

This Bill is complementary to the Australian Meat and Live-stock Research and Development Corporation Bill 1985. Its purpose is, firstly, to effect consequential amendments to the enabling Acts of three related instrumentalities. Secondly, the Bill seeks to repeal the existing Meat Research Legislation and thirdly, it proposes transitional provisions for the period before the new research and development arrangements become fully operational.

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

Clause 2(4) - Retrospectivity

Clause 2(4) of this Bill makes the commencement of sections 5,6,8, sub-sections 13(1), 15(1) and 21(1) and section 32 retrospective to 6 July 1984, being the date on which the Australian Meat and Livestock Corporation Amendment Act 1984 commenced. Each provision appears largely to be a drafting change designed to correct errors in the 1984 Act.

The Committee draws this clause to the attention of Senators in that it might be considered to trespass unduly on personal rights and liberties.

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

AUSTRALIAN MEAT AND LIVESTOCK LEGISLATION (CONSEQUENTIAL
AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 1985 (Cont 2)

Clause 14 - General comment

Section 30B(4) of the Australian Meat and Live-stock Corporation Act 1977, an amendment introduced in 1984, sets out the purposes for the convening of an annual general meeting of the Corporation. Sub-sections 30G(1), (2) and (3) of the Principal Act specify the persons eligible to vote at annual general meetings. Eligible persons will be entered on two registers: firstly, of live-stock producers, who are entitled to multiple voting (based on the number of live-stock owned); and secondly, exporters of meat and live-stock or processors of meat, who are entitled to one vote.

Clause 14 amends the Principal Act by substituting sub-section 30G(4) with a new sub-section which provides that a motion to endorse a recommendation to the Minister to vary the live-stock slaughter levy or the live-stock export charge shall be deemed to be passed unless 75% of all the eligible voters entered on both registers reject it.

This clause also amends the Principal Act by substituting sub-section 30G(6) with a new sub-section which provides that to pass a motion of no confidence in the Chairman or the Corporation the supporting vote, on both registers, must exceed 75% of the total registered voting entitlements.

The Committee draws this clause to the attention of Senators in that it would appear to contain provisions which infringe on normal democratic principles in the conduct of the business of meetings.

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

D2/85

AUSTRALIAN MEAT AND LIVE-STOCK RESEARCH AND DEVELOPMENT
CORPORATION BILL 1985

This Bill was introduced into the House of Representatives on 20 March 1985 by the Minister for Primary Industry.

The purpose of the Bill is to replace the Australian Meat Research Committee with an incorporated body, the Australian Meat and Live-stock Research and Development Corporation (AMLRDC), so as to improve the efficiency and effectiveness of meat and live-stock research and development (R&D) and improve accountability for R&D expenditure.

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

Clause 27 - General comment

The comments on clause 14 of the Australian Meat and Live-stock Legislation (Consequential Amendments and Transitional Provisions) Bill 1985 apply to the voting procedures to be adopted at annual general meetings of the Research and Development Corporation as set out in clause 27 of this Bill.

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

D2/85

BANKRUPTCY AMENDMENT BILL 1985

This Bill was introduced into the Senate on 20 March 1985 by the Minister Representing the Attorney-General.

The purpose of the Bill is to achieve greater uniformity with comparable provisions of the Companies Act 1981, particularly in the area of priority of debts and registration and control of trustees, to enhance the special protection already accorded to maintenance creditors. The Bill is also designed to remove anomalies from the Bankruptcy Act 1966 and to improve the administration of the Act.

The Committee has no comments on this Bill.

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

D2/85

BOUNTY (INJECTION-MOULDING EQUIPMENT) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 20 March 1985 by the Minister for Industry, Technology and Commerce.

The purpose of the Bill is to continue bounty assistance to the industry producing injection-moulding machines for the production of plastic goods, and parts for such machines, for a further four years.

The bounty will be paid at the rate of 20 per cent of value added in the first and second years, reducing to 10 per cent of the value added in the third and fourth years.

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

Clause 2 - Retrospectivity

This clause makes the commencement of the Bill retrospective to 23 November 1984. The Explanatory Memorandum accompanying the Bill states that that is the date following the expiry of the Principal Act. The Committee notes that the retrospectivity is beneficial to the recipients of the bounty.

The Committee however, continues to take the view that Senators should be alerted to retrospectivity in legislation and thus draws attention to this clause in that it might be considered to trespass unduly on personal rights and liberties.

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

D2/85

EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 20 March 1985 by the Attorney-General.

The purpose of the Bill is to regulate extradition between Australia and all other Commonwealth countries based on the London Scheme, agreed to by Commonwealth Law Ministers in 1966 and to incorporate amendments to improve the practical operation of the existing legislation.

General comment

Some parts of this Bill are identical to provisions contained in a similarly - titled Bill introduced by the Attorney-General on 30 May 1984 but which lapsed when the House of Representatives was dissolved following the calling on the 1984 election. The Committee draws the attention of Senators to the following clauses of this Bill:

Clause 4 - Henry VIII clause

This clause, which is similar to one included in the earlier Bill and commented on in Alert Digest No.7 of 1984, inserts a new section 4A into the Principal Act. The section provides that "... regulations may amend the list of crimes for which extradition may be granted to give effect to obligations which Australia may undertake in the future pursuant to Treaty.

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

D2/85

EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL 1985 (Cont 2)

This clause will remove the need for amending the Principal Act whenever Australia becomes party to a Treaty..." (Explanatory Memorandum p.3).

In 1984 the Committee drew this clause to the attention of Senators in that a "Henry VIII" clause might be considered to be an inappropriate delegation of legislative power.

In its Eighth Report of 1984 (5 September 1984) the Committee noted that the Attorney-General had responded to this comment. His response noted that the power granted by the amendment would be rarely used and would refer only to the most serious crimes and that:

The serious nature of the crimes which will be covered by such treaties and the fact that all normal extradition safeguards will apply suggest that a fugitive will not be unfairly disadvantaged by this amendment. In particular it should be noted that the double criminality rule will apply and accordingly no fugitive will be able to be extradited for a 'convention offence' unless the acts or omissions constituting that offence would also constitute an offence under Australia's general criminal law.

With the inclusion of the original clause, without amendment, in the current Bill the Committee reiterates the comment made in its Eighth Report of 1984:

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

EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL 1985 (Cont 3)

While the Committee notes the safeguards that surround the extradition process it remains of the opinion that significant amendments to legislation should be made by the Parliament. In view of the fact that the power to amend will be "rarely used" the need to amend the Principal Act will occur only occasionally and should not be an onerous burden on the Attorney-General's Department.

The Committee therefore continues to draw this clause to the attention of Senators in that a "Henry VIII" might be considered to be an inappropriate delegation of legislative power.

Clause 8 - Unreviewable discretion

Proposed section 12(2)(b), which is similar to one included in the earlier Bill and commented on in Alert Digest No. 7 of 1984, vests in the Attorney-General a discretion to determine whether an offence is of a political character. If the offence is considered to be a political offence the Attorney-General shall not give notice under sub-section (1) initiating the process of extradition. At present it is the responsibility of a magistrate to determine whether an offence is of a political character. The Explanatory Memorandum notes that "...it is considered that such a decision is more appropriately taken by the executive than the judiciary." It is worth noting that the fugitive could initiate proceedings for habeas corpus when such a decision is taken by a magistrate, thus reviewing the grounds for the magistrate's decisions. However, no avenue for review of the merits of the Attorney-General's decision is available under this amendment.

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

EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL 1985 (Cont 4)

In 1984 the Committee drew this clause to the attention of Senators in that it might be considered to make personal rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

In its Eighth Report of 1984 (5 September 1984) the Committee noted that the Attorney-General had provided a lengthy response to this comment. The response is quoted again for the information of Senators:

As the legislation stands the decision whether an offence is an offence of a political character may be taken by either the magistrate or the Attorney-General. In the former case the decision is reviewable by way of habeas corpus; in the latter case there is no merits review. The amendment will provide that the decision may only be taken by the Attorney-General. To the extent that the amendment will deny a fugitive the ability to review a decision in this area, the situation is correctly stated by the Committee and the question whether the amendment makes personal rights unduly dependent on non-reviewable administrative decisions must be addressed.

One reason for the amendment is that decisions of the courts on what constitutes an offence of a political character are singularly unhelpful and that, not surprisingly in view of this, there are great difficulties in providing an adequate definition of this type of offence. To provide that the

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EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL 1985
(Cont 5)

decision should be taken by the executive alone is consistent with the existing provisions in the extradition legislation that the Attorney-General alone can refuse extradition if he is satisfied that a fugitive will be prosecuted or prejudiced because of his political opinions (section 11 of the Extradition (Commonwealth Countries) Act; section 14 of Extradition (Foreign States) Act). A decision to reject a claim that political persecution will arise if extradition is permitted is not reviewable on the merits. The policy behind the proposed amendment is also consistent with the handling of applications for refugee status in this country pursuant to the Convention relating to the Status of Refugees. In these cases the D.O.R.S. Committee makes a recommendation to the Minister for Immigration and Ethnic Affairs on whether the applicant has a well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion. A decision by the Minister to refuse to grant a refugee status is not reviewable on the merits. Another reason for the amendment is that decisions in this area obviously have serious implications for Australia's relations with foreign countries and should accordingly be taken by the Executive Government and not be subject to review. On the basis of this consideration and existing policy in the area of 'political persecution' I consider that it is reasonable that decisions in this area be not reviewable.

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

EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL 1985 (Cont 6)

With the inclusion of the original clause, without amendment, in the current Bill, the Committee reiterates the comment made in its Eighth Report of 1984:

The Committee acknowledges the difficulties inherent in relying on the Courts to determine whether an offence is of a political character and also the parallels between the policy embodied in these Bills and the policy relating to the determination of refugee status.

Nevertheless the Committee continues to draw this clause to the attention of Senators in that it might be considered to make personal rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

Clause 9 - Issue of warrants

This clause, which was not included in the 1984 Bill, inserts a new sub-section 14 (4A). It entitles police officers who have a warrant for the arrest of a person and who possess "reasonable grounds for suspecting" the presence of evidence to enter, search for and seize such material on land and in buildings and other property without having first obtained a warrant relating specifically to those premises. The normal practice is

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EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL (Cont 7)

that the right to enter and search buildings and property is accompanied by a requirement that a warrant specifically directed to such action be obtained beforehand, see for example Crimes Act 1914 s.10. The Committee draws this clause to the attention of Senators in that it may trespass unduly on personal rights and liberties.

Clause 16 - Powers of entry, search and seizure

The comment on clause 9 above applies to clause 16 (new section 25A) of this Bill.

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

EXTRADITION (FOREIGN STATES) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 20 March 1985 by the Attorney-General.

The purpose of this Bill is to provide for amendments to the Extradition (Foreign States) Act 1966. That Act regulates Australia's extradition relations with countries that are not members of the Commonwealth and with which Australia has extradition arrangements.

The comments on clauses 8 and 9 of the Extradition (Commonwealth Countries) Amendment Bill 1985 apply to clauses 6 (new section 15(2)(b): unreviewable discretion) and 7 (new section 16(4A): issue of warrants) of this Bill.

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

FOREIGN OWNERSHIP AND CONTROL REGISTRATION BILL 1985

This Bill was introduced into the Senate on 20 March 1985 by Senator Jack Evans.

The purpose of the Bill is to establish a public register of foreign corporations which own or control major Australian properties or other assets.

This Bill is virtually identical to one introduced by Senator Jack Evans on 13 September 1984. As indicated in Alert Digest No. 12 of 1984 (3 October 1984) and in Report No. 11 of 1984 (10 October 1984) the Committee draws attention to the following clause of the Bill:

Clause 12 - Reversal of the burden of proof

Sub-clause (3) states that any officer or agent of a foreign corporation registered under the Companies Act in a State or Territory "...shall, unless the contrary is proved, be deemed to be knowingly concerned in and party to any contravention by the corporation..." or failure by the corporation to comply with sub-section 12(1).

The Committee draws this clause to the attention of Senators in that such a shifting of the burden of proof may be considered to trespass unduly on personal rights and liberties.

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

D2/85

INTERNATIONAL DEVELOPMENT ASSOCIATION (SPECIAL
CONTRIBUTION) BILL 1985

This Bill was introduced into the House of Representatives on 20 March 1985 by the Minister for Foreign Affairs.

The purpose of the Bill is to authorise an additional voluntary contribution by Australia of \$A60 million towards the resources of the International Development Association.

The Committee has no comments on this Bill.

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

LIVE-STOCK EXPORT CHARGE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 20 March 1985 by the Minister for Primary Industry.

The main purpose of this Bill, which is complementary to the Australian Meat and Live-stock Research and Development Corporation Bill 1985, is to amend the Live-stock Export Charge Act 1977 to be consistent with the changed provisions for future meat and livestock research and development.

The Live-stock Export Charge Act 1977 imposes a charge on the export of livestock. Part of the charge funds represents the industry's contribution for research and development.

The Committee has no comments on this Bill.

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

LIVE-STOCK SLAUGHTER LEVY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 20 March 1985 by the Minister for Primary Industry.

The main purpose of this Bill, which is complementary to the Australian Meat and Live-stock Research and Development Corporation Bill 1985, is to amend the Live-stock Slaughter Levy Act 1964 to be consistent with the changed provisions for future meat and livestock research and development.

The Committee has no comments on this Bill.

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

QUEENSLAND RAINFORESTS CONSERVATION BILL 1985

This Bill was introduced into the Senate on 19 March 1985 by Senator Macklin.

The purpose of the Bill is to act as an interim protection measure for tropical rainforests by issuing "natural heritage" status for certain areas upon application to the courts.

The Committee has no comments on this Bill.

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

D2/85

REMUNERATION AND ALLOWANCES AMENDMENT BILL 1984 [1985]

This Bill was introduced into the Senate on 20 March 1985 by Senator Harradine.

Purpose: This Bill proposes to modify Determination No. 18 of the Remuneration Tribunal relating to the condition under which financial assistance for overseas study travel for Senators and Members of Parliament is made available.

The Committee has no comments on this Bill.

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

SOIL CONSERVATION (FINANCIAL ASSISTANCE) BILL 1985

This Bill was introduced into the House of Representatives on 20 March 1985 by the Minister for Primary Industry.

- (i) The purpose of the Bill is to provide a statutory basis whereby the Commonwealth can contribute to soil conservation nationally by providing financial assistance to the States, Commonwealth Departments, other institutions and individuals for this purpose;
- (ii) to establish a Soil Conservation Advisory Committee comprised of members nominated by the Commonwealth and by the Australian Soil Conservation Council, to recommend priorities, strategies and conditions for expenditure of funds provided under the Bill, and to provide advice on soil conservation in general to the Commonwealth, and to report annually on the operation of the Bill.

The Committee has no comments on this Bill.

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

D2/85

TAXATION SYSTEM REFORM BILL 1985

This Bill was introduced into the Senate on 21 March 1985 by Senator Jack Evans.

The purpose of the Bill is to provide for the establishment of an all party Joint House Committee. The Committee, with the assistance and advice of consultants and staff has the following functions -

- (a) to review -
 - (i) the reports of the Taxation Review Committee (the 'Asprey' Committee); and
 - (ii) the report of the Committee of Inquiry into taxation and inflation (the 'Matthews' Committee);
- (b) to formulate, in the light of its review of those reports and of any evidence taken by the Committee for the purposes of that review, comprehensive reforms of the taxation system; and
- (c) to prepare draft legislation to give effect to those reforms.

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

TAXATION SYSTEM REFORM BILL 1985 (Cont 2)

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

Clause 26(1) - Burden of proof

Clause 26(1) seeks to reverse the burden of proof, in proceedings for an offence against that clause by requiring the accused to prove a reasonable excuse rather than insisting that the prosecution prove all the elements of the crime. It would appear that no explanation for this provision is provided in the material accompanying the Bill.

The Committee draws this clause to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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

TAX AVOIDANCE SCHEMES BILL 1985

This Bill was introduced into the Senate on 22 March 1985
by Senator Jack Evans.

Purpose: the Tax Avoidance Schemes Bill seeks to fulfil
two objects:

- (i) to declare the opinion of the parliament concerning
the extent to which legislation for preventing the
operation of blatant tax avoidance schemes can be
expressed to apply retrospectively; and
- (ii) to provide a means whereby persons can guard
themselves against entering into transactions that
may later be affected by retrospective taxation
legislation.

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

Clause 6(3) - Unreviewable discretion

Clause 6 of the Bill includes a proposed sub-section which vests
an unappealable discretion in the Minister. It provides that a
person may apply to the Treasurer for a declaration that a
particular taxation minimisation scheme will not be treated as "a
blatant tax avoidance scheme". Authority is vested in the
Treasurer to determine the question of the issue of such a
declaration within 90 days after the receipt of an application.

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

TAX AVOIDANCE SCHEMES BILL 1985 (Cont 2)

The nature of the question of what constitutes "a blatant tax avoidance scheme" is such that it might be argued that there should exist at the least, provision for judicial review of the decision.

The Committee draws this provision to the attention of Senators in that it might be regarded as making rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 8(1) - General comment

Clause 8 sets out the effect of a declaration made under clause 6. Under its provisions every person concerned in the scheme is entitled to treat the declaration as a firm assurance that, if the scheme is entered into in exact conformity with the particulars of the scheme identified in the declaration, no Commonwealth government will propose or support legislation which would retrospectively alter adversely to that person the tax law relating to that scheme.

This provision appears to be an attempt to fetter future Parliaments in the kind of legislation which they will pass. It can therefore be argued that the impact of this provision serves only to arouse expectations which may well be dashed by the legislative action of a future Parliament.

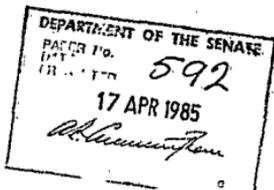
Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

SCRUTINY OF BILLS COMMITTEE - TABLING OF ALERT
DIGEST

CHAIRMAN:

MR PRESIDENT,

I LAY ON THE TABLE SCRUTINY OF BILLS ALERT DIGEST
NO.2 DATED 27 MARCH 1985.



SCRUTINY OF BILLS ALERT DIGEST

No. 3 of 1985

17 APRIL 1985

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF
BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman.
Senator B. Cooney
Senator R.A. Crowley
Senator J. Haines
Senator the Hon. D.B. Scott

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.

D3/85

The Committee has considered the following Bills:

Appropriation Bill (No. 3) 1984-85

Appropriation Bill (No. 4) 1984-85

Constitution Alteration (Disqualification of Members and Candidates) Bill 1985

Corporations (Employee-owned Co-operatives) Bill 1985

Customs Tariff Amendment Bill 1985

Dividend Recoupment Tax Bill 1985

National Welfare Fund Repeal Bill 1985

Petroleum (Submerged Lands) (Cash Bidding) Amendment Bill 1985

Snowy Mountains Engineering Corporation Bill 1985

Supported Accommodation Assistance Bill 1985

Taxation (Unpaid Company Tax) Assessment Amendment Bill 1985

Telecommunications (Interception) Amendment Bill 1985

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

D3/85

APPROPRIATION BILL (NO. 3) 1984-85

This Bill was introduced into the House of Representatives on 27 March 1985 by the Minister Representing the Minister for Finance.

The purpose of the Bill is to appropriate \$426,018,000 out of the Consolidated Revenue Fund, additional to the sums appropriated by the Appropriation Act (No. 1) 1984-85, for the service of the year ending on 30 June 1985.

The Committee has no comments on this Bill.

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

D3/85

APPROPRIATION BILL (NO. 4) 1984-85

This Bill was introduced into the House of Representatives on 27 March 1985 by the Minister Representing the Minister for Finance.

The purpose of the Bill is to appropriate \$138,493,000 out of the Consolidated Revenue Fund, additional to the sum appropriated by the Appropriation Act (No. 2) 1984-85, for certain expenditure in respect of the year ending on 30 June 1985.

The Committee has no comments on this Bill.

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

D3/85

CONSTITUTION ALTERATION (DISQUALIFICATION OF MEMBERS
AND CANDIDATES) BILL 1985

This Bill was introduced into the Senate on 28 March
1985 by Senator Mason.

The purpose of the Bill is to alter section 44 of the
Constitution so that any person holding an office of
profit under the Crown will experience no obstruction
under the Constitution in standing for election to
the Federal Parliament.

The Committee has no comments on this Bill.

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

D3/85

CORPORATIONS (EMPLOYEE-OWNED CO-OPERATIVES) BILL 1985

This Bill was introduced into the Senate on 25 March 1985 by Senator Jack Evans.

The purpose of this Bill is to provide a legal framework and financial assistance for existing corporations to undergo a transition to become co-operatives. The Bill does not seek to replace existing corporate structures. It seeks to provide a class of organisational structure which will allow businesses to be responsive and responsible to employees and other interest groups and thereby to create businesses which are more durable and efficient, and of greater benefit to the country as a whole.

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

Clause 30 - Review of decisions

Clause 30 provides for the review of decisions by the Employee-owned Corporations Board which would be established by the Bill under the Administrative Decisions (Judicial Review) Act 1977. Sub-clause 30(2) provides that, apart from review under the Administrative Decisions (Judicial Review) Act 1977, the decisions of the Board are to be final and

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

D3/85

CORPORATIONS (EMPLOYEE-OWNED CO-OPERATIVES) BILL 1985
(Cont 2)

conclusive and may not be challenged in any court. The purpose of clause 30 would therefore appear to be to deprive persons aggrieved by a decision of the Board of any avenue of review other than the Administrative Decisions (Judicial Review) Act 1977. Clause 30 does not confer a right of review but merely acknowledges the fact that decisions of the Board would be reviewable under the Administrative Decisions (Judicial Review) Act 1977 anyhow. Further, while the Administrative Decisions (Judicial Review) Act 1977 provides for the review of a decision as to its legality, it does not provide an avenue for the review of decisions on their merits. Given the nature of the discretionary powers vested in the Board it might be considered that review by the Administrative Appeals Tribunal would be more appropriate.

The Committee draws this clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

CUSTOMS TARIFF AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 27 March 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

The Customs Tariff Amendment Bill 1985 proposes amendments to the Customs Tariff Act 1982. The Bill contains 4 schedules and is necessary to enact tariff changes which have been introduced into the Parliament in the 1985 Autumn sittings by Customs Tariff Proposals Nos. 1-4 (1985).

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

Clause 2 - Retrospectivity

Clause 2 provides for the amendments which would be made by the Bill to have effect from the dates on which they were originally notified, viz. 11 October 1984, 26 October 1984 and 1 January 1985 as appropriate. Customs tariff changes are initiated by Customs Tariff Proposals submitted to Parliament. When the Parliament is not sitting the Customs Act 1901 permits the Minister to notify in the Gazette his intention to propose in the Parliament a Customs

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

CUSTOMS TARIFF AMENDMENT BILL 1985 (Cont 2)

Tariff or a Customs Tariff alteration. Customs Tariff Proposals Nos. 1 to 4 (1985) to which the Customs Tariff Amendment Bill 1985 will give legislative force were notified accordingly. By long established convention the new tariffs are charged from the date on which they are notified and, as in this case, the subsequent changes to the Customs Tariff Act are made retrospective to that date.

Although the Committee recognises that clause 2 of the Customs Tariff Amendment Bill 1985 is in accordance with established convention the Committee believes that in conformity with its usual practice such retrospectivity should be drawn to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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

D3/85

DIVIDEND RECOUPMENT TAX BILL 1985

This Bill was introduced into the House of Representatives on 27 March 1985 by the Treasurer.

This Bill is the second of the "bottom-of-the-harbour" bills to which the Special Minister of State referred in his statement in the House of Representatives on 27 February 1985. The measures contained in this Bill are identical with those contained in bills by similar titles which were introduced on Budget night 1983 and on 2 May 1984. On each occasion, the Bill was passed by the House of Representatives but the second reading of the Bill was negatived in the Senate. This Bill will formally impose a tax on the dividend amount determined in accordance with the rules being inserted in the recoupment tax legislation by the amending Assessment Bill.

General Comment

This Bill imposes a tax on dividend amounts determined in accordance with the Taxation (Unpaid Company Tax) Assessment Amendment Bill 1985. Senators are accordingly referred to the comments on that Bill in this Digest.

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

NATIONAL WELFARE FUND REPEAL BILL 1985

This Bill was introduced into the House of Representatives on 27 March 1985 by the Minister Representing the Minister for Finance.

The purpose of this Bill is to provide for the repeal of the National Welfare Fund Act. Welfare and social service payments presently met from a ledger head called the National Welfare Fund would in future be met directly from standing appropriations of the Consolidated Revenue Fund under the specific Acts authorising the particular payments.

The Committee has no comments on this Bill.

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

D3/85

PETROLEUM (SUBMERGED LANDS) (CASH BIDDING) AMENDMENT
BILL 1985

This Bill was introduced into the Senate on 28 March 1985 by the Minister for Resources and Energy.

The purpose of this Bill is to amend the Petroleum (Submerged Lands) Act 1967 to provide for the award of highly prospective offshore petroleum exploration permits on the basis of cash bids. It will also amend the Petroleum (Submerged Lands) (Exploration Permit Fees) Act 1967 so that this Act will not apply to permits awarded by way of cash bidding.

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

Clause 5 - Proposed section 22B

Proposed sub-sections 22B(1) and (2) would give the Joint Authority (comprising the Commonwealth Minister and the relevant State Minister) a discretion to reject applications for permits to explore for petroleum. No mechanism for review of the exercise of this discretion is provided for. While the Explanatory Memorandum indicates that it is proposed that the Joint Authority reject applications if the cash bid made is considered inadequate on account of

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

D3/85

PETROLEUM (SUBMERGED LANDS) (CASH BIDDING) AMENDMENT
BILL 1985 (Cont 2)

insufficient competition, if there is evidence of collusive bidding, if the bidder does not have the technical or financial resources to carry out offshore operations effectively or if any conditions made known prior to the bidding round are not met, these criteria are not set out in the legislation. The scope for review pursuant to the Administrative Decisions (Judicial Review) Act 1977 is accordingly limited.

The Committee notes that the proposed provisions are in conformity with the existing provisions for the granting of permits in the Principal Act, sub-section 22(1) similarly failing to provide for review of the decisions of the Joint Authority. Nonetheless the Committee draws the proposed provisions to the attention of Senators in that such an unfettered discretion may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

D3/85

SNOWY MOUNTAINS ENGINEERING CORPORATION BILL 1985

This Bill was introduced into the House of Representatives on 27 March 1985 by the Minister for Housing and Construction.

The purpose of this Bill is to provide for the restructuring of the Snowy Mountains Engineering Corporation, to put it on a more commercial footing and to allow it to participate more effectively in the international engineering market.

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

Clause 40 - Henry VIII clause

Sub-clause 40(2) provides that, subject to sub-clause 40(3), the Corporation is not subject to State or Territory taxes. Sub-clause 40(3) provides that the application of sub-clause 40(2) may be removed by regulation so that the Corporation is subjected to taxation under a specified law of a State or Territory. Sub-clause 40(3) may be regarded as a

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

SNOWY MOUNTAINS ENGINEERING CORPORATION BILL 1985
(Cont 2)

"Henry VIII" clause as it permits the effect of sub-clause 40(2) to be varied by regulation.

The Committee draws the sub-clause to the attention of Senators in that it may be considered to be an inappropriate delegation of legislative power.

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

SUPPORTED ACCOMMODATION ASSISTANCE BILL 1985

This Bill was introduced into the House of Representatives on 27 March 1985 by the Minister Representing the Minister for Community Services.

The purpose of this Bill is to authorise the Commonwealth to enter into a 4.5 year agreement with each State and with the Northern Territory for the provision of financial assistance by the Commonwealth to a State or the Northern Territory, to enable non-government organisations and local governments to provide a range of supported accommodation and related support services.

The Committee has no comments on this Bill.

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

D3/85

TAXATION (UNPAID COMPANY TAX) ASSESSMENT AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 27 March 1985 by the Treasurer.

The Taxation (Unpaid Company Tax) Assessment Amendment Bill 1985 is substantially the same as Bills by similar titles which were introduced into the House of Representatives on Budget night 1983 and again on 2 May 1984. On each occasion the Bill was passed by the House of Representatives but the second reading of the Bill was negatived in the Senate.

The Taxation (Unpaid Company Tax) Assessment Amendment Bill 1985 differs from the Budget night 1983 version in that it incorporates a provision to permit the payment of interest under the Taxation (Interest on Overpayments) Act 1983 on certain repayments of company tax and varies the evidentiary provision to take into account comments of the High Court in MacCormick v F.C. of T. 52 ALR 53 on the constitutional validity of that provision. The Dividend Recoupment Tax Bill 1985 is in all material respects identical with the 1983 version of the Bill.

General Comment

This Bill extends provisions of the Taxation (Unpaid Company Tax) Assessment Act 1982 so that personal income tax avoided by former owners of companies

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

D3/85

TAXATION (UNPAID COMPANY TAX) ASSESSMENT AMENDMENT
BILL 1985 (Cont 2)

stripped of pre-tax profits will be subject to recoupment. As the Principal Act had retrospective effect to 1 January 1972 this Bill will in similar fashion retrospectively alter the situation of taxpayers. The Committee therefore draws the Bill to the attention of Senators in that such retrospectivity might be considered to trespass unduly on personal rights and liberties.

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

D3/85

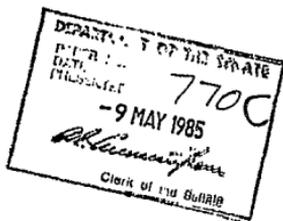
TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT ACT 1985

This Act was introduced into the House of Representatives on 28 March 1985 by the Attorney-General.

The purpose of the Act is to amend the Telecommunications (Interception) Act 1979 to enable Mr Justice Stewart, as Royal Commissioner, to investigate unauthorised telephone intercepts occurring in New South Wales to see whether they disclose an offence or possible offence against a law of the Commonwealth or a law of a Territory.

The Committee notes that this is a case when, as permitted by its Terms of Reference, it is commenting on legislation notwithstanding that the Bill has already been agreed to by both Houses of Parliament and has become law. The Committee has no comments on the Act.

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



SCRUTINY OF BILLS ALERT DIGEST

No. 4 of 1985

8 MAY 1985

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF
BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator B. Cooney
Senator R.A. Crowley
Senator J. Haines
Senator the Hon. D.B. Scott

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.

D4/85

The Committee has considered the following Bills:

Ashmore and Cartier Islands Acceptance Amendment Bill 1985
Australian Dried Fruits Corporation Amendment Bill 1985
Australian Federal Police Amendment Bill 1985
Banks (Shareholdings) Amendment Bill 1985
Bounty (Ships) Amendment Bill 1985
Complaints (Australian Federal Police) Amendment Bill 1985
Customs and Excise Legislation Amendment Bill 1985
Dried Sultana Production Underwriting Amendment Bill 1985
Dried Vine Fruits Equalization Levy Amendment Bill 1985
Excise Tariff Amendment Bill 1985
Export Inspection Charge Bill 1985
Export Inspection Charge Collection Bill 1985
Export Inspection Legislation (Consequential Amendments)
Bill 1985
First Home Owners Amendment Bill 1985
Fisheries Levy Amendment Bill 1985
Fishing Legislation Amendment Bill 1985
Housing Loans Insurance Amendment Bill 1985
National Capital Development Commission Amendment Bill 1985
National Occupational Health and Safety Commission
Bill 1985
Petroleum (Submerged Lands) Amendment Bill 1985
Petroleum (Submerged Lands) (Registration Fees) Amendment
Bill 1985
Petroleum (Submerged Lands) (Retention Lease Fees) Bill 1985
Petroleum (Submerged Lands) (Royalty) Amendment Bill 1985
Poultry Industry Assistance Amendment Bill 1985
Poultry Industry Levy Amendment Bill 1985
Public Lending Right Bill 1985
Representation Amendment Bill 1985

D4/85

Rural Industries Research Bill 1985

Rural Industries Research (Transitional Provisions and
Consequential Amendments) Bill 1985

Stevedoring Industry Levy Amendment Bill 1985

Tobacco Charge (No. 1) Amendment Bill 1985

Tobacco Charge (No. 2) Amendment Bill 1985

Tobacco Charge (No. 3) Amendment Bill 1985

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

D4/85

ASHMORE AND CARTIER ISLANDS ACCEPTANCE AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Territories.

The Ashmore and Cartier Islands Acceptance Amendment Bill 1985 will apply in the Territory of Ashmore and Cartier Islands the law in force in the Northern Territory from time to time, thereby providing for the automatic up-dating of the laws in force in the Territory of Ashmore and Cartier Islands. The law currently applying in that Territory is the law in force in the Northern Territory as at 1 July 1978.

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

Clause 7 - Delegation

Clause 7 inserts a new sub-section 11(3) enabling the Minister to delegate any of his powers under the section (other than the power of delegation) to "a person". The powers so enabled to be delegated would include not only the power under new sub-section 11(2) to direct that a power or function vested in a person or authority (other than a court) by a law in force in the Territory be exercised by a specified person or authority but also any powers similarly vested in a person or authority in respect of which

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

D4/85

ASHMORE AND CARTIER ISLANDS ACCEPTANCE AMENDMENT BILL
1985 (Cont 2)

no direction under sub-section 11(2) has been made and which are therefore vested in the Minister by the existing sub-section 11(1) of the Principal Act.

While such powers of delegation are becoming quite standard they impose no limitation, and give no guidance, as to the attributes of the person to whom a delegation may be made. The Committee accordingly draws this clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

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

D4/85

AUSTRALIAN DRIED FRUITS CORPORATION AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The Australian Dried Fruits Corporation Amendment Bill 1985 has the following main purposes:

- (1) to improve the operational performance of the Corporation by providing for the appointment to the Corporation of two additional persons with special qualifications; and
- (2) to make a variety of minor machinery amendments.

The Committee has no comments on this Bill.

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

D4/85

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Special Minister of State.

The principal purpose of the Australian Federal Police Amendment Bill 1985 is to give effect to the Government's decision to ensure the economical and efficient use of Australian Federal Police (AFP) personnel by the enactment of redeployment and retirement provisions directly comparable to those which apply to Commonwealth Public Servants under the Commonwealth Employees (Redeployment and Retirement) Act 1979.

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

Clause 4 - Delegation

Clause 4 substitutes a new sub-section 15(1) enabling the Commissioner to delegate all or any of his powers under the Principal Act (other than the power of delegation and his powers under new sections 38A-38H) to another member of the Australian Federal Police or a member of the Public Service support staff.

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

D4/85

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1985
(Cont 2)

The Committee recognises that the new sub-section 15(1) merely restates the content of the old (with the addition of references to the new sections 38A-38H which would be added by the Bill) but it is concerned that the provision imposes no limitation, and gives no guidance, as to the rank or level of person to whom a delegation may be made. The Principal Act confers powers on the Commissioner such as the power to issue General Orders or General Instructions and the power to appoint officers which it would be quite inappropriate for a junior member of the Australian Federal Police or a junior public servant to exercise. The Committee therefore draws this clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 14 - Redeployment Provisions

Clause 14 inserts new provisions in the Principal Act relating to the retirement and redeployment of members of the Australian Federal Police.

New sub-section 38A(1) would empower the Commissioner to publish notices in the Australian Federal Police Gazette setting out -

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

D4/85

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1985
(Cont 3)

- (a) administrative procedures to be followed in facilitating the efficient and economical use of the members of the Australian Federal Police, including criteria by reference to which a member may be identified as a member whose services are not being made use of efficiently and economically; and
- (b) principles in accordance with which the functions of the Commissioner in taking action to redeploy members of the Australian Federal Police are to be performed.

The proposed Appeals Board would be required to take into account such criteria and principles in reviewing decisions of the Commissioner declaring a member eligible for redeployment or taking action to redeploy a member. No provision is made for the parliamentary scrutiny of notices published by the Commissioner.

While new sections 38B, 38C, 38D and 38E require notice of a decision of the Commissioner and the reasons for the making of that decision to be served on the member of the Australian Federal Police affected by the decision, they do not require that the member be notified of the right of appeal against the decision. The Committee has taken the view in

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

D4/85

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1985
(Cont 4)

the past that notification of a decision should include a statement of the rights of appeal available to the person affected by the decision.

New sections 38F and 38G would limit the power of the Appeals Board to the making of recommendations to the Commissioner. It would have no power to substitute its own decision for that of the original decision-maker as does, for example, the Administrative Appeals Tribunal. The Committee notes that the decision that the power of the Board should be recommendatory rather than determinative was apparently taken for reasons of policy, namely the need to preserve the ultimate authority of the Commissioner and to preserve the character of the Australian Federal Police as a disciplined force. The Committee is also aware that the decision is in accordance with a recommendation of the Administrative Review Council in its report, 'Australian Federal Police Act 1979, Sections 38 and 39' (Parliamentary Paper No. 267/1982), though it observes that the Council's reasons for this recommendation - in particular that 'it is inappropriate that a Board whose membership is not fixed, and which may on occasions include junior officers, should make a determination binding on the Commissioner' - would appear to flow in part from the

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

D4/85

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1985
(Cont 5)

Council's initial decision to confer the review jurisdiction on the proposed Appeals Board rather than the Administrative Appeals Tribunal. In this regard the Committee would draw attention to the strong dissent of the former Chairman of the Australian Law Reform Commission, Mr Justice Kirby, from this initial decision which appears in paragraph 57 of the Council's report. The Committee is of the view that the proposed new sections may not make adequate provision for review on the merits of decisions of the Commissioner regarding the redeployment of members of the Australian Federal Police.

The Committee therefore draws the clause to the attention of Senators in that sub-section 38A(1) may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny, in that the absence of notification of appeal rights in sections 38B, 38C, 38D and 38E may be considered to make rights liberties and/or obligations unduly dependent upon insufficiently defined administrative powers and in that sections 38F and 38G may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

AUSTRALIAN FEDERAL POLICE AMENDMENT BILL 1985
(Cont 6)

Clause 15 - Establishment of Appeals Board

Clause 15 amends section 40 of the Principal Act by inserting a new paragraph 40(ca) enabling the making of regulations providing for the establishment of an Appeals Board to hear appeals in relation to the promotion or redeployment of members of the Australian Federal Police. The Committee considers that where substantial powers of review are to be conferred by an enactment on a new Board or Tribunal provision should be made in that enactment and not in delegated legislation for the constitution and procedures of that Board or Tribunal. In considering the adequacy of the review jurisdiction conferred on the new body the Parliament should have before it the proposed constitution and procedures of that body. The Committee therefore draws the clause to the attention of Senators in that it may be considered to constitute an inappropriate delegation of legislative power.

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

D4/85

BANKS (SHAREHOLDINGS) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Treasurer.

The purpose of the Banks (Shareholdings) Amendment Bill 1985 is to introduce a number of amendments to the Banks (Shareholdings) Act 1972 (the Act) which will facilitate the establishment of new banks in Australia as well as improve the administration of the Act. The Banks (Shareholdings) Act will continue to serve as an important adjunct to the prudential supervision of banks in Australia. The Banks (Shareholdings) Amendment Bill 1984 was introduced into Parliament in the Budget sittings of 1984, but was not passed. The current Bill incorporates some additional amendments.

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

Clause 6

Clause 6 makes a number of amendments to section 10 of the Principal Act.

Paragraph 6(d) substitutes a new sub-section 10(4) enabling the Governor-General by notice in the Gazette to permit a specified person to hold more than 15% of the voting shares in a bank if he is

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

BANKS (SHAREHOLDINGS) AMENDMENT BILL 1985 (Cont 2)

satisfied that to do so is in the national interest. New sub-section 10(4) may be regarded as a "Henry VIII" clause as it permits the upper limits on shareholdings fixed by sub-sections 10(1) and (2D) to be varied by executive instrument without any form of Parliamentary scrutiny. The Committee draws the paragraph to the attention of Senators in that it may be considered insufficiently to subject the exercise of legislative power to parliamentary scrutiny.

Paragraph 6(o) adds new sub-sections 10(10) and (11) enabling the Treasurer to declare that a person's interest in a share by reason of his being deemed, under section 9 of the Principal Act, to be an associate of a person who has an interest in that share shall be disregarded in determining the shareholding of that person and to revoke such a declaration. No review of the Treasurer's decision is provided for and the Committee draws this paragraph to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

BOUNTY (SHIPS) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

This Bill proposes to amend the Bounty (Ships) Act 1980 to extend the bounty assistance under that Act to vessels constructed or modified for exportation from Australia.

The Committee has no comments on this Bill.

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

D4/85

COMPLAINTS (AUSTRALIAN FEDERAL POLICE) AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Special Minister of State.

The principal purpose of the Complaints (Australian Federal Police) Amendment Bill 1985 is to clarify the procedures which govern internal investigations within the Australian Federal Police (AFP) so as to protect the rights of members of the force and to improve the operation of the procedures. The Bill is based upon recommendations put to the Government by the Australian Federal Police Association and addresses matters raised in the 1982-83 Annual Report of the Federal Police Disciplinary Tribunal.

The Committee has no comments on this Bill.

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

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 23 April 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

This Bill principally proposes to amend the Customs Act 1901 and the Excise Act 1901, to give effect to various Government decisions relating to subject matter contained in those Acts. In addition, the Bill proposes to effect consequential penalty amendments to the Distillation Act 1901, the Spirits Act 1906, and the Coal Excise Act 1949.

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

Clause 10 - Non-reviewable discretion

Clause 10 inserts a new section 128B in the Customs Act 1901 allowing the Minister to declare by notice in the Gazette that goods owned by a specified person taken on board a ship or aircraft for use as ship's or aircraft's stores may be dealt with by periodic returns rather than by way of individual entry. Although it is apparent that a valuable right is to be conferred by such a declaration, no indication is given as to how a person may apply to the Minister to make a declaration, no criteria are set out for the

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

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CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1985
(Cont 2)

Minister's decision and no right of review is provided in respect of a refusal by the Minister to make a declaration.

The Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 16 - Unauthorized use of cameras etc.

Clause 16 inserts a new offence section 234AB in the Customs Act 1901 which would prohibit a person (including a disembarking passenger) from operating a camera or using an appliance which records or transmits sound except by authority -

- (a) at a place in relation to which a sign is displayed under sub-section 234AA(2), being a place used by officers for questioning passengers disembarking from a ship or aircraft and examining their personal baggage; or
- (b) at a place (being a place that is part of a ship, of an aircraft or of a wharf) at a time when the personal baggage of passengers

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

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CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1985
(Cont 3)

disembarking from, or embarking on, a ship or aircraft is being examined at or in the vicinity of that place.

A fine of up to \$1,000 may be imposed.

The Committee is concerned that, in relation to paragraph (a), it would not appear necessary that the person prosecuted have seen the sign or even have been aware that the place was one in which unauthorized use of cameras and sound recorders was prohibited. Similarly, in relation to paragraph (b), it would not appear necessary that the person prosecuted have been aware that the personal baggage of passengers was being examined in the vicinity. In any case the Committee considers that paragraph (b) is cast far more broadly than is necessary. Presumably the intention is to catch persons actually photographing or recording officers questioning persons or examining their baggage yet as it stands the paragraph could, for example, catch a disembarking passenger standing on a wharf and filming his or her family descending the gangplank of a ship merely because 'in the vicinity of that place' the personal baggage of passengers was being examined.

The Committee draws the clause to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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

D4/85

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1985
(Cont 4)

Clause 17 - Vicarious liability

Clause 17 inserts a new section 257 in the Customs Act 1901 making bodies corporate and other persons responsible for conduct engaged in by, and the state of mind of, their servants or agents acting within the scope of their actual or apparent authority. The Committee recognises that the High Court established in R. v. Australasian Films Ltd (1921) 29 CLR 195 that a principal may be responsible for an act done by his or her servant or agent in the course of his or her employment and for the state of mind of the agent or servant in doing that act if that can be said to be the intention of the legislature having regard to the ordinary principles of statutory interpretation. However the Committee is concerned that new section 257 may be broader in its scope than the existing law and it raises for the consideration of Senators whether it is just that a natural person in particular should be made criminally liable for the acts of servants or agents of which that person had no knowledge and for which that person had given no express authorisation.

The Committee draws the clause to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1985
(Cont 5)

Clause 23 - Revocation of concession orders

Clause 23 inserts a new sub-section 269P(2B) permitting the Minister to revoke a tariff concession order where the Minister becomes satisfied that, because of a mistake, an amendment of the Customs Tariff Act 1982 or otherwise, the description of the goods in the concession order was not a description of the goods in respect of which it was intended to make the order. By virtue of new sub-section 269P(3A) the revocation may be retrospective to the date on which the concession order came into effect. New sub-section 269P(11) provides that, having revoked a concession order, the Minister must make a new order declaring that the goods in respect of which it was intended to make the original concession order are the subject of a tariff concession.

It has been suggested to the Committee in a private submission that if, for example, a concession order were to be made in respect of 'brooms' and if the Minister were to become satisfied at some later date that it had been intended to make the order only in respect of 'millet brooms' and not other types of brooms (e.g. steel wire brooms), the new sub-sections would enable the Minister to revoke the concession order ab initio and to substitute a new order declaring that the tariff concession applied only to 'millet brooms' notwithstanding that this might have

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CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL 1985
(Cont 6)

a significant adverse effect on persons who had imported other types of brooms in the belief that the tariff concession applied to them. The Committee draws attention to the clause in that it may be considered to trespass unduly on personal rights and liberties.

Clause 36 - Non-reviewable discretion

Clause 36 inserts a new section 58C in the Excise Act 1901 similar in effect to the new section 128B inserted in the Customs Act 1901 by clause 10. The comment on that clause also applies to this clause.

Clause 43 - Vicarious liability

Clause 43 inserts a new section 145A in the Excise Act 1901 in the same terms as the new section 257 inserted in the Customs Act 1901 by clause 17. The comment on that clause applies equally to this clause.

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

D4/85

DRIED SULTANA PRODUCTION UNDERWRITING AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The amendments proposed in this Bill to be made to the Dried Sultana Production Underwriting Act 1982 bring arrangements in this Act into line with recent Government decisions on underwriting for the 1986 to 1990 seasons following a report by the Industries Assistance Commission concerning dried vine fruit.

The Committee has no comments on this Bill.

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

D4/85

DRIED VINE FRUITS EQUALIZATION LEVY AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The amendments proposed in this Bill to be made to the Dried Vine Fruits Equalization Levy Act 1978 require that the Minister will determine any equalization levy for a variety of dried vine fruit in a season at such an amount that the equalization payment distributing the proceeds of the levy for that variety to the industry is unlikely to exceed an amount forming a specified percentage of the average return for exports of that variety in that season.

The Committee has no comments on this Bill.

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

EXCISE TARIFF AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 23 April 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

This Bill proposes a number of alterations to the Excise Tariff Act 1921. The major alteration introduces a new excise duty scale (an 'intermediate' scale) for crude oil produced from fields discovered before 18 September 1975 and not developed before 23 October 1984. The proposed excise duty scale is between the existing 'old' oil scale and the 'new' oil scale and is designed to encourage the development of 'old' oilfields which had not been developed as at 23 October 1984.

The Committee has no comments on this Bill.

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

EXPORT INSPECTION CHARGE BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The primary purpose of this Bill is to consolidate the existing export inspection charging Acts for primary products other than meat, where charges are imposed on the basis of an export permit. The Bill does not encompass export inspection charges for inspection of livestock and wool as these are not readily amenable to consolidation.

The Committee has no comments on this Bill.

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

D4/85

EXPORT INSPECTION CHARGE COLLECTION BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The purpose of the Bill is to provide for collection of charges to be imposed as a result of the enactment of the Export Inspection Charge Bill 1985.

The Committee has no comments on this Bill.

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

D4/85

EXPORT INSPECTION LEGISLATION (CONSEQUENTIAL
AMENDMENTS) BILL 1985

This Bill was introduced into the House of
Representatives on 17 April 1985 by the Minister for
Primary Industry.

The Export Inspection Legislation (Consequential
Amendments) Bill 1985 makes provision for the
amendment or repeal of certain Acts in consequence of
the enactment of the Export Inspection Charge and
Export Inspection Charge Collection Bills.

The Committee has no comments on this Bill.

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

D4/85

FIRST HOME OWNERS AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 16 April 1985 by the Minister for Housing and Construction.

The purpose of the Bill is to provide for a number of machinery amendments of minor policy significance or of a routine administrative nature, and to provide for a fixed appropriation to contain expenditure under the First Home Owners Scheme to within Budget appropriation.

The Committee has no comments on this Bill.

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

D4/85

FISHERIES LEVY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The Fisheries Licences Levy Act 1984 imposes levy on the granting of fisheries licences in prescribed classes and provides for amounts of levy to be as prescribed in the regulations and for the manner of payment of levy.

The Bill adds to the Principal Act power to impose levy on the renewal or variation of a licence in a prescribed class or on the allocation, or renewal of the allocation, of prescribed classes of units of fishing capacity determined in a plan of management for a fishery under sub-section 7B(1) of the Fisheries Act 1952 as proposed to be amended. The Bill also provides with respect to amounts of levy payable and the manner of payment of the levy and authorises the regulations to provide for matters by application of the matters in a plan of management.

The Committee has no comments on this Bill.

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

FISHING LEGISLATION AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The principal purpose of the Bill is to provide clear and legally-based powers for the development and implementation of management plans in accordance with the stated objectives of the Fisheries Act 1952 of ensuring that the living resources of the Australian fishing zone are not endangered by over-exploitation and that there is optimum utilisation of those resources.

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

Clause 10 - Suspension of licences

Clause 10 inserts new sub-sections 10(1), (2) and (3) in the Fisheries Act 1952 empowering the Minister or the Secretary to suspend a fishing licence if the Minister or Secretary has reasonable grounds to believe that -

- (a) there has been a contravention of a condition of the licence;

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

D4/85

FISHING LEGISLATION AMENDMENT BILL 1985 (Cont 2)

- (b) the holder has done an act prohibited by a Ministerial notice under section 8; or
- (c) the holder knowingly made a false or misleading statement in an application under the Act, the regulations or a plan of management.

A suspension remains in force for one month or, if proceedings for an offence against the Act in relation to the alleged act or omission by reason of which the licence was suspended are sooner instituted, until the completion of those proceedings.

No right of review is accorded in relation to the suspension of a licence although it is apparent that a licence may be the holder's livelihood and that a suspension may last for some months. The Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

D4/85

HOUSING LOANS INSURANCE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Housing and Construction.

This Bill is to amend the Housing Loans Insurance Act 1965 to extend the areas of business activity for the Housing Loans Insurance Corporation, specifically in respect of securities traded in the secondary mortgage market and to extend the range of insurance cover provided by the Corporation.

The Committee has no comments on this Bill.

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

D4/85

NATIONAL CAPITAL DEVELOPMENT COMMISSION AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 23 April 1985 by the Minister for Territories.

The purpose of this Bill is to amend the National Capital Development Commission Act 1957 to modernise the structure of the Commission and make it more accountable and responsive to both the Government and the A.C.T. community. The Bill seeks to do this by replacing the Commission's corporation sole with a board of seven commissioners and by inserting a ministerial power of direction clause.

The Committee has no comments on this Bill.

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

D4/85

NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION
BILL 1985

This Bill was introduced into the House of Representatives on 23 April 1985 by the Minister for Employment and Industrial Relations.

The purpose of this Bill is to establish a statutory corporation, the National Occupational Health and Safety Commission, with the objects of developing community awareness of occupational health and safety issues; providing a forum for Commonwealth, State and Territory Governments, and peak councils of employees and employers to consult together and to participate in the development of occupational health and safety policies and strategies; and providing a national focus for occupational health and safety activities.

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

Clause 52 - Reversal of onus of proof

Sub-clause 52(2) makes it an offence for an employer to dismiss, or to threaten to dismiss, an employee from his or her employment, or to prejudice, or to threaten to prejudice, an employee in his or her employment, because the employee has given evidence, or proposes to give evidence, at an inquiry. By virtue of sub-clause 52(4) an employer charged with

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

D4/85

NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION
BILL 1985 (Cont 2)

this offence is to bear the burden of proving that the employee in question was not dismissed, prejudiced or threatened because he or she gave evidence or proposed to give evidence if it is established that the employee was dismissed, prejudiced or threatened with dismissal or prejudice and that before that occurred he or she gave evidence or proposed to give evidence at an inquiry.

The Committee has commented in the past on similar provisions (see comments on clause 51 of the Biological Control Bill 1984 in its Seventh Report of 1984 and on clause 63 of the Radiocommunications Bill 1983 in its Eleventh Report of 1983) and has accepted the argument that the reversal of the onus of proof is necessary for the proper protection of witnesses since it is very difficult to prove that a person has been dismissed for a particular reason. However the Committee notes the recommendation of the Senate Standing Committee on Constitutional and Legal Affairs in its Report on 'The Burden of Proof in Criminal Proceedings' (PP319/1982) that all persuasive burdens on defendants should be reduced to evidential ones and poses the question whether the protection accorded to witnesses would be significantly diminished if the burden placed on the employer in sub-clause 52(4) were an evidential one only, rather than a persuasive one, that is, if the

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

D4/85

NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION
BILL 1985 (Cont 3)

employer bore the burden of adducing evidence that the employee was not dismissed, prejudiced or threatened because he or she gave evidence or proposed to do so rather than being required to establish that fact on the balance of probabilities in order to exculpate himself or herself.

The Committee draws the clause to the attention of Senators in that the reversal of the persuasive onus of proof may be considered to trespass unduly on personal rights and liberties.

Clause 63 - Objection to dissemination of information

Pursuant to clause 62 the Commission is to be empowered to require persons to furnish information and produce documents to the Commission. Sub-clause 63(1) requires the Commission, if it proposes to disseminate or publish any information so furnished or contained in a document so produced, to notify -

- . the person who furnished the information or produced the document;
- . if the information is of a personal, domestic or business nature, any person who could reasonably be expected to be identified by the dissemination or publication of the information;

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

D4/85

NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION
BILL 1985 (Cont 4)

- . if the information contains a trade secret, any person who could reasonably be expected to be adversely affected by the disclosure of that trade secret; and

- . any person who could reasonably be expected to be adversely affected by the dissemination or publication of information in respect of the lawful business, commercial or financial affairs of the person,

and to invite the person to object to the dissemination or publication of the information. However the only ground of objection permitted is that to disseminate or publish the information would be contrary to the public interest. One may imagine that a person who has provided information may strenuously object, for purely private and personal reasons, to his identity or views being disclosed even though it would be difficult to say that such disclosure would be contrary to the public interest. Equally the dissemination of trade secrets may not be contrary to the public interest but may have a very serious effect on the holder of those particular secrets. In the absence of some special definition of the public interest it is suggested that the right to object to publication or dissemination of information provided by clause 53 is somewhat illusory.

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

NATIONAL OCCUPATIONAL HEALTH AND SAFETY COMMISSION
BILL 1985 (Cont 5)

The Committee draws attention to the clause in that it may be considered to trespass unduly on personal rights and liberties.

Clause 64 - Delegation

Clause 64 permits the Commission to delegate all or any of its powers under the Act or any other law (other than the power of delegation) to 'a person' or to the Executive.

The Committee is concerned that this provision imposes no limitation, and gives no guidance, as to the attributes of the person to whom a delegation may be made and accordingly draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

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

D4/85

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL

This Bill was introduced into the House of Representatives on 23 April 1985 by the Minister Representing the Minister for Resources and Energy.

The purpose of this Bill is to amend the Petroleum (Submerged Lands) Act 1967 so as to:

- (a) provide for the granting of retention leases over currently non-commercial discoveries;
- (b) revise the registration provisions of the Act and improve the administrative processes for the making of Regulations and Directions and related matters; and
- (c) enable review by the Administrative Appeals Tribunal of discretionary decisions made by the Commonwealth Minister (or his delegate) as designated authority in areas adjacent to Commonwealth Territories, or in exercise of other specified powers.

General comment

The Committee notes that although the Bill would confer on the Administrative Appeals Tribunal a review jurisdiction in respect of decisions of the Minister exercising the powers of the Joint Authority

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

D4/85

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL (Cont 2)

in relation to the adjacent area in respect of the Territory of Ashmore and Cartier Islands, Norfolk Island and the Territory of Heard and McDonald Islands (clause 35), no change is to be made to the present state of affairs under which decisions of the Joint Authority (comprising the Commonwealth Minister and the relevant State Minister) in relation to the adjacent area in respect of a State are not reviewable on their merits but only as to their legality pursuant to the Administrative Decisions (Judicial Review) Act 1977. Indeed the Bill would add a number of non-reviewable discretions to the Act. Specifically -

- clause 5 inserts new sections 38B, 38E and 38G empowering the Joint Authority to grant or to refuse to grant, to cancel and to renew or to refuse to grant the renewal of retention leases, all without substantive review;
- clause 18 substitutes a new section 78 giving the Joint Authority an absolute discretion to approve or to refuse to approve transfers of title and as to any security to be lodged by the transferee or transferees for compliance with the provisions of the Act; and

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

D4/85

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL (Cont 3)

- . clause 20 substitutes new sections 80 and 81 empowering the Joint Authority to approve or to refuse to approve dealings affecting an interest in title and dealings relating to future interests, again without any form of review.

The rationale advanced in the Second Reading Speech for the failure to provide for any review on the merits of decisions of the Joint Authority is that Joint Authority decisions are 'policy decisions' and are therefore 'clearly not a matter for the AAT'. The Committee has difficulty, however, in seeing why a decision to grant or not to grant a retention lease on the basis of the Joint Authority's opinion as to the commercial viability of the lease should be characterised as a 'policy decision' rather than an administrative decision and hence amenable to review on the merits by the Administrative Appeals Tribunal.

The Committee draws this aspect of the Bill, and clauses 5, 18 and 20 in particular, to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL (Cont 4)

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

Clause 36 - Regulations

Clause 36 inserts a new sub-section 157(2A) permitting the making of regulations applying, adopting or incorporating a code of practice or standard, whether issued within or outside Australia, 'as in force or existing from time to time'. The proposed sub-section would in effect permit the substance of the regulations to be amended by a variation in a code of practice or standard.

The Committee draws the clause to the attention of Senators in that it may be considered insufficiently to subject the exercise of legislative power to parliamentary scrutiny.

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

PETROLEUM (SUBMERGED LANDS) (REGISTRATION FEES)
AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 23 April 1985 by the Minister Representing the Minister for Resources and Energy.

This Bill sets out the fees payable in relation to the registration of transfers and dealings in titles. It is consequential on the amendments in the Petroleum (Submerged Lands) Amendment Bill 1985 coming into operation and providing for changes to the procedures for the registration of transfers of, and dealings in, titles.

The Committee has no comments on this Bill.

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

PETROLEUM (SUBMERGED LANDS) (RETENTION LEASE FEES)
BILL 1985

This Bill was introduced into the House of Representatives on 23 April 1985 by the Minister Representing the Minister for Resources and Energy.

This Bill sets out the annual fees payable in relation to retention leases. It is consequential on the amendments in the Petroleum (Submerged Lands) Amendment Bill 1985 coming into operation and providing for a new form of petroleum title to be known as a retention lease. These provisions mirror the provisions of the Petroleum (Submerged Lands) (Exploration Permit Fees) Act 1967.

The Committee has no comments on this Bill.

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

D4/85

PETROLEUM (SUBMERGED LANDS) (ROYALTY) AMENDMENT BILL
1985

This Bill was introduced into the House of Representatives on 23 April 1985 by the Minister Representing the Minister for Resources and Energy.

The Petroleum (Submerged Lands) (Royalty) Act 1967 is amended to exempt any petroleum production from permits, retention leases or production licences in the Territory of Ashmore and Cartier Islands adjacent area from the provisions of this Act. It is also amended as a consequence of the retention lease provisions of the Petroleum (Submerged Lands) Amendment Bill 1985 coming into operation.

The Committee has no comments on this Bill.

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

D4/85

POULTRY INDUSTRY ASSISTANCE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

This Bill contains amendments to the Poultry Industry Assistance Act 1965 which establishes a Poultry Industry Trust Fund and provides for the granting of financial assistance to the States and the Australian Capital Territory for the assistance of the poultry industry and also provides for expenditure of funds on poultry research.

The Committee has no comments on this Bill.

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

D4/85

POULTRY INDUSTRY LEVY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The purpose of this Bill is to amend the Poultry Industry Levy Act 1965. The Poultry Industry Levy Act 1965 imposes a levy on all hens, in excess of twenty, kept for commercial purposes. Funds collected are used to provide financial assistance to the States and to make an industry contribution to poultry (eggs) research.

The Committee has no comments on this Bill.

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

PUBLIC LENDING RIGHT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Arts, Heritage and Environment.

The purpose of the Public Lending Right Bill 1985 is to establish a statutory basis for the operation of the Public Lending Right Scheme and thereby formalise the Government's commitment to compensation of Australian authors and publishers for the free multiple use of their books in public lending libraries in Australia.

The Committee has no comments on this Bill.

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

D4/85

REPRESENTATION AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Special Minister of State.

The purpose of this Bill is to enable the twelve additional Senators elected to the Parliament in December 1984 to receive salary and allowances from the date of their election (1 December 1984) rather than from the date their term commenced (21 February 1985) as is currently specified in the Act.

The Committee has no comments on this Bill.

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

D4/85

RURAL INDUSTRIES RESEARCH BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The purpose of this Bill is to amalgamate existing rural industry research legislation and provide one Act for the administration of Rural Industry Research Funds (which are known as RIRFs). The Bill will bring about improvements in the organisation and administration of existing RIRFs, it will revamp the Commonwealth Special Research Grants Scheme and will place rural research funding on a secure footing.

The Committee has no comments on this Bill.

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

D4/85

RURAL INDUSTRIES RESEARCH (TRANSITIONAL PROVISIONS
AND CONSEQUENTIAL AMENDMENTS) BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

This Bill is complementary to the Rural Industries Research Bill 1985. The purposes of the Bill are to amend complementary legislation where necessary, to repeal existing legislation no longer required, and to provide transitional provisions necessary for the enactment of the Rural Industries Research Bill 1985.

The Committee has no comments on this Bill.

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

STEVEDORING INDUSTRY LEVY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 23 April 1985 by the Minister for Employment and Industrial Relations.

The purpose of this Bill is to allow the Stevedoring Industry Finance Committee greater flexibility in setting the rate of special levies on local cargo.

The Committee has no comments on this Bill.

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

D4/85

TOBACCO CHARGE (NO.1) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The purpose of this Bill is to amend the Tobacco Charge Act (No.1) 1955. The Bill makes provision for the continued funding of the Australian Tobacco Board to take effect from the time at which tobacco research is brought under the new legislative arrangements for organisation and administration of Rural Industry Research Funds.

The Committee has no comments on this Bill.

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

TOBACCO CHARGE (NO.2) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The purpose of this Bill is to amend the Tobacco Charge Act (No.2) 1955. The Bill makes provision for the continued funding of the Australian Tobacco Board from levies paid by tobacco growers and manufacturers, to take effect from the time at which tobacco research is brought under the umbrella of the new rural industries research legislation.

The Committee has no comments on this Bill.

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

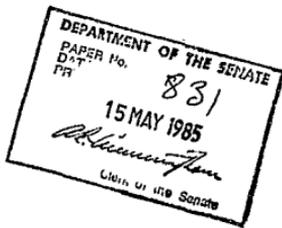
TOBACCO CHARGE (NO.3) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 April 1985 by the Minister for Primary Industry.

The purpose of this Bill is to amend the Tobacco Charge Act (No.3) 1955. The Bill makes provision for the continued funding of the Australian Tobacco Board from levies paid by tobacco growers and manufacturers, to take effect from the time at which tobacco research is brought under the umbrella of the new rural industries research legislation.

The Committee has no comments on this Bill.

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



SCRUTINY OF BILLS ALERT DIGEST

No. 5 of 1985

15 MAY 1985

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF
BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator B. Cooney
Senator R.A. Crowley
Senator J. Haines
Senator the Hon. D.B. Scott

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.

D5/85

The Committee has considered the following Bills:

Aboriginal Land Rights (Northern Territory) Amendment
Bill 1985

Australian Land Transport (Financial Assistance)
Bill 1985

Australian Shipping Commission (Additional Capital)
Bill 1985

Australian Sports Commission Bill 1985

Bass Strait Freight Adjustment Levy Amendment
Bill 1985

Bass Strait Freight Adjustment Trust Fund
Amendment Bill 1985

Broadcasting and Television Legislation Amendment
Bill 1985

Commonwealth Banks Amendment Bill 1985

Communications Legislation Amendment Bill 1985

Companies Amendment Bill 1985

Companies (Fees) Amendment Bill 1985

Dairy Industry Stabilization Levy Amendment
Bill 1985

Dairy Legislation Amendment Bill 1985

Dairy Produce Market Support Bill 1985

Dairy Produce Market Support Levy Bill 1985

Director of Public Prosecutions Amendment
Bill 1985

Ministers of State Amendment Bill 1985

National Crime Authority (Miscellaneous Amendments)
Bill 1985

National Parks and Wildlife Conservation Amendment
Bill 1985

Sales Tax (No.5) Amendment Bill 1985

Sales Tax Assessment Bill (No.10) 1985

Sales Tax Bill (No.10A) 1985
Sales Tax Bill (No.10B) 1985
Sales Tax Bill (No.10C) 1985
Sales Tax Laws Amendment Bill 1985
Snowy Mountains Engineering Corporation Amendment
Bill 1985
Social Security and Repatriation (Abolition of Assets
Test) Bill 1985 [No.2]
States and Northern Territory Grants (Rural Adjustment)
Bill 1985
States Grants (Education Assistance - Participation
and Equity) Amendment Bill 1985
States Grants (Schools Assistance) Legislation Amendment
Bill 1985
States Grants (Tertiary Education Assistance) Amendment
Bill 1985
Statute Law (Miscellaneous Provisions) Bill (No.1) 1985
Supply Bill (No.1) 1985-86
Supply Bill (No.2) 1985-86
Supply (Parliamentary Departments) Bill 1985-86
Taxation Laws Amendment Bill 1985
Telecommunications (Interception) Amendment Bill 1985
Wool Industry Amendment Bill 1985
Wool Tax (Nos. 1 to 5) Amendment Bills 1985

NOTE: This Digest is circulated to all Honourable
Senators. Any Senator who wishes to draw matters
to the attention of the Committee under its Terms
of Reference is invited to do so.

D5/85

ABORIGINAL LAND RIGHTS (NORTHERN TERRITORY) AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister for Aboriginal Affairs.

The purpose of this Bill is to;

- . provide for the grant of title to the land in the Uluru National Park to an Aboriginal Land Trust, and
- . provide for an arrangement whereby the Aboriginal Land Trust is required to lease back that land to the Director, Australian National Parks and Wildlife Service to hold for the purposes of the National Parks and Wildlife Conservation Act 1975.

The Committee has no comments on this Bill.

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

AUSTRALIAN LAND TRANSPORT (FINANCIAL ASSISTANCE) BILL
1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister for Transport.

This Bill provides for the establishment of an Australian Land Transport Fund into which is to be paid a specified share of customs and excise duty on motor spirit and diesel fuel for the purpose of funding a program of financial assistance for land transport over the five year period 1985/86 to 1989/90.

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

Clauses 19,20,21 and 22 - Henry VIII clauses

Clauses 19, 20, 21 and 22 permit the Minister to direct that percentages set out in sub-sections 17(1) or (2) or 18(1) or (2) or Schedules 1, 2 or 3 be varied so as to allocate the undistributed balance of the proposed Australian Land Transport Trust Fund after 30 June 1987 and to transfer funds from one category to another (eg. from urban arterial roads to national roads or vice versa).

The nature of the percentages set out in the Schedule is such that ease of variation may be desirable and the

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

AUSTRALIAN LAND TRANSPORT (FINANCIAL ASSISTANCE) BILL
1985 (Cont 2)

Committee recognises that the Minister's power is subject to strict limitations. Nevertheless as the clauses permit the variation of the terms of the Act by executive instrument they may be characterised as "Henry VIII" clauses and as such the Committee draws the clauses to the attention of Senators in that they may be considered to be an inappropriate delegation of legislative power.

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

AUSTRALIAN SHIPPING COMMISSION (ADDITIONAL CAPITAL)
BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister for Transport.

The purpose of this Bill is to provide the Australian Shipping Commission with additional capital of \$70,541,000. This additional capital is required to provide the Commission with a capital structure appropriate for a commercial enterprise and marks a further step in the Government's program of revitalising Australia's shipping industry.

The Committee has no comments on this Bill.

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

AUSTRALIAN SPORTS COMMISSION BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Minister for Sport, Recreation and Tourism.

This Bill is for an Act to establish the Australian Sports Commission as a Commonwealth statutory authority. The Bill sets out the objectives, functions and powers of the Commission. It also covers a wide range of issues relating to its management and operation. The Bill defines the relationship between the Commission and the Government within which the Commission will undertake its tasks. It also authorises the establishment of an Australian Sports Aid Foundation.

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

Clause 11 - Delegation

Clause 11 permits the proposed Australian Sports Commission to delegate any of its powers under the Act (other than the power of delegation) to "a person" or to "a committee".

The Committee is concerned that the clause imposes no limitation as to the persons or committees to whom or to which powers may be delegated. If the power of delegation to committees, for example, is intended to be restricted to committees of members of the Commission

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

AUSTRALIAN SPORTS COMMISSION BILL 1985 (Cont 2)

constituted under clause 19 of the Bill then the Committee believes this should be stipulated. The Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 34 - Henry VIII clause

Clause 34 provides that the Commission shall not, except with the written approval of the Minister, enter into a contract involving payment or receipt by the Commission of more than \$500,000 "or, if a higher amount is prescribed, that higher amount". Because the clause permits the variation of the amount specified by regulations it may be characterised as a "Henry VIII" clause and as such the Committee draws it to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

Clauses 36 and 37 - Henry VIII clauses

Clauses 36 and 37 provide that the income, property and transactions of the proposed Australian Sports Commission and Sports Aid Foundation are not to be subject to Commonwealth, State or Territory taxes. Sub-clauses 36(3) and 37(3), however, provide that the regulations may subject the Commission or Foundation to taxation under a specified law. The sub-clauses may be

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AUSTRALIAN SPORTS COMMISSION BILL 1985 (Cont 3)

regarded as "Henry VIII" clauses in that they permit the effect of clauses 36 and 37 to be varied by regulations. The Committee drew attention to a similar provision in the Snowy Mountains Engineering Corporation Bill 1985 in its Alert Digest No. 3 of 1985.

The Committee draws sub-clauses 36(3) and 37(3) to the attention of Senators in that they may be considered an inappropriate delegation of legislative power.

Clause 40 - Delegation

Clause 40 permits the Minister to delgate to "a person" certain of his powers under the Act including, for example, the power to give directions to the Commission with respect to the policies and practices to be followed by it and the power to approve the entry by the Commission into contracts involving payment of more than \$500,000. The Committee questions whether these powers would not more appropriately be exercisable only by the Minister and considers that, if they are to be delegated, some qualification should be imposed on the persons to whom they may be delegated.

The Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

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

BASS STRAIT FREIGHT ADJUSTMENT LEVY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister Representing the Minister for Resources and Energy.

The purpose of this Bill is to give effect to changes in the adjustment levy rate in accordance with variations in the special freight allowance component of the import parity price for Bass Strait crude oil. The amendments increase the amount of adjustment levy on Bass Strait crude oil from 1 January and 1 March 1985 and thereafter express the amount of levy as a fixed 65 per cent of the special freight allowance component.

The Committee has no comments on this Bill.

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

BASS STRAIT FREIGHT ADJUSTMENT TRUST FUND AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister Representing the Minister for Resources and Energy.

This Bill provides for consequential amendments to the Bass Strait Freight Adjustment Trust Fund Act 1984 arising from parallel amendments being made to the Bass Strait Freight Adjustment Levy Act 1984. Those amendments increase the amount of adjustment levy on Bass Strait crude oil from 1 January and 1 March 1985 and thereafter express the amount of levy as a fixed 65 per cent of the special freight allowance component in the import parity price of Bass Strait crude oil. The present Bill provides for automatic transfer to the Trust Fund of levy collected and paid into consolidated revenue.

The Committee has no comments on this Bill.

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

BROADCASTING AND TELEVISION LEGISLATION AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister for Communications.

The purpose of this Bill is to provide for a number of amendments to the Australian Broadcasting Corporation Act 1983 which will enable the Australian Broadcasting Corporation (ABC) to establish subsidiary commercial companies, partnerships and other ventures jointly with the private sector; to formalise the position of a staff elected Director on the ABC Board; to appoint unattached officers to the ABC and to deem certain officers as having retired from the ABC as a result of prolonged unauthorised absence from work.

The Committee has made no comments on this Bill.

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

COMMONWEALTH BANKS AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Treasurer.

The main purpose of this Bill is to broaden the charter of the Commonwealth Banks Act 1959 to allow the Commonwealth Development Bank to provide finance for all general business purposes and to provide equity financing and packages of equity and debt.

The Committee has no comments on this Bill.

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

COMMUNICATIONS LEGISLATION AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister for Communications.

Provisions of this Bill will allow Telecom and OTC to enter into currency hedging and financial futures contracts. It will also enable Australia Post, Telecom and OTC to lease property for periods longer than 10 years without the need for approval of the Minister for Communications, providing the cost of the lease does not exceed the current prescribed contract threshold - presently \$2,000,000 in the case of Telecom and \$500,000 in the case of Australia Post and OTC.

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

Clauses 9 and 16 - Henry VIII clauses

Clauses 9 and 16 insert new sections 82 and 79 in the Postal Services Act 1975 and the Telecommunications Act 1975 respectively, providing that the relevant Commission shall not, except with the written approval of the Minister, enter into contracts for amounts exceeding \$500,000 'or, if a higher amount is prescribed by the regulations, that higher amount'. Because each clause permits the variation of the amount specified by regulations, each may be characterised as a

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

COMMUNICATIONS LEGISLATION AMENDMENT BILL 1985
(Cont 2)

"Henry VIII" clause and as such the Committee draws each clause to the attention of Senators in that the clauses may be considered an inappropriate delegation of legislative power.

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

COMPANIES AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Attorney-General.

The purpose of this Bill is to facilitate the introduction of a new 'short form' of annual return, which will be used as the vehicle for making significant changes to the requirements for disclosure of financial information by companies.

The Committee has no comments on this Bill.

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

COMPANIES (FEES) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Attorney-General.

The purpose of the Companies (Fees) Amendment Bill is to ensure that changes to the annual return procedures effected by the Companies Amendment Bill 1985 do not alter the provisions relating to the liability of companies to pay late fees for failing to notify Corporate Affairs Commissions of various matters including changes of directors and changes in address of the registered office.

The Committee has no comments on this Bill.

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

DAIRY INDUSTRY STABILIZATION LEVY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Minister for Primary Industry.

This Bill amends the Dairy Industry Stabilization Levy Act 1977 and is an integral element in the overall package of marketing arrangements. The Bill imposes a levy on certain dairy products produced at a factory, with butter, butteroil and cheddar cheeses likely to be the only products to, in practice, attract a significant levy. The rate of the levy will be determined by regulation in the first year and for subsequent years by a formula which is detailed in the legislation.

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

Clause 7 - Rate of levy

Clause 7 substitutes a new section 7 in the Principal Act providing that the base rate of levy imposed on dairy products is to be fixed by regulations. The Committee considers that provisions fixing rates of taxes, levies or similar imposts are not appropriate for inclusion in delegated legislation. It has drawn attention to similar provisions previously (see for example its comments on the Radiocommunications (Frequency Reservation Certificate Tax) Bill 1983 in its Eleventh Report of 1983).

The Committee draws the clause to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

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

DAIRY LEGISLATION AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Minister for Primary Industry.

This Bill contains amendments to the Dairy Produce Act 1924 and the Dairy Produce Sales Promotion Act 1958. The most significant provision is that which discontinues export pooling for production on or after 1 July 1985. Since existing export pools will continue until finalised, appropriate savings provisions have been provided in the Bill.

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

Clause 17 - Henry VIII clause

Clause 17 substitutes a new section 25 in the Dairy Produce Act 1924 providing that the Australian Dairy Corporation shall not, except with the approval of the Minister, enter into a contract for an amount exceeding \$500,000 'or, if a higher amount is prescribed, that higher amount'.

Because the clause permits the variation of the amount specified in the Act by way of regulations it may be characterised as a "Henry VIII" clause and as such the Committee draws it to the attention of Senators in that it may be regarded as an inappropriate delegation of legislative power.

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

DAIRY LEGISLATION AMENDMENT BILL 1985 (Cont 2)

Clause 20 - Determinations by Corporation

Clause 20 inserts a new section 27 in the Dairy Produce Act 1924 relating to the making of determinations by the Corporation that a product is dairy produce for the purposes of the Act. Paragraph 27(1)(c) will authorize the making of determinations which are retrospective in their effect. The Committee is concerned that power should be vested in the Corporation to make determinations with retrospective effect, the only sanction for the Parliament being the disallowance of the determination.

The Committee draws the clause to the attention of Senators in that, by permitting the making of executive instruments with retrospective effect, it may be considered to constitute an inappropriate delegation of legislative power.

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

DAIRY PRODUCE MARKET SUPPORT BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Minister for Primary Industry.

The Bill provides for collection and administrative arrangements for the market support levy imposed under the Dairy Produce Market Support Levy Bill 1985 and the Dairy Products Levy imposed under the Dairy Industry Stabilization Levy Amendment Bill 1985; the establishment of a Market Support Fund and the payment of market support payments; and the establishment of a supplementary fund and the payment of supplementary market support payments.

The Committee has no comments on this Bill.

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

DAIRY PRODUCE MARKET SUPPORT LEVY BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Minister for Primary Industry.

The Bill provides for the imposition of a levy on the milk fat content of relevant dairy produce (whole milk and whole milk dairy products). The maximum amount of the levy is 45 cents per kilogram of milk fat, with the operative rate being established by regulation following a recommendation by the Australian Dairy Corporation. The levy is payable by the producer of the relevant dairy produce.

The Committee has no comments on this Bill.

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

D5/85

DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Attorney-General.

This is a Bill to amend the Director of Public Prosecutions Act 1983 (the Principal Act) so as to confer additional functions on the Director of Public Prosecutions. In particular, the Bill will permit the Director of Public Prosecutions to pursue, where appropriate, civil remedies on behalf of the Commonwealth and its authorities at the stage when he is considering or proposing to prosecute.

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

Clause 3 - Unreviewable discretion

Paragraph 3(1)(d) inserts a new sub-section 6(7) in the Principal Act providing that the taking by the Director of a civil remedy shall not be challenged or called in question in any court on grounds which relate to the Director's power, under the Act, to take that remedy.

The provision is similar in effect to the existing sub-section 6(7) on which the Committee commented in its Fourteenth Report of 1983 (30 November 1983). The effect of the sub-section is to oust the jurisdiction of the courts to examine the power of the Director to take certain proceedings. The Committee appreciates that this ousting of jurisdiction would appear to flow from the policy of the Bill but it would appreciate more detailed explanation of the reasons for so ousting the jurisdiction of the courts.

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

MINISTERS OF STATE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Special Minister of State.

The purpose of this Bill is to amend the Ministers of State Act 1952 to increase the limit on the annual sum appropriated from the Commonwealth Consolidated Revenue Fund in respect of the salaries of Ministers, consequent upon the automatic flow-on, to offices within the Remuneration Tribunal's jurisdiction, of the 2.6 per cent National Wage Case handed down by the Australian Conciliation and Arbitration Commission on 3 April 1985.

The Committee has no comments on this Bill.

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

NATIONAL CRIME AUTHORITY (MISCELLANEOUS AMENDMENTS)
BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Special Minister of State.

The purpose of this Bill is to amend the National Crime Authority Act 1984 to exempt certain information obtained under various legislative provisions from the ambit of section 20 of the Act.

The Committee has no comments on this Bill.

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

NATIONAL PARKS AND WILDLIFE CONSERVATION AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister for Arts, Heritage and the Environment.

The purpose of this Bill is to amend the National Parks and Wildlife Conservation Act 1975 to enable implementation of the government's decision to grant the land in Uluru (Ayers Rock - Mount Olga) National Park to an Aboriginal Land Trust and implementation of the agreement with the Aboriginal traditional owners to lease the area back to the Director of National Parks and Wildlife to be managed as a National Park.

The Committee has no comments on this Bill.

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

SALES TAX (NO.5) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Treasurer.

The purpose of this Bill is to amend the Sales Tax Act (No.5) 1930 to formally impose sales tax on imported goods at the rates of tax in force when the goods are entered for home consumption.

The Committee has no comments on this Bill.

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

SALES TAX ASSESSMENT BILL (NO.10) 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Treasurer.

This Bill will ensure that royalties paid in connection with the manufacture, sale or lease of goods, but under arrangements that have the effect of excluding them from the taxable sale value of the goods, will not escape the payment of sales tax.

The Committee has no comments on this Bill.

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

SALES TAX BILL (NO.10A) 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Treasurer.

This Bill will formally impose sales tax payable under the (No.10) Assessment Bill on royalties in cases where that sales tax is technically a duty of excise.

The Committee has no comments on this Bill.

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

SALES TAX BILL (NO.10B) 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Treasurer.

By this Bill, sales tax will be formally imposed on royalties paid on goods where the tax is in the nature of a customs duty, for example, where the payment of the royalty is connected with the importation of the goods.

The Committee has no comments on this Bill.

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

SALES TAX BILL (NO.10C) 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Treasurer.

The purpose of this Bill is to impose a tax, being neither a duty of excise nor a duty of customs, on the sale value of certain goods.

The Committee has no comments on this Bill.

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

SALES TAX LAWS AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Treasurer.

This is the main Bill in a package of 6 Bills that together will amend the sales tax in a number of important respects.

Included in this Bill are measures necessary to counter arrangements under which wholesalers are avoiding sales tax by selling goods by retail under agency and other marketing arrangements.

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

Clause 2 - Retrospectivity

Sub-clause 2(2) deems section 3, sub-section 4(2), sections 11 and 12 and sections 54 to 56 to have come into operation on 21 August 1981. Sub-section 4(2) substitutes a new definition of 'manufacture' in the Sales Tax Assessment Act (No.1) 1930 to make it clear that the exclusion in respect of the combination of parts that it is customary for users or consumers to undertake applies only to combination customarily undertaken by persons who ultimately use or enjoy the end product. The Explanatory Memorandum states that the present form of the exclusion has been exploited by

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SALES TAX LAWS AMENDMENT BILL 1985 (Cont 2)

firms which previously imported fully assembled products at high rates of tax but now import the components and assemble the products in Australia. By virtue of sub-clause 2(2) the re-drafted definition would apply to goods manufactured after 20 August 1981, the date on which the former Treasurer announced the proposed change in the law.

Sections 11 and 12 and sections 54 to 56 amend transitional provisions inserted in the Sales Tax Assessment Act (No.1) 1930 by the Sales Tax Assessment (No.1) Amendment Act 1978 and transitional provisions in the latter Act. That Act introduced anti-avoidance measures including provisions designed to secure payment of sales tax on the full value of goods manufactured for a person out of exempt materials supplied by that person to the manufacturer. Transitional provisions restricted the operation of these measures to goods manufactured under agreements entered into after 20 September 1978. The Explanatory Memorandum states that the transitional provisions have allowed the continuation of long-standing arrangements between closely associated companies which were in existence prior to 20 September 1978 and are likely to continue indefinitely. By virtue of sub-clause 2(2) the exemption afforded by the transitional provisions to arrangements in existence prior to 20 September 1978 will no longer apply in respect of goods manufactured after 20 August 1981, the date of the announcement by the former Treasurer of this proposal.

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

SALES TAX LAWS AMENDMENT BILL 1985 (Cont 3)

It is clear from the Explanatory Memorandum not only that the sub-clause will retrospectively affect the position of persons and companies with respect to their liability to pay sales tax but also that it is intended to do so as a matter of policy. However since the existence of the loopholes has apparently been known since August 1981 it may be considered that the period of retrospective application - by now almost four years - is excessive. The Committee draws the sub-clause to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

Clause 59 - Entry and inspection without warrant

Clause 59 inserts a new section 12E in the Sales Tax Procedure Act 1934 providing that for the purposes of a Sales Tax Assessment Act an officer authorized in writing by the Commission may enter any premises at all reasonable times, inspect documents, examine goods and remove or take samples of such goods.

The Committee draws the clause to the attention of Senators in that, by providing for entry and inspection without warrant, it may be considered to trespass unduly on personal rights and liberties.

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

SNOWY MOUNTAINS ENGINEERING CORPORATION AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister for Housing and Construction.

The purpose of this Bill is to provide for the restructuring and revitalisation of the Snowy Mountains Engineering Corporation so as to create a viable organisation resulting in consequential financial returns to the Commonwealth at levels consistent with sound commercial principles and practices. The Bill replaces the Snowy Mountains Engineering Corporation Bill 1985 introduced on 27 March 1985.

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

Clause 8 - Proposed sections 23, 50 and 54

Delegation

Clause 8 inserts new Parts IV, V, VI and VII in the Principal Act to provide for the restructuring of the Corporation. Proposed section 23 would enable the Corporation Board to delegate any of its powers under the Act (other than the power of delegation) to "a person". Proposed section 54 would similarly enable the Minister to delegate any of his or her powers under the Act (other than the power of delegation) to "a person".

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

SNOWY MOUNTAINS ENGINEERING CORPORATION AMENDMENT
BILL 1985 (Cont 2)

The Committee is concerned that the proposed sections place no limitation on, and give no indication of, the attributes of persons to whom the powers of the Board or Minister may be delegated. It therefore draws the provisions to the attention of Senators in that they may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Inappropriate delegation of legislative power

Proposed section 50 would provide that the Corporation is subject to taxation under the laws of the Commonwealth 'and to such other taxation as the Minister specifies'. It appears that the section is a re-wording of clause 40 of the Snowy Mountains Engineering Corporation Bill 1985 to which the Committee drew attention in its Alert Digest No. 3 of 1985 (17 April 1985). That clause provided that the Corporation was not to be subject to State or Territory taxes except as provided by regulations. Proposed section 50 goes even further by removing the decision to subject the Corporation to State or Territory taxes from parliamentary scrutiny. The Committee draws the provision to the attention of Senators in that it may be regarded as an inappropriate delegation of legislative power.

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

D5/85

SOCIAL SECURITY AND REPATRIATION (ABOLITION OF ASSETS TEST) BILL 1985 [No.2]

This Bill was introduced into the Senate on 8 May 1985 by Senator Messner.

The purpose of this Bill is to abolish the assets test on Social Security and Repatriation pensioners and beneficiaries enacted in September 1984. The Bill is in the same form as the similarly titled Bill introduced into the Senate on 28 February 1985 by Senator Messner, the Second Reading of which was negatived on 21 March 1985.

The Committee has no comments on this Bill.

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

STATES AND NORTHERN TERRITORY GRANTS (RURAL ADJUSTMENT)
BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister for Primary Industry.

The purpose of this Bill is to provide parliamentary approval for the execution on behalf of the Commonwealth of an agreement between the Commonwealth and the States for a new rural adjustment scheme. The details of the scheme are set out in the agreement which is contained in a schedule to the Bill and in a schedule to the agreement.

The Committee has no comments on this Bill.

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

STATES GRANTS (EDUCATION ASSISTANCE - PARTICIPATION AND EQUITY) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Minister Representing the Minister for Education.

The primary purpose of this Bill is to amend the States Grants (Education Assistance - Participation and Equity) Act 1983 to supplement the grants available to the States and the Northern Territory to take account of cost increases since the enactment of the last amending legislation in October 1984. This Act provides funds for the Participation and Equity Program which commenced in 1984.

The Committee has no comments on this Bill.

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

STATES GRANTS (SCHOOLS ASSISTANCE) LEGISLATION AMENDMENT
BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Minister Representing the Minister for Education.

The main purpose of this Bill is adjust 1985 grants to government and non-government schools in the States and Northern Territory, in line with the Government's policy of providing retrospective costs supplementation for the Commonwealth's schools programs.

The Committee has no comments on this Bill.

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

D5/85

STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) AMENDMENT
Bill 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Minister Representing the Minister for Education.

The primary purpose of this Bill is to supplement tertiary education grants to the States and the Northern Territory for cost increases by amending the States Grants (Tertiary Education Assistance) Act 1984. This Act provides grants to the States and the Northern Territory for financial assistance to universities and colleges of advanced education for the triennium 1985-87 and technical and further education for 1985.

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

Clause 12 - Variation of Schedules

Clause 12 inserts new sub-sections 41 (3A) and (3B) in the Principal Act enabling the Minister to direct that a project or a Commonwealth contribution specified in Schedule 18,19 or 20 to the Act be varied in accordance with the direction.

The Committee notes that directions under the new sub-sections will, unlike directions under existing sub-sections 41(1) and (2), be able to be given with the

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STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) AMENDMENT
BILL 1985 (Cont 2)

result that a State may become liable to repay an amount to the Commonwealth, and will not, again unlike directions under sub-sections 41(1) and (2), be subject to tabling and disallowance. Because the sub-sections permit the variation of the terms of the Act by executive direction they may be characterised as "Henry VIII" clauses and as such the Committee draws the new provisions to the attention of Senators in that they may be regarded as an inappropriate delegation of legislative power.

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO.1) 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Attorney-General.

The amendments made by this Bill have a number of purposes such as the tidying up, correction or up-dating of legislation. Other amendments implement changes that are of minor policy significance or are of a routine administrative nature.

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

Clause 3

Delegation

Clause 3 amends the Acts specified in Schedule 1 to the Bill as set out in that Schedule. The Schedule inserts a new section 12A in the Consular Privileges and Immunities Act 1972 permitting the Minister for Industry, Technology and Commerce to delegate to "a person" all of the Minister's powers under the Act, other than the power of delegation.

The Explanatory Memorandum indicates that it is intended that powers will only be delegated to Departmental officers but the proposed section does not spell this out. The Committee draws the new provision to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO.1) 1985
(Cont 2)

dependent upon insufficiently defined administrative powers.

The Schedule also inserts a new section 14A in the Diplomatic Privileges and Immunities Act 1967 similarly permitting the Minister for Industry, Technology and Commerce to delegate to "a person" all of the Minister's powers under the Act, other than the power of delegation.

Once again although the Explanatory Memorandum indicates that it is intended only to delegate to Departmental officers no such limitation is imposed by the proposed section. The Committee draws the new section to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Reversal of onus of proof

The Schedule further inserts new sections 11 and 22 in the Protection of the Sea (Prevention of Pollution from Ships) Act 1983. New sub-sections 11(2) and (4) and 22(2) and (4) each impose on the defendant in a prosecution under sub-sections 11(1) or (3) or 22(1) or (3) for failure to notify incidents involving the discharge of oil or other liquid substances the burden

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO.1) 1985
(Cont 3)

of establishing to the satisfaction of the court on the balance of probabilities defences made available under those sub-sections, viz. that the person was unable to comply, that the person was not aware of the incident or was not aware that the master of the ship was unable to comply with the relevant obligation. The Senate Standing Committee on Constitutional and Legal Affairs in its Report, 'The Burden of Proof in Criminal Proceedings' (Parliamentary Paper No. 319/1982) urged that such a persuasive onus should not be placed on defendants but rather that they should merely be required to bear an evidential onus, that is the onus of adducing evidence of the existence of a defence, the burden of negating which will then be borne by the prosecution.

The Committee draws new sub-sections 11(2) and (4) and 22(2) and (4) to the attention of Senators in that, by imposing a persuasive onus on defendants in criminal proceedings, they may be considered to trespass unduly on personal rights and liberties.

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

SUPPLY BILL (NO.1) 1985-86

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister Representing the Minister for Finance.

This Bill, together with its companion Bills, Supply Bill (No. 2) 1985-86 and Supply (Parliamentary Departments) Bill 1985-86, seeks interim appropriations for the services of the government for the period 1 July 1985 to 30 November 1985, by which date it is expected that the equivalent Appropriation Bills, which will form part of the budget for 1985-86, will have been enacted.

The Committee has no comments on this Bill.

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

SUPPLY BILL (NO. 2) 1985-86

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister Representing the Minister for Finance.

This Bill seeks interim appropriations, totalling \$1,752.6 million, for expenditure on capital works and services, payments to or for the States and the Northern Territory and certain other services for the period 1 July 1985 to 30 November 1985.

The Committee has no comments on this Bill.

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

SUPPLY (PARLIAMENTARY DEPARTMENTS) BILL 1985-86

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister Representing the Minister for Finance.

This Bill seeks interim appropriations to meet expenditure by the parliamentary departments during the period 1 July 1985 to 30 November 1985. They total some \$19.5 million which is \$2.3 million or about 13.4 per cent greater than the amount provided for the same functions in the supply period 1984-85. An increase is necessary to maintain the on-going operations of the Parliament, and to meet unavoidable salary and other cost increases arising partly from the increased numbers of Members and Senators.

The Committee has no comments on this Bill.

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

TAXATION LAWS AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Treasurer.

This Bill will amend the Taxation Law in a number of ways including -

- (a) it will abolish the rule, known as the 30/20 rule, that requires Life Assurance companies and certain superannuation funds to hold specified proportions of their assets in public and Commonwealth securities;
- (b) it will amend the law to extend existing anti-tax avoidance provisions to counter further variants of avoidance schemes of the expenditure recoupment type;
- (c) it also contains the measures necessary for the phased introduction of personal income tax on Christmas Island and the introduction there of full company tax and medicare levy in accordance with the decision to fully integrate the island with mainland Australia; and
- (d) the secrecy provisions of the income tax law are to be amended to enable the Commissioner of Taxation to supply further information for statistical purposes to the Australian Statistician.

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

TAXATION LAWS AMENDMENT BILL 1985 (Cont 2)

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

Clauses 12, 14 and 38 - Retrospectivity

Clauses 12,14 and 38 will extend existing provisions of the Principal Act which operate to deny deductions or rebates for expenditure incurred under an agreement entered into on or after 24 September 1978 for the purpose of tax avoidance whereby the taxpayer receives a compensatory benefit the value of which, together with the expected tax saving, is greater than or equal to the initial expenditure. The amendments will extend the operation of these provisions to cover variants of 'expenditure recoupment' schemes such as expenditure incurred in contract fees paid in respect of the growing of cotton and management fees paid in relation to the growing of jojoba beans. The effect of the amendments will be to deny deductions or rebates claimed in respect of expenditure incurred in such schemes from the 1978-79 income year on.

The Explanatory Memorandum justifies this retrospectivity on the basis that 24 September 1978 was the date on which the former Treasurer announced legislative action against such schemes and said that any future legislation dealing with variants of the schemes would be effective from that date. Nevertheless the Committee draws the clauses to the attention of Senators in that such retrospective denial of deductions or rebates to taxpayers may be considered to trespass unduly on personal rights and liberties.

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

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 9 May 1985 by the Attorney-General.

This Bill amends the Telecommunications (Interception) Act 1979 in two main respects. Firstly it will enable Telecom, in specified emergency situations, to intercept a telephone call in order to establish the location of a caller so that appropriate assistance can be given.

Secondly, it will enable formal evidence of acts done by Telecom employees in enabling members of the Australian Federal Police to execute an interception warrant to be given by certificate in court proceedings.

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

Clause 6 - Evidentiary certificates

Clause 6 inserts a new section 25A in the Principal Act providing that the Managing Director of Telecom may issue a certificate setting out facts with respect to acts or thing done by or in relation to officers of the Commission in the execution of warrants permitting the interception of communications made to or from a telecommunications service. Such a certificate is to be conclusive evidence of the matters stated in the document in proceedings by way of prosecution for narcotics offences.

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

TELECOMMUNICATIONS (INTERCEPTION) AMENDMENT BILL 1985
(Cont 2)

The Committee is concerned that in proceedings relating to serious criminal offences evidence should be able to be given by way of conclusive certificate. The Committee acknowledges the weight of the reasons advanced by the Attorney-General in his Second Reading Speech in support of the amendment, in particular the need to protect Telecom employees involved in narcotic interception from public identification because of fears for their safety and the safety of their families.

However, the Committee draws the clause to the attention of Senators in that by permitting the issuing of conclusive certificates in criminal proceedings it may be considered to trespass unduly on personal rights and liberties.

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

WOOL INDUSTRY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 8 May 1985 by the Minister for Primary Industry.

The purpose of this Bill is to amend the Wool Industry Act 1972. The Bill makes provision for the apportionment of wool tax receipts, imposed by the Wool Tax Acts (Nos. 1-5) 1964, among the market support, wool research and the general purposes of the Australian Wool Corporation, that is wool promotion and market administration expenses.

The Committee has no comments on this Bill.

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

WOOL TAX (NOS. 1 TO 5) AMENDMENT BILLS 1985

These Bills were introduced into the House of Representatives on 8 May 1985 by the Minister for Primary Industry.

These Bills will amend the Wool Tax Acts (Nos. 1-5) 1964 to remove from those Acts provision for apportionment of wool tax receipts between wool market support, wool research and the general purposes of the Australian Wool Corporation, ie wool promotion and market administration.

These amendments complement amendments to the Wool Industry Act 1972 which will bring the apportionment of wool tax receipts under that Act and will also allow greater flexibility in the apportionment of wool tax receipts.

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

Clause 3 - Henry VIII clause

Clause 3 of each Bill substitutes a new section 5 in the relevant Principal Act specifying the rate of tax as 8% of the sale value of the wool or such lower rate as may be prescribed. New sub-section 6(2) added by clause 4 of each Bill provides that the rate of tax prescribed must be greater than 4%. Because clause 3 in each case

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WOOL TAX (NOS. 1 TO 5) AMENDMENT BILLS 1985 (Cont 2)

permits the variation of the rate of tax imposed by the enactment by regulations the clause may be characterised as a "Henry VIII clause".

The Committee draws clause 3 of each Bill to the attention of Senators in that in each case it may be considered to be an inappropriate delegation of legislative power.

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



SCRUTINY OF BILLS ALERT DIGEST

No. 6 of 1985

22 MAY 1985

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF
BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator B. Cooney
Senator R.A. Crowley
Senator J. Haines
Senator the Hon. D.B. Scott

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.

D6/85

The Committee has considered the following Bills:

Broadcasting and Television Amendment Bill 1985

Broadcasting and Television (Consequential Amendments)
Bill 1985

Broadcasting Stations Licence Fees Amendment Bill 1985

Defence (Re-establishment) Amendment Bill 1985

Health Legislation Amendment Bill 1985

Local Government (Personal Income Tax Sharing) Amendment
Bill 1985

National Health Amendment Bill 1985

Repatriation Legislation Amendment Bill 1985

Social Security and Repatriation Legislation Amendment
Bill 1985

Social Security Legislation Amendment Bill 1985

States Grants (Nurse Education Transfer Assistance)
Bill 1985

States Grants (Tertiary Education Assistance) Amendment
Bill (No.2) 1985

Television Stations Licence Fees Amendment Bill 1985

NOTE: This Digest is circulated to all Honourable
Senators. Any Senator who wishes to draw matters
to the attention of the Committee under its Terms
of Reference is invited to do so.

BROADCASTING AND TELEVISION AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 15 May 1985 by the Minister for Communications.

The Broadcasting and Television Amendment Bill 1985 amends the Broadcasting and Television Act 1942. The Bill has four main purposes:

- to convert the Act from "station based" to "service based" licensing arrangements;
- to provide for the licensing of commercial radio and television services transmitted to remote areas by the Australian Satellite (AUSSAT);
- to provide uniform procedures for the conduct of Australian Broadcasting Tribunal (Tribunal) inquiries, as well as related amendments; and
- to provide for certain minor amendments.

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

Clause 26 - Henry VIII clause

Clause 26 substitutes a new section 79ZJ in the Principal Act providing that various sections of the Act

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D6/85

BROADCASTING AND TELEVISION AMENDMENT BILL 1985 (Cont 2)

apply to the Special Broadcasting Service as they apply to the Australian Broadcasting Corporation "with such exceptions and subject to such modifications as are prescribed".

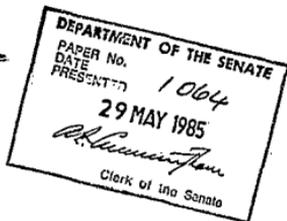
The clause may be regarded as a "Henry VIII" clause in that it permits the effect of the provision to be altered or negated by regulations. The Committee draws the clause to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

Clauses 32, 35 and 42 - Henry VIII clauses

Paragraphs 32(m), 35(j) and 42(f) insert new sub-paragraphs 83(6)(da)(vi), 86(11B)(ca)(vii) and 89A(1D)(ca)(v) respectively each permitting the prescription, by regulations, of matters to which the Australian Broadcasting Tribunal is to have regard in granting remote licences, renewing such licences or consenting to the transfer of such licences. The new provisions may be regarded as "Henry VIII" clauses in that they would permit the matters which the legislature has determined the Tribunal should have regard to in making such decisions to be varied by regulations.

The Committee draws the proposed provisions to the attention of Senators in that they may be regarded as an inappropriate delegation of legislative power.

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



SCRUTINY OF BILLS ALERT DIGEST

No. 7 of 1985

29 MAY 1985

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF
BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator B. Cooney
Senator R.A. Crowley
Senator J. Haines
Senator the Hon. D.B. Scott

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

D7/85

The Committee has considered the following Bills:

Bills of Exchange Amendment Bill 1985

Cheques Bill 1985

Fertilizers (Subsidy) Amendment Bill 1985

Income Tax Assessment Amendment Bill 1985

Parliament (Powers, Privileges and Immunities)
Bill 1985

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

BILLS OF EXCHANGE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 22 May 1985 by the Attorney-General.

The Bills of Exchange Amendment Bill 1985 will amend the Bills of Exchange Act 1909:

- . to make certain changes to that Act that are consequential upon the introduction of the Cheques Bill 1985; and
- . to make changes to the Act to give effect to certain recommendations of the 1964 Manning Committee Report into the Bills of Exchange Act.

The Committee has no comments on this Bill.

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

D7/85

CHEQUES BILL 1985

This Bill was introduced into the House of Representatives on 22 May 1985 by the Attorney-General.

The purpose of the Bill is to provide a separate law on cheques. The Government foreshadowed its intention to introduce this legislation when it released a draft Cheques Bill for public comment in February 1984.

The Committee has no comments on this Bill.

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

D7/85

FERTILIZERS (SUBSIDY) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 20 May 1985 by the Minister for Primary Industry.

The purpose of the Bill is to extend until 30 June 1986 the operation of -

- (i) the Nitrogenous Fertilizers Subsidy Act 1966; and
- (ii) the Phosphate Fertilizers Subsidy Act 1963.

The Bill reflects the Government's response to the interim report of the Industries Assistance Commission which recommended that the subsidies cease on 30 June 1985.

The Committee has no comments on this Bill.

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

D7/85

INCOME TAX ASSESSMENT AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 23 May 1985 by the Treasurer.

This Bill will amend provisions of the income tax law enacted last year to change the taxation treatment of lump sum superannuation and kindred payments to clarify and reinforce the operation of the law in line with the Government's announced objectives.

The Committee has no comments on this Bill.

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

D7/85

PARLIAMENT (POWERS, PRIVILEGES AND IMMUNITIES) BILL 1985

This Bill was introduced into the House of Representatives on 21 May 1985 by Mr Spender.

The purpose of this Bill is to declare the powers, privileges and immunities of the Senate and the House of Representatives, and the committees of each of those Houses.

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

Clause 5 - Definition of privileges

While the Bill sets out to codify the powers of the Houses to punish persons guilty of a breach of a privilege of a House by way of fine or imprisonment it does not attempt to define the privileges for breach of which a person may be punished. Rather, clause 5 retains the terms of section 49 of the Constitution in stating that the privileges of each House are those of the United Kingdom House of Commons as at the establishment of the Commonwealth.

The Committee is concerned that an offence carrying a penalty of a fine of up to \$10,000 in the case of a body corporate or a fine of up to \$5,000 or 6 months imprisonment in the case of a natural person should be created without a clear definition of the acts sought to be punished. The Committee notes that the Joint Select Committee on Parliamentary Privilege recognised this

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

D7/85

PARLIAMENT (POWERS, PRIVILEGES AND IMMUNITIES) BILL 1985
(Cont 2)

problem in its Final Report (Parliamentary Paper No. 219/1984) but argued (at pages 80-82 of that Report) that it was impossible to define exhaustively in advance the circumstances that may constitute contempt of Parliament. Nevertheless the Committee draws the clause to the attention of Senators in that because of the uncertainty it creates as to what constitutes a breach of privilege it may be considered to trespass unduly on personal rights and liberties.

Clause 10 - Henry VIII clause

Sub-paragraph 10(1)(a)(ii) and paragraph 10(2)(b) each enable a House of the Parliament by resolution to specify a maximum fine higher than that permitted by the Bill (presently \$5,000 in the case of a natural person and \$10,000 in the case of a body corporate). Because each paragraph enables the amendment of an enactment by way of resolution of a single House rather than by way of amending legislation they may be characterised as "Henry VIII" provisions and as such the Committee draws them to the attention of Senators in that they may be considered to constitute an inappropriate delegation of legislative power.

Clauses 12 and 13 - Rights of review

Sub-clauses 12(2), 12(8) and 13(3) make it clear that

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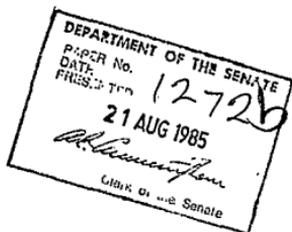
D7/85

PARLIAMENT (POWERS, PRIVILEGES AND IMMUNITIES) BILL 1985
(Cont -3)

the right of review to be conferred on the High Court in respect of a resolution of a House that a person be punished by imprisonment is to be limited to the making of a declaration as to the legality of the actions of that House. The making of such a declaration is not to oblige the House to rescind its resolution. No right of review is to be conferred in respect of resolutions to fine a person.

The Committee acknowledges that the lack of any substantive review on the merits of the actions of a House of the Parliament in resolving to punish a person for contempt or breach of privilege is clearly intended as a matter of policy. The reasons for this decision are fully canvassed at pages 90 to 94 of the Joint Select Committee's Final Report (supra). Nevertheless the Committee draws the clauses to the attention of Senators in that by failing to provide anything more than a limited power of review as to the legality of the exercise of its powers by a House they may be considered to trespass unduly on personal rights and liberties.

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



SCRUTINY OF BILLS ALERT DIGEST

No. 8 of 1985

21 AUGUST 1985

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator B. Cooney
Senator R.A. Crowley
Senator J. Haines

TERMS OF REFERENCE

Extract

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

D8/85

The Committee has considered the following Bills:

Australian Airspace (Nuclear Weapons Prohibition) Bill 1985
Australian Waters (Nuclear-Powered Ships Prohibition) Bill 1985
Australian Waters (Nuclear Weapons Prohibition) Bill 1985
Customs (Prohibition of Exportation of Nuclear Materials) Bill
1985
Customs (Prohibition of Importation of Nuclear Hardware) Bill
1985
Nuclear Weapons Prohibitions Bill 1985

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

D8/85

AUSTRALIAN AIRSPACE (NUCLEAR WEAPONS PROHIBITION) BILL 1985

This Bill was introduced into the Senate on 30 May 1985 by Senator Chipp.

The purpose of this Bill is to prohibit the passage of aircraft carrying nuclear weapons through Australian airspace.

The enforcement provisions of this Bill, the Australian Waters (Nuclear-Powered Ships Prohibition) Bill 1985 and the Australian Waters (Nuclear Weapons Prohibition) Bill 1985 are in substantially similar terms and the comments on clauses of this Bill apply also to the relevant clauses of those Bills.

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

Clause 6 - Review of Ministerial directions

Sub-clause 6(2) would provide that the Minister may direct the taking of such action 'as is, in his opinion, reasonably necessary' to prevent the entry into Australian airspace of an aircraft carrying nuclear weapons. Under sub-clause 6(4) the Commonwealth would only be liable for loss or damage suffered as a result of action taken in accordance with a Ministerial direction if a court were satisfied 'that the action directed to be taken was of such a kind that it could not reasonably have been directed having regard to all the circumstances of the particular case'.

The Committee is gratified that an attempt has been made in this and the other two cognate Bills to overcome the objection which the Committee expressed in its Alert Digest No. 12 of 1984 with regard to the lack of review of the similar Ministerial

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

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discretion in clause 6 of the Australian Waters (Nuclear-Powered Ships and Nuclear Weapons Prohibition) Bill 1984. However the Committee is concerned that the wording of sub-clause 6(4) leaves unclear whether a full merits review or only a review as to the legality of the exercise of the Minister's power of direction is to be afforded: that is, whether it is intended that the court stand in the Minister's shoes and determine whether the action directed to be taken was in fact 'reasonably necessary' or whether the court is restricted to examining whether the action directed to be taken was so unreasonable that a reasonable person could not so have exercised the power of direction. If the latter then the provision does not go beyond the right of review accorded under the Administrative Decisions (Judicial Review) Act 1977 which the Committee criticised as insufficient in its comment on the Australian Waters (Nuclear-Powered Ships and Nuclear Weapons Prohibition) Bill 1984 in its Alert Digest No. 12 of 1984.

The Committee is inclined to the view that sub-clause 6(4) does not afford a full merits review. If such review were intended the sub-clause could merely have required the court to be satisfied that the action directed to be taken was not reasonably necessary having regard to all the circumstances of the case. Instead the court is required to be satisfied that the action directed to be taken 'could not reasonably have been directed'. The Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 7 - Entry and search without warrant

Clause 7 provides that a police officer, customs officer or member of the Defence Force may board and search aircraft and require the person in charge of the aircraft to give information

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

D8/85

and produce books and papers 'for the purpose of ascertaining whether there has occurred a contravention of section 5'. The officers are not required to obtain judicial authorization for such entry and search in the form of a warrant nor are they required to have reasonable grounds for believing that the aircraft is in fact armed with or carrying nuclear weapons. In other words any aircraft could be entered and searched pursuant to this power.

The Committee draws this clause to the attention of Senators in that such an unrestricted power of entry and search may be considered to trespass unduly on personal rights and liberties.

Clause 8 - Defence of reasonable excuse

Clause 8 would create an offence where a person fails to facilitate the boarding of an aircraft, refuses to allow a search to be made, refuses or neglects to comply with a requirement to give information or to produce books and papers or gives false or misleading information to an officer. The Committee is concerned that in the absence of the usual proviso 'without reasonable excuse' a person may commit this offence even though there may be reasons of safety why an aircraft should not be boarded or the person may be genuinely ignorant of the information which he or she is required to give. The offence of giving false or misleading information also does not follow the usual form of such provisions in that it fails to stipulate that the information provided be false or misleading 'in a material particular'.

The Committee draws the clause to the attention of Senators in that in these two respects it may be considered to trespass unduly on personal rights and liberties.

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

D8/85

AUSTRALIAN WATERS (NUCLEAR-POWERED SHIPS PROHIBITION) BILL 1985

This Bill was introduced into the Senate on 30 May 1985 by Senator Chipp.

The purpose of this Bill is to prohibit the passage of nuclear-powered ships through Australian waters.

The comments on clauses 6,7 and 8 of the Australian Airspace (Nuclear Weapons Prohibition) Bill 1985 apply equally to clauses 6,7,and 8 of this Bill.

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

D8/85

AUSTRALIAN WATERS (NUCLEAR WEAPONS PROHIBITION) BILL 1985

This Bill was introduced into the Senate on 30 May 1985 by Senator Chipp.

The purpose of this Bill is to prohibit the passage of ships carrying nuclear weapons through Australian waters.

The comments on clauses 6,7,and 8 of the Australian Airspace (Nuclear Weapons Prohibition) Bill 1985 apply equally to clauses 6,7 and 8 of this Bill.

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

D8/85

CUSTOMS (PROHIBITION OF EXPORTATION OF NUCLEAR MATERIALS) BILL
1985

This Bill was introduced into the Senate on 30 May 1985 by
Senator Chipp.

The purpose of this Bill is to prohibit the export of nuclear
materials from Australia.

The Committee has no comments on this Bill.

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

D8/85

CUSTOMS (PROHIBITION OF IMPORTATION OF NUCLEAR HARDWARE) BILL
1985

This Bill was introduced into the Senate on 30 May 1985 by Senator Chipp.

The purpose of this Bill is to prohibit the import of nuclear hardware except where such importation is considered essential for the purpose of enabling the 'Australian Atomic Energy Agency' to maintain its capacity to produce isotopes for medical or industrial use.

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

Clause 6 - Review of Ministerial discretion

Paragraph 6(2)(b) provides that permission to import nuclear hardware shall not be granted by the Minister unless the Minister is satisfied that the nuclear hardware is essential for the purpose of enabling the 'Australian Atomic Energy Agency' to maintain its capacity to produce isotopes for medical or industrial use. Although sub-clause 6(4) would require the Minister to lay before each House of the Parliament a statement setting out particulars of the nuclear hardware to be imported and the use to which it is to be put where permission is granted, the Minister's discretion to grant or refuse permission would not be reviewable except as to its legality pursuant to the Administrative Decisions (Judicial Review) Act 1977.

The Committee has argued on previous occasions that neither parliamentary scrutiny nor review under the Administrative Decisions (Judicial Review) Act 1977 provide an adequate path for review on the merits of administrative decisions such as that in

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

D8/85

question here. One may imagine, for example, that if there were a difference of opinion between the Minister and the 'Agency' as to whether particular nuclear hardware was essential for the 'Agency's' work, review by an independent, quasi-judicial body like the Administrative Appeals Tribunal would provide an appropriate means of resolving that difference. Accordingly the Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

D8/85

question here. One may imagine, for example, that if there were a difference of opinion between the Minister and the 'Agency' as to whether particular nuclear hardware was essential for the 'Agency's' work, review by an independent, quasi-judicial body like the Administrative Appeals Tribunal would provide an appropriate means of resolving that difference. Accordingly the Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

D8/85

NUCLEAR WEAPONS PROHIBITIONS BILL 1985

This Bill was introduced into the Senate on 30 May 1985 by Senator Chipp.

The purpose of this Bill is to prohibit the development, testing, manufacture, transportation or storage of nuclear weapons in, or the importation of nuclear weapons into, Australia.

The Committee has no comments on this Bill.

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

DEPARTMENT OF THE SENATE
PAPER No. 1520
DATE 11 SEP 1985
PRESENTED BY
William J. ...



SCRUTINY OF BILLS ALERT DIGEST

No. 9 of 1985

11 SEPTEMBER 1985

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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 M. Baume
Senator B. Cooney
Senator R.A. Crowley
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.

D9/85

The Committee has considered the following Bills:

- Appropriation Bill (No. 1) 1985-86
- Appropriation Bill (No. 2) 1985-86
- Appropriation (Parliamentary Departments) Bill 1985-86
- *Building Industry Act 1985
- Census and Statistics Amendment Bill 1985
- Dairying Industry Research and Promotion Levy Amendment Bill 1985
- Export Inspection Charges (Miscellaneous Amendments) Bill 1985
- Export Inspection (Establishment Registration Charge) Bill 1985
- Export Inspection (Service Charge) Bill 1985
- Export Market Development Grants Amendment Bill 1985
- Fisheries Agreements (Payments) Amendment Bill 1985
- Foreign Fishing Boats Levy Amendment Bill 1985
- Foreign States Immunities Bill 1985
- Grain Legumes Levy Bill 1985
- Grain Legumes Levy Collection Bill 1985
- Industrial Democracy Bill 1985
- Liquefied Petroleum Gas (Grants) Amendment Bill 1985
- Northern Prawn Fishery Voluntary Adjustment Scheme Loan Guarantee Bill 1985
- Overseas Students Charge Amendment Bill 1985

D9/85

Parliamentary Powers, Privileges and Immunities Bill 1985

Qantas Airways Limited (Loan Guarantee) Bill 1985

States (Works and Housing) Assistance Bill 1985

Wheat Tax Amendment Bill 1985

*Reported to the Senate 11 September 1985.

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

D9/85

APPROPRIATION BILL (NO. 1) 1985-86

This Bill was introduced into the House of Representatives on 20 August 1985 by the Treasurer.

The purpose of the Bill is to appropriate money from the Consolidated Revenue Fund for the ordinary annual services of Government provided for in the 1985-86 Budget.

The Committee has no comments on this Bill.

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

D9/85

APPROPRIATION BILL (NO. 2) 1985-86

This Bill was introduced into the House of Representatives on 20 August 1985 by the Treasurer.

The purpose of the Bill is to appropriate money from the Consolidated Revenue Fund for expenditure on various goods and services, for making advances and loans, and grants to the States and the Northern Territory.

The Committee has no comments on this Bill.

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

D9/85

APPROPRIATION (PARLIAMENTARY DEPARTMENTS) BILL 1985-86

This Bill was introduced into the House of Representatives on 20 August 1985 by the Treasurer.

The purpose of the Bill is to appropriate sums from the Consolidated Revenue Fund for the purposes of Parliamentary Departments during the 1985-86 financial year.

The Committee has no comments on this Bill.

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

D9/85

CENSUS AND STATISTICS AMENDMENT BILL 1985.

This Bill was introduced into the House of Representatives on 21 August 1985 by the Treasurer.

The main purpose of this Bill is to amend the Census and Statistics Act 1905 to enable the external Territories to be included in the 1986 and future Censuses of Population and Housing.

The Committee has no comments on this Bill.

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

D9/85

DAIRYING INDUSTRY RESEARCH AND PROMOTION LEVY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

The purpose of this Bill is to amend the Dairying Industry Research and Promotion Levy Act 1972 to increase the maximum rate of levy for research purposes.

The Committee has no comments on this Bill.

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

D9/85

EXPORT INSPECTION CHARGES (MISCELLANEOUS AMENDMENTS) BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

The purpose of the Bill is to amend the Export Inspection Charge Act 1985 and the Export Inspection Charge Collection Act 1985 so as to provide for collection of charges to be imposed consequential upon passage of the Export Inspection (Service Charge) Bill 1985 and the Export Inspection (Establishment Registration Charge) Bill 1985.

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

Clause 20 - Self incrimination

Clause 20 would substitute a new sub-section 10(2) in the Export Inspection Charge Collection Act 1985 removing self incrimination as an excuse for not submitting returns or providing information under the Act. The new sub-section includes the usual proviso that returns or information so submitted or provided are not to be admissible in evidence except in proceedings for failing to furnish information or a return or for knowingly furnishing information or a return that is false or misleading in a material particular.

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

D9/85

EXPORT INSPECTION CHARGES (MISCELLANEOUS AMENDMENTS) BILL 1985
(Cont. 2)

Although the clause is in standard form the Committee draws it to the attention of Senators as is its usual practice with all clauses removing the privilege against self incrimination in that the clause may be considered to trespass unduly on personal rights and liberties.

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

D9/85

EXPORT INSPECTION (ESTABLISHMENT REGISTRATION CHARGE) BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

The purpose of the Bill is to provide for a charge to be made upon the registration of an export registered establishment where this is requested by an industry.

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

Clause 7 - Inappropriate delegation of legislative power

Clause 7 provides that the rate of charge in respect of the registration of an establishment is to be fixed by regulation. No maximum rate is set. By contrast section 7 of the Export Inspection Charge Act 1985, although leaving the rate of quantity charges to be specified by regulation, imposes a maximum rate of charge.

The Committee has argued in the past that where a charge, levy or tax is left to be fixed by regulation the empowering enactment should at least stipulate a maximum rate. Accordingly the Committee draws the clause to the attention of Senators in that it may be considered inappropriately to delegate legislative power.

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

D9/85

EXPORT INSPECTION (SERVICE CHARGE) BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

The primary purpose of this Bill is to extend the range of legislative options for imposing charges on industry to recoup part of the costs of inspecting rural produce for export. This Bill provides for a charge to be imposed for inspection services provided to a registered export establishment on the basis of hours worked.

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

Clause 7 - Inappropriate delegation of legislative power

Clause 7 provides that the rate of charge in respect of the provision of an export inspection service at an establishment is to be fixed by regulation. As in the case of clause 7 of the Export Inspection (Establishment Registration Charge) Bill 1985 no maximum rate of charge is set and for similar reasons the Committee draws clause 7 of this Bill to the attention of Senators in that it may be considered inappropriately to delegate legislative power.

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

D9/85

EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 21 August 1985 by the Minister for Trade.

This Bill gives legislative effect to the Government's decision announced to Parliament in the 14 May 1985 Statement by the Treasurer to amend the Export Market Development Grants Act 1974 with effect from 20 May 1985.

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

Clause 2 - Retrospectivity

Sub-clause 2(2) provides that certain amendments made by the Bill are to be retrospective to 20 May 1985 in accordance with a press release made by the Minister on 14 May 1985. The amendments have the effect of restricting entitlements under the Export Market Development Grants Scheme.

The Committee is critical of this type of 'legislation by press release' which carries with it the inherent assumption that people should arrange their affairs in accordance with the press releases of Ministers rather than in accordance with the laws made by Parliament. The Committee draws the sub-clause to the attention of Senators in that such retrospectivity may be considered to trespass unduly on personal rights and liberties.

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

D9/85

EXPORT MARKET DEVELOPMENT GRANTS AMENDMENT BILL 1985

(Cont 2)

Clause 9 - Retrospective determinations

Clause 9 would insert a new section 10 in the Principal Act permitting the Minister to declare foreign countries to be proscribed countries by determination in writing published in the Gazette. Expenditure relating to trade with proscribed countries would no longer be eligible expenditure for the purposes of the Act and consideration derived from trade with such countries would no longer be counted as export earnings for the purposes of the Act.

New sub-section 10(1) provides that a determination that a country is a proscribed country may take effect retrospectively. Thus the Minister could, for example, publish on 1 September a determination proscribing a country with effect from 1 July. While sub-sections 10(2), (3), (4) and (5) would provide safeguards in respect of expenditure incurred or consideration received in pursuance of arrangements entered into prior to 1 July (the date of effect of the determination) no such safeguards would be provided in respect of expenditure incurred or consideration received in pursuance of arrangements entered into between 1 July and 1 September (the date on which the determination was actually published). In other words persons could lose considerable benefits under the Act in respect of such expenditure and export income even though, at the time they entered into the relevant agreements, no determination had been published proscribing the particular country.

The Committee draws the clause to the attention of Senators in that such retrospective alteration of eligibility may be considered to trespass unduly on personal rights and liberties.

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

D9/85

FISHERIES AGREEMENTS (PAYMENTS) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

This Bill amends the Fisheries Agreements (Payments) Act 1981 in parallel with the amendments proposed by clauses 5 and 6 of the Foreign Fishing Boats Levy Amendment Bill 1985.

The Committee has no comments on this Bill.

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

D9/85

FOREIGN FISHING BOATS LEVY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

This Bill amends the Foreign Fishing Boats Levy Act 1981:

- (i) to provide clear legal authority for collecting the amount specified in an agreement between Australia and a person other than a foreign Government, whereby Australia agrees to license foreign boats for fishing in the Australian fishing zone; and
- (ii) to empower the Minister to declare that a foreign fishing boat operated by, for or on the instructions of, an Australian for the benefit of Australia is a boat in respect of which the Act does not impose levy.

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

Clause 4 - Non-reviewable discretion

Clause 4 would insert new sub-sections 4(4) and (5) providing that the Minister may declare by notice in the Gazette that the levy imposed on foreign fishing boats is not payable in respect of a particular boat if the Minister is satisfied that the boat is operated by, on behalf of, or in accordance with the instructions of, a resident of Australia and that the operations

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

D9/85

FOREIGN FISHING BOATS LEVY AMENDMENT BILL 1985 (Cont 2)

of the boat in the Australian fishing zone will confer benefits on Australia. Declarations by the Minister will be tabled under the new sub-section (5) but will not be subject to disallowance.

The Committee questions whether parliamentary scrutiny is the most appropriate method of review of this type of discretion. Even if Ministerial declarations were to be made subject to disallowance the Parliament would not be particularly well placed to make judgements about whether, for example, the fishing boat in question was being operated in accordance with the instructions of a resident of Australia. Moreover there is no provision for review of a decision of the Minister refusing to make a declaration under the new sub-section. The Committee suggests that this is a case where jurisdiction to review the Minister's decision on its merits should be conferred on an independent, quasi-judicial body like the Administrative Appeals Tribunal. Accordingly the Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 5 - Inappropriate delegation of legislative power

Clause 5 would insert a new sub-section 5(2) providing that where the Minister has entered into an agreement with a person other than a foreign government with respect to the granting of licences to foreign fishing boats the amount of the foreign

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

D9/85

fishing boats levy is to be the amount specified in that agreement. The effect of this clause, taken together with the Fisheries Agreements (Payments) Act 1981 as amended by the Fisheries Agreements (Payments) Bill 1985, is that the Parliament has delegated to the Minister the power to set, by agreement, the amount of the foreign fishing boat levy in certain cases. By virtue of section 9B of the Fisheries Act 1952 such agreements are tabled in Parliament but they are not subject to disallowance.

The Committee recognizes that a similar regime already applies in respect of amounts in lieu of the foreign fishing boats levy payable under agreements entered into by the Minister and foreign Governments. However the Committee queries whether the effect of these arrangements is that the Parliament delegates its taxation powers in this area without retaining any effective control over the exercise of those powers. The Committee draws the clause to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

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

D9/85

FOREIGN STATES IMMUNITIES BILL 1985

This Bill was introduced into the House of Representatives on 21 August 1985 by the Attorney-General.

The purpose of the Foreign States Immunities Bill 1985 is to set out in clear and accessible form the law relating to the jurisdiction of Australian courts over foreign States, their agencies and instrumentalities.

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

Clause 42 - 'Henry VIII' clause: Retrospectivity

Sub clauses 42(1) and (2) provide that where the Governor-General is satisfied:

- . that an immunity or privilege conferred by the Act in relation to a foreign State is not accorded by the law of the foreign State in relation to Australia; or
- . that the immunities and privileges conferred by the Act in relation to a foreign State differ from those required by a treaty, convention or other agreement to which the foreign State and Australia are parties,

the Governor-General may make regulations modifying the operation of the Act with respect to those immunities and privileges in relation to the foreign State. Sub-clauses 42(3) and (4) permit regulations made under sub-clauses (1) and (2) to extend to proceedings instituted prior to the making of the relevant

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

D9/85

FOREIGN STATES IMMUNITIES BILL 1985 (Cont 2)

regulations and such regulations extending or restricting immunity from action may affect the substantive rights of the parties.

The Committee acknowledges the reasons of policy advanced in the Law Reform Commission's report on Foreign State Immunity for this provision (see paragraph 162, pages 101-2 of ALRC Report No. 24, Parliamentary Paper No. 239/1984). In particular the Committee acknowledges the need in any general regime of foreign state immunity to allow for variations to be negotiated on a bilateral basis with particular countries. It draws attention to the Law Reform Commission's argument that -

'[I]f only prospective regulations are permitted the ability of the Australian government to negotiate claims settlements agreements with foreign states may be severely hampered. For example, the ability of the United States to negotiate the release of the Tehran hostages in 1981 depended upon its ability to block all litigation then under way against Iran in United States courts.'

However it is the Committee's practice to draw attention to all 'Henry VIII' clauses permitting the modification of the operation of an Act by regulations. The Committee therefore draws clause 42 to the attention of Senators in that it may be considered an inappropriate delegation of legislative power and in that by permitting the retrospective alteration of the rights of parties before the courts it may be considered to trespass unduly on personal rights and liberties.

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

D9/85

GRAIN LEGUMES LEVY BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

The purpose of this Bill is to provide for the imposition of a levy on grain legumes produced in Australia. The moneys raised by the imposition of the levy will be used to finance research into grain legumes.

The Committee has no comments on this Bill.

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

D9/85

GRAIN LEGUMES LEVY COLLECTION BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

The purpose of this Bill is to provide the machinery necessary for collecting the levy imposed by the Grain Legumes Levy Bill 1985.

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

Sub-clause 12(2) - Self incrimination

Sub-clause 12(2) provides that a person is not excused from submitting a return or providing information on the ground that it might tend to incriminate the person but that any return or information so submitted or provided is not admissible in evidence except in proceedings for the failure to submit a return or to provide information or for the furnishing of information or a return that is false or misleading in a material particular.

Although the sub-clause is in standard form it is the Committee's practice to draw to the attention of Senators all such provisions removing the privilege against self incrimination in that they may be considered to trespass unduly on personal rights and liberties.

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

D9/85

INDUSTRIAL DEMOCRACY BILL 1985

This Bill was introduced into the Senate on 21 August 1985 by Senator Siddons.

The purpose of the Bill is to encourage the introduction of industrial democracy in Australian enterprises through reduction in company tax for enterprises classified as industrial democracy enterprises.

The Committee has no comments on this Bill.

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

D9/85

LIQUEFIED PETROLEUM GAS (GRANTS) AMENDMENT BILL 1985

This Bill was introduced into the Senate on 22 August 1985 by the Minister for Industry, Technology and Commerce.

The purpose of the Bill is to amend the Liquefied Petroleum Gas (Grants) Act 1980 to terminate the operation of the subsidy schemes under that Act on and from 1 October 1985, in accordance with the Government's decision announced by the Treasurer on 14 May 1985.

The Committee has no comments on this Bill.

D9/85

NORTHERN PRAWN FISHERY VOLUNTARY ADJUSTMENT SCHEME LOAN GUARANTEE
BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

The purpose of the Bill is to authorise the Treasurer, on behalf of the Commonwealth and at the request of the Queensland Fish Management Authority, to guarantee the repayment of, and the payment of interest on, one or more loans made to the Queensland Fish Management Authority to provide initial funding for the Northern Prawn Fishery Voluntary Adjustment Scheme (including repayment of money borrowed to provide initial funding).

The Committee has no comments on this Bill.

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

D9/85

OVERSEAS STUDENTS CHARGE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 21 August 1985 by the Minister Representing the Minister for Education.

The Bill is designed to amend section 6 of the Overseas Students Charge Act 1979 to enable new regulations to fix the rates of charge up to a maximum amount of \$4,340 instead of the current amount not exceeding \$3,350.

The Committee has no comments on this Bill.

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

D9/85

PARLIAMENTARY POWERS, PRIVILEGES AND IMMUNITIES BILL 1985

This Bill was introduced into the Senate on 22 August 1985 by Senator Macklin.

The purpose of the Bill is to declare the powers, privileges and immunities of each House of the Parliament, its members and committees.

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

Clause 4 - Definition of privileges

Like the Parliament (Powers, Privileges and Immunities) Bill 1985 introduced into the House of Representatives on 21 May 1985 by Mr. Spender this Bill sets out to make certain changes in the law relating to parliamentary privilege recommended by the Joint Select Committee on Parliamentary Privilege. Two of the comments made by the Committee on Mr. Spender's Bill in its Alert Digest No. 7 of 1985 (29 May 1985) apply also to this Bill.

While the Bill sets out to codify the powers of the Houses to punish persons guilty of a breach of a privilege of a House by way of a fine or imprisonment it does not attempt to define the privileges for breach of which a person may be punished. Rather, clause 4 simply refers to the powers, privileges and immunities in force under section 49 of the Constitution.

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

D9/85

PARLIAMENTARY POWERS, PRIVILEGES AND IMMUNITIES BILL 1985
(Cont 2)

The Committee is concerned that an offence carrying a penalty of a fine of up to \$25,000 in the case of a body corporate or a fine of up to \$5,000 or 6 months imprisonment in the case of a natural person should be created without a clear definition of the acts sought to be punished. As with Mr. Spender's Bill the Committee notes that the Joint Select Committee on Parliamentary Privilege recognized this problem in its Final Report (Parliamentary Paper No. 219/1984) but argued (at pages 80-82 of that Report) that it was impossible to define exhaustively in advance the circumstances that may constitute contempt of Parliament. Nevertheless the Committee draws the clause to the attention of Senators in that because of the uncertainty it creates as to what constitutes a breach of privilege it may be considered to trespass unduly on personal rights and liberties.

Clause 10 - Rights of Review

Clause 10 would confer on the High Court a limited power of review in respect of penalties imposed by either House for an offence against that House. The power of review would be limited to penalties of imprisonment and the High Court would be restricted to making a declaration that 'the offence of which the applicant was convicted did not amount to an obstruction of or interference with the proper performance of the functions of a House, its members or committees' (sub-clause 10(3)). The jurisdiction conferred on the High Court by this Bill is thus more limited than that which would be conferred by Mr. Spender's Bill (which extends to the making of a declaration as to the legality of the actions of the House in question).

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

D9/85

PARLIAMENTARY POWERS, PRIVILEGES AND IMMUNITIES BILL 1985
(Cont 3)

As with Mr. Spender's Bill the Committee acknowledges that the lack of any substantive review on the merits of the action of a House of Parliament in resolving to punish a person for contempt or breach of privilege is clearly intended as a matter of policy. The reasons for this decision are fully canvassed at pages 90-94 of the Joint Select Committee's Final Report (supra).

However the Committee emphasizes that no review would be accorded in respect of fines imposed by either House (as distinct from penalties of imprisonment) and that the power of review accorded in respect of penalties of imprisonment is limited to the making of a declaration. Any further action is left to the House concerned. The Committee therefore draws the clause to the attention of Senators in that by failing to provide anything more than a very limited power of review of the exercise of its powers by a House it may be considered to trespass unduly on personal rights and liberties.

Clause 20 - Restriction of use of parliamentary proceedings in evidence.

Sub-clause 20(1) would prevent a proceeding in Parliament from being commented upon, used to draw inferences or conclusions, analysed or made the subject of any examination of witnesses or submission in any proceedings in any court. The Second Reading Speech indicates that the sub-clause is intended to restore the law 'to what it was thought to be before the judgement of Mr. Justice Cantor', a reference to that judge's decision with regard to the construction of Article 9 of the Bill of Rights of 1688 in R. v. Murphy in the N.S.W. Supreme Court, presently under appeal.

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

D9/85

PARLIAMENTARY POWERS, PRIVILEGES AND IMMUNITIES BILL 1985
(Cont 4)

Article 9 of the Bill of Rights of 1688 declares: 'That the Freedom of Speech and Debates or Proceedings in Parlyament ought not to be impeached or questioned in any Court or Place out of Parlyament.' In certain respects the interpretation of this provision is clear. Thus, for example, it is well established that an action, civil or criminal, does not lie against a member of Parliament for words spoken in parliamentary debate. Similarly it is established that it is not a breach of the provision to tender passages in Hansard merely to prove, as a fact, that certain things have been said in Parliament. There is argument, however, about the use to which such evidence may be put without infringing the prohibition contained in Article 9. It has been held in the United Kingdom, for example, that parliamentary debates may not be relied upon to establish malice in an action for defamation arising out of statements made in a subsequent television interview: Church of Scientology of California v. Johnson-Smith [1972] 1 QB 522. On the other hand Mr. Justice Cantor held that statements made by persons as witnesses before parliamentary Committees could be used as 'prior inconsistent statements' to cast doubt on the credit to be attached to the evidence given by those persons as witnesses in subsequent court proceedings.

The Committee is concerned that, in attempting to clarify this area, sub-clause 20(1) would in fact significantly extend the existing prohibition contained in Article 9 of the Bill of Rights of 1688, thereby disadvantaging litigants who may seek to rely on evidence of debates or other proceedings in Parliament.

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

D9/85

PARLIAMENTARY POWERS, PRIVILEGES AND IMMUNITIES BILL 1985

(Cont 5)

By way of illustration section 15AB of the Acts Interpretation Act 1901, added in 1984, presently permits the use of any official record of debates in the Parliament to assist in determining the meaning of a provision of an Act in certain specified circumstances. It is suggested that to use proceedings in Parliament in this way is to use them to draw conclusions, an activity which would be prohibited by sub-clause 20(1). Similarly it is arguable that to examine the Journals or Votes and Proceedings to ascertain as a matter of fact whether a particular Act has received the assent of the Parliament in accordance with the Constitution - a fundamental question going to the validity of the Act - would be to 'analyse' proceedings in Parliament, an activity which sub-clause 20(1) would purport to prohibit.

The Committee therefore draws the sub-clause to the attention of Senators in that by going beyond the existing prohibition on the use of proceedings in Parliament in the courts contained in Article 9 of the Bill of Rights of 1688 it may be considered to trespass unduly on personal rights and liberties.

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

D9/85

QANTAS AIRWAYS LIMITED (LOAN GUARANTEE) BILL 1985

This Bill was introduced into the House of Representatives on 21 August 1985 by the Minister for Aviation.

The purpose of this Bill is to authorize the Treasurer, on behalf of the Commonwealth, to guarantee borrowings raised by Qantas Airways Limited to finance the purchase of a Boeing 747-300 Extended Upper Deck aircraft. The guarantee is limited to an aggregate of \$US115 million.

The Committee has no comments on this Bill.

D9/85

STATES (WORKS AND HOUSING) ASSISTANCE BILL 1985

This Bill was introduced into the House of Representatives on 21 August 1985 by the Treasurer.

The main purpose of this Bill is to authorise payments in 1985-86 arising out of decisions taken at the 30 May 1985 Loan Council Meeting which fall outside the provisions of the Financial Agreement Act 1928.

The Committee has no comments on this Bill.

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

D9/85

WHEAT TAX AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 22 August 1985 by the Minister for Primary Industry.

This Bill provides for an amendment to the Wheat Tax Act 1957 to increase the maximum tax rate to \$1.10 per tonne. The operative rate within this maximum is set by regulation on the recommendation of the Australian Wheatgrowers' Federation. The tax is collected at industry's request and held in trust to fund research projects.

The Committee has no comments on this Bill.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 10 of 1985

9 OCTOBER 1985



ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator M. Baume
Senator B. Cooney
Senator R.A. Crowley
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.

3.

D10/85

The Committee has considered the following Bills:

Bounty (Agricultural Tractors and Equipment) Bill 1985

Bounty (Commercial Motor Vehicles) Amendment Bill (No. 2)
1985

Bounty (Metal Working Machines and Robots) Bill 1985

D10/85

BOUNTY (AGRICULTURAL TRACTORS AND EQUIPMENT) BILL 1985

This Bill was introduced into the Senate on 11 September 1985 by the Minister for Industry, Technology and Commerce.

The Bill proposes a continuation of the bounty assistance for certain agricultural tractors and tractor cabs from 1 July 1985 until 31 December 1992. Bounty assistance will also be provided on original equipment parts and accessories for tractors.

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

Sub-clause 23(4) - Non-reviewable decision

Sub-clause 23(4) provides that the registration of premises for the purposes of the bounty scheme is to take effect from the date on which the notice registering those premises is signed 'or such earlier date, not being a date earlier than 1 July 1985, as is determined by the Comptroller-General and specified in that notice'.

While a decision by the Comptroller-General refusing to register premises is reviewable by the Administrative Appeals Tribunal pursuant to paragraph 35(1)(m), it does not appear that a decision by the Comptroller-General refusing to determine a date of effect for registration earlier than the date on which the notice is signed is so reviewable. Bounty is only payable in respect of manufacture carried out at registered premises so the determination may have considerable significance. The Committee therefore draws sub-clause 23(4) to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

D10/85

BOUNTY (AGRICULTURAL TRACTORS AND EQUIPMENT) BILL 1985
(Cont 2)

Sub-clause 28(5) - Self incrimination

Sub-clause 28(5) states that a person is not excused from answering a question or producing documents on the ground that the answer or the production of the documents might tend to incriminate the person. The sub-clause includes the usual proviso that such an answer or the production of such a document is not admissible in evidence against the person in criminal proceedings other than proceedings relating to the furnishing of information that is, to the knowledge of the person, false or misleading in a material particular.

Although the sub-clause is in standard form the Committee draws it to the attention of Senators as is its usual practice with all clauses removing the privilege against self incrimination in that the sub-clause may be considered to trespass unduly on personal rights and liberties.

Clause 34 - Delegation

Clause 34 would permit the Minister to delegate to "a person" all or any of his or her powers under the Act, other than the power of delegation. The Committee questions whether it is appropriate that such an unrestricted power of delegation should apply, for example, to the Minister's power under sub-clause 23(4) to inform the Comptroller-General that the registration of premises will not permit the orderly development in Australia of the industry manufacturing bountiable equipment. The Committee notes restrictions imposed in similar delegation powers in other legislation coming before the Parliament, for example new section 34A to be inserted by clause 12 of the Student Assistance Amendment Bill 1985.

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

BOUNTY (AGRICULTURAL TRACTORS AND EQUIPMENT) BILL 1985
(Cont 3)

The Committee draws clause 34 to the attention of Senators in that such an unrestricted power of delegation may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

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

D10/85

BOUNTY (COMMERCIAL MOTOR VEHICLES) AMENDMENT BILL (NO. 2)
1985

This Bill was introduced into the House of Representatives on 18 September 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

This Bill, which is part of a package of revised assistance arrangements for the commercial motor vehicle industry in Australia, proposes the phasing out over a three year period commencing on 1 January 1986 of the bounty assistance on certain components used in the assembly of general purpose heavy commercial vehicles.

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

Clause 8 - New sub-section 14N(4) - Non-reviewable discretion

New sub-section 14N(4) which would be inserted by clause 8 is in the same form as sub-clause 23(4) of the Bounty (Agricultural Tractors and Equipment) Bill 1985 and the Committee's comment on that sub-clause applies also to this provision.

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

D10/85

BOUNTY (METAL WORKING MACHINES AND ROBOTS) BILL 1985

This Bill was introduced into the Senate on 11 September 1985 by the Minister for Industry, Technology and Commerce.

This Bill proposes the introduction of new bounty assistance for the metal working machine tools industry from 1 July 1985 to 30 June 1991 in line with the Industries Assistance Commission's major recommendations on long-term assistance measures to the Australian metal working machine tools and robotics industries.

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

Clause 4 - Definition of "modification" - Non-reviewable discretion

The definition of "modification" in relation to bountiable equipment B in sub-clause 4(1) would give the Minister an unfettered discretion to determine whether a particular conversion of equipment will substantially increase the capacity and capability of the equipment, thus attracting bounty. It does not appear that the right of review by the Administrative Appeals Tribunal of the Comptroller-General's decisions with regard to the payment of bounty accorded in clause 40 would extend to a review of the Minister's decision under this definition and because the definition turns on the Minister's subjective opinion the scope for review pursuant to the Administrative Decisions (Judicial Review) Act 1977 would be very limited.

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

BOUNTY (METAL WORKING MACHINES AND ROBOTS) BILL 1985
(Cont 2)

Accordingly the Committee draws the clause to the attention of Senators in that the definition of "modification" may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clauses 6, 7 and 8 - 'Henry VIII' clauses

Clauses 6, 7 and 8 enable the Minister by notice in writing in the Gazette to vary the content of the definitions of bountiable equipment, the formulae for value added in the manufacture or modification of bountiable equipment and the amount of bounty payable expressed as a percentage of the value added. Notices under these clauses are to be subject to tabling and disallowance as if they were regulations.

The clauses may be characterised as 'Henry VIII' clauses in that they enable the content of legislation to be varied by executive instrument. The explanatory memorandum indicates that such flexibility is necessary to take account of rapid technological change in the metal working tools and robotics industries and to cater for immediate changes in the economic circumstances affecting the industry. While the Committee has in the past recognised the need for flexibility in bounty schemes to take effect of technological change and market conditions (see comments on Bounty (High Alloy Steel Products) Bill 1983 and Bounty (Steel Mill Products) Bill 1983, Seventeenth Report of 1983) it adopts the practice of drawing attention to all 'Henry VIII' clauses as a matter of principle leaving the question whether the clause may be considered justifiable in the circumstances to the

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

BOUNTY (METAL WORKING MACHINES AND ROBOTS) BILL 1985
(Cont 3)

Parliament. Accordingly the Committee draws clauses 6, 7 and 8 to the attention of Senators in that the clauses may be considered an inappropriate delegation of legislative power.

Sub-clause 28(4) - Non-reviewable decision

Sub-clause 28(4) is in the same form as sub-clause 23(4) of the Bounty (Agricultural Tractors and Equipment) Bill 1985 and the Committee's comment on that sub-clause applies also to this provision.

Sub-Clause 33(5) - Self-incrimination

Sub-clause 33(5) is in the same form as sub-clause 28(5) of the Bounty (Agricultural Tractors and Equipment) Bill 1985 and the Committee's comment on that sub-clause applies also to this provision.

Clause 39 - Delegation

Clause 39 is in the same form as clause 34 of the Bounty (Agricultural Tractors and Equipment) Bill 1985 and the Committee's comment on that clause applies also to this provision.



SCRUTINY OF BILLS ALERT DIGEST

NO. 11 of 1985

9 OCTOBER 1985

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator M. Baume
Senator B. Cooney
Senator R.A. Crowley
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.

D11/85

The Committee has considered the following Bills:

Customs Tariff (Stand-By Duty) Bill 1985

Dairy Produce Amendment Bill 1985

Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Bill 1985

Income Tax (Individuals) Bill 1985

Interstate Road Transport Bill 1985

Interstate Road Transport Charge Bill 1985

Judiciary Amendment Bill 1985

Loans Bill 1985

Medicare Levy Bill 1985

Petermann Aboriginal Land Trust (Boundaries) Bill 1985

Sales Tax (Exemptions and Classifications) Amendment Bill 1985

Sales Tax Laws Amendment Bill (No. 2) 1985

Sales Tax (Nos. 1-4 and 6-9) Amendment Bills 1985

Sales Tax (No. 5) Amendment Bill (No. 2) 1985

D11/85

States Grants (General Revenue) Bill 1985

States Grants (Petroleum Products) Bill 1985

Student Assistance Amendment Bill 1985

Student Assistance (Loans Guarantee and Subsidy) Repeal Bill
1985

Taxation Laws Amendment Bill (No. 2) 1985

NOTE: This Digest is circulated to all Honourable
Senators. Any Senator who wishes to draw matters
to the attention of the Committee under its Terms
of Reference is invited to do so.

D11/85

CUSTOMS TARIFF (STAND-BY DUTY) BILL 1985

This Bill was introduced into the House of Representatives on 11 September 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

This Bill forms part of the Government's policy on domestic crude oil marketing arrangements. This policy was announced by the former Minister for Resources and Energy, Senator Walsh, on 9 October 1984. The purpose of the Bill is to enable the imposition of a special Customs duty of 3 cents per litre on the importation of certain petroleum oils, should that prove to be necessary in the event of a shortfall or underlifting of indigenous crude oils by local refiners.

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

Clauses 10 and 11 - Retrospectivity

The intention of the Bill is apparently to deter refiners from not taking up their quota of Australian crude oil under the Crude Oil Marketing Partial Allocation Scheme. It seeks to do this by imposing a duty of 3 cents a litre on oil imported by refiners who fail to take up their quota over a period of 3 consecutive months (in the case of Bass Strait oil) or 6 consecutive months (in the case of other oil). Clauses 10 and 11 provide that the failure of refiners to take up their quotas may be measured from 1 July (in the case of Bass Strait oil) or 1 April (in the case of other oil). Thus while duty can only be imposed after the Bill has become law, it may be imposed on the basis of events which took place before the introduction of the Bill into Parliament.

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

D11/85

CUSTOMS TARIFF (STAND-BY DUTY) BILL 1985

(Cont 2)

The Second Reading speech explains this retrospectivity on the basis that the Crude Oil Marketing Partial Allocation Scheme came into effect on 1 January 1985 and that it was the 'previously announced and clearly defined government intention' that the Bill should take effect, as far as practicable, from the introduction of that Scheme. The Committee is concerned that a customs duty should be imposed on the basis of events which have occurred prior to the introduction into Parliament of the Bill imposing the duty and draws clauses 10 and 11 to the attention of Senators in that such retrospectivity may be considered to trespass unduly on personal rights and liberties.

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

D11/85

DAIRY PRODUCE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 11 September 1985 by the Minister for Primary Industry.

This Bill contains two amendments to the Dairy Produce Act 1924. The first will correct a legal difficulty in the operation of the export pooling arrangements for the dairy industry. The second amendment will remove administrative difficulties with the present legislation with respect to the power of the Australian Dairy Corporation to enter contracts.

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

Clause 4 - 'Henry VIII' clause

Clause 4 would substitute a new section 25 in the Principal Act providing that the Australian Dairy Corporation shall not, except with the approval of the Minister, enter into a contract for an amount exceeding \$500,000 'or, if a higher amount is prescribed, that higher amount'.

Because it permits the threshold amount for Ministerial approval specified in the Act to be varied by regulation the provision may be characterized as a 'Henry VIII' clause and as such the Committee draws it to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

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

D11/85

INCOME TAX (COMPANIES, CORPORATE UNIT TRUSTS AND
SUPERANNUATION FUNDS) BILL 1985

This Bill was introduced into the House of Representatives on 19 September 1985 by the Minister for Health (on behalf of the Minister Assisting the Treasurer).

This Bill will formally impose income tax for 1985-86 on the 1984-85 taxable income of companies, registered organizations and unit trusts treated as companies for tax purposes. It also imposes tax on the current year taxable income of superannuation funds, ineligible approved deposit funds and trust income of non-resident company beneficiaries.

The Committee has no comments on this Bill.

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

D11/85

INCOME TAX (INDIVIDUALS) BILL 1985

This Bill was introduced into the House of Representatives on 19 September 1985 by the Minister for Health (on behalf of the Minister Assisting the Treasurer).

This Bill will:

- (a) formally impose tax payable for the 1985-86 financial year by individuals at the rates declared by the Income Tax (Rates) Act 1982; and
- (b) formally impose provisional tax for the 1985-86 year of income.

The Committee has no comments on this Bill.

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

INTERSTATE ROAD TRANSPORT BILL 1985

This Bill was introduced into the House of Representatives on 11 September 1985 by the Minister for Transport.

The Interstate Road Transport Bill 1985 provides for an interstate vehicle registration scheme and trust fund, and makes provision for a Federal system of licensing operators engaged in interstate trade and commerce.

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

Sub-clause 45(1) - Power to require information

Sub-clause 45(1) would confer on the Regulatory Authorities a very wide power to require persons by notice in writing to furnish information or produce documents which the Authority has reason to believe may be relevant to the functions of the Authority or may relate to a possible contravention of the Act or the regulations, of a law of a State or Territory with respect to the safety of persons or property arising out of the use of motor vehicles or of a road safety standard made under the Act. Failure to furnish the required information or produce the required documents would attract a fine of up to \$1,000 or \$5,000 in the case of a corporation.

The Committee has in the past drawn attention to such wide powers to require information in bounty legislation (see comments on the Bounty (Room Air Conditioners) Bill 1983 in its Second Report of 1983 and on the Bounty (Two-Stroke Engines) Bill 1984 in its Fourth Report of 1984). In the present case the Committee would suggest that any motorist . .

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

INTERSTATE ROAD TRANSPORT BILL 1985

(Cont 2)

(not merely a person involved in the interstate road transport industry) could be required to furnish information relating to a possible contravention of a State or Territory motor vehicle law and that any person consigning goods could be required to produce documents on the ground that they were relevant to the performance of the functions of a Regulatory Authority under the Act. The Committee therefore draws the sub-clause to the attention of Senators in that by conferring such a broad power on the Regulatory Authorities it may be considered to trespass unduly on personal rights and liberties.

Paragraph 45(1)(a) states that the Regulatory Authority may require information to be given 'within the time and in the manner specified in the notice'. Paragraph 45(1)(b) states that the Regulatory Authority may require documents to be produced 'in accordance with the notice'. The Bill contains no indication of a minimum time which may be specified in the notice for furnishing the information or, for example, to attend before an inspector to furnish the relevant information. Very early in its history this Committee obtained acceptance of the principle that a minimum time should be stipulated in such notices (see comment on clause 16 of the Dried Sultana Production Underwriting Bill 1981, Second Report of 1982, and the subsequent amendment to that clause stipulating a minimum period of 14 days notice, Senate Journals, 16 March 1982, p. 789). It is disappointed to see a return to the old form of such provisions and draws this aspect of sub-clause 45(1) to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

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

INTERSTATE ROAD TRANSPORT BILL 1985

(Cont 3)

Sub-clause 45(4) - Self incrimination

Sub-clause 45(4) states that a person is not excused from giving information or producing a document on the ground that the information or the production of the document might tend to incriminate the person. The sub-clause departs from the usual form of such provisions in that, while it states that the information or the production of the document is not to be admissible in evidence in a prosecution of a natural person other than a prosecution for making a false or misleading statement, it permits the use of such self incriminating information or documents in the prosecution of a body corporate for any offence against the Act or the regulations. In other words a body corporate may be required to produce documents under clause 45 on pain of a fine of \$5,000 and may then be prosecuted for contraventions of the Act revealed in those documents.

While the question whether the privilege against self incrimination is one which may be claimed by corporations remains to be decided in Australia (though Murphy J. in the High Court has held that it may not, most recently in Controlled Consultants Pty. Ltd. v. Commissioner for Corporate Affairs (1985) 59 ALJR 254 at 258) it has been so held in England: see Freckleton, I., 'Witnesses and the Privilege Against Self Incrimination' (1985) 59 ALJ 204 at pp. 207-8. It is the Committee's practice to draw attention to all clauses removing the privilege against self incrimination but it does so particularly in this case because corporations may be compelled to produce incriminating documents which may then be used against them

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

INTERSTATE ROAD TRANSPORT BILL 1985

(Cont 4)

in prosecutions for offences against the Act. The Committee draws sub-clause 45(4) to the attention of Senators in that such a removal of the privilege against self incrimination may be considered to trespass unduly on personal rights and liberties.

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

D11/85

INTERSTATE ROAD TRANSPORT CHARGE BILL 1985

This Bill was introduced into the House of Representatives on 11 September 1985 by the Minister for Transport.

This Bill is an integral part of the Federal Interstate Vehicle Registration Scheme to be established by the Interstate Road Transport Bill 1985. It provides for charges to be paid by motor vehicles and trailers registered under the Interstate Road Transport Bill. These charges are to recover road maintenance and upkeep costs resulting from damage to roads by motor vehicles and trailers engaged in interstate trade and commerce.

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

Clause 5 - Inappropriate delegation of legislative power

By virtue of clause 5 the amount of the interstate road transport charge is to be ascertained in accordance with regulations made under clause 6. The Committee has consistently drawn attention to provisions permitting a tax, levy or charge to be fixed by regulation without stipulating a maximum amount (see most recently its comment on the Dairy Industry Stabilization Levy Amendment Bill 1985, Seventh Report of 1985).

The Committee draws the clause to the attention of Senators in that by leaving the amount of charge to be specified in regulations it may be considered an inappropriate delegation of legislative power.

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

D11/85

JUDICIARY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 19 September 1985 by the Attorney-General.

The purpose of this Bill is to repeal sub-section 69(3) of the Judiciary Act 1903, which presently permits a person charged with an offence against the laws of the Commonwealth to apply to a judge of the High Court or of a Supreme Court of a State for the appointment of counsel for his or her defence.

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

Clause 3 - Removal of right to legal aid

Sub-clause 3(1) would repeal sub-section 69(3) of the Judiciary Act 1903. That section provides that a person committed for trial for an indictable offence against the laws of the Commonwealth may apply to a judge of the High Court or of a State Supreme Court for the appointment of counsel for his or her defence. If the judge is satisfied that the applicant is without adequate means to provide for his or her defence and that it is desirable in the interests of justice that counsel should be appointed the judge certifies this to the Attorney-General who then causes arrangements to be made for the defence of the applicant.

The Second Reading Speech argues that sub-section 69(3) is 'out of step with modern developments in the provision of legal aid' and that it is 'ripe for exploitation'. It draws attention to the development in Australia of a comprehensive system of legal aid through State and Territory legal aid commissions and the Australian Legal Aid Office. Legal aid

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

JUDICIARY AMENDMENT BILL 1985

(Cont 2)

is provided on the basis of the ability of the applicant to meet the cost of proceedings and 'comprehensive review and appeal procedures' are provided. The Second Reading Speech argues that if legal aid continues to be provided under sub-section 69(3) the costs to the Commonwealth could be substantial.

The Committee recognises that whether sub-section 69(3) should be repealed is essentially a question of policy. However it is concerned that a presently existing statutory right to legal aid is being taken away. This existing entitlement is in accordance with Article 14 of the International Covenant on Civil and Political Rights which recognises the right of persons charged with criminal offences to have legal assistance in any case where the interests of justice so require and to have such assistance without payment if such persons do not have the means to pay for it. The safeguarding of this existing right under sub-section 69(3) in respect of indictable Commonwealth offences may be distinguished from the provision of legal aid generally where the apportionment of scarce financial resources becomes a consideration.

The Committee draws the clause to the attention of Senators in that by removing the presently existing entitlement to legal aid under sub-section 69(3) it may be considered to trespass unduly on personal rights and liberties.

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

LOANS BILL 1985

This Bill was introduced into the House of Representatives on 11 September 1985 by the Minister for Finance.

The purpose of the Bill is to make provision for the financing of the prospective Budget deficit in 1985-86 and subsequent years together with the associated prospective deficits in the Consolidated Revenue Fund.

The Committee has no comments on this Bill.

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

MEDICARE LEVY BILL 1985

This Bill was introduced into the House of Representatives on 11 September 1985 by the Minister for Health (on behalf of the Minister Assisting the Treasurer).

The Bill will declare the basic rate of Medicare levy for 1985-86 and, until the Parliament otherwise provides, for 1986-87. The basic rate will be 1 per cent of taxable income. The Bill will remove the ceiling on the amount of levy payable and contains the income threshold levels below which people with low incomes will not be called on to pay any levy.

The Committee has no comments on this Bill.

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

D11/85

PETERMANN ABORIGINAL LAND TRUST (BOUNDARIES) BILL 1985

This Bill was introduced into the House of Representatives on 19 September 1985 by the Minister for Aboriginal Affairs.

This Bill is necessary to rectify a discrepancy in the boundaries of an area of Aboriginal land described in Schedule 1 of the Aboriginal Land Rights (Northern Territory Act 1976 as 'Petermann'.

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

Clause 5 - No compensation payable

The effect of the Bill is to transfer a small area of land - apparently some 2 square kilometres in all - from the control of the Petermann Aboriginal Land Trust to the control of the Uluru Land Trust. Clause 5 provides that the Commonwealth is not to be liable to pay compensation to any person by reason of the enactment of the Bill.

It is not clear why this clause is considered necessary. The Second Reading Speech suggests that the aboriginal owners have agreed to the transfer of the land. However the inclusion of clause 5 may indicate that it is not certain that all the aboriginal owners have in fact so agreed. The Committee draws the clause to the attention of Senators in that by negating any right to claim compensation in respect of the removal of some 2 square kilometres of land from the Petermann Aboriginal Land Trust it may be considered to trespass unduly on personal rights and liberties.

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

D11/85

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT BILL
1985

This Bill was introduced into the House of Representatives on 19 September 1985 by the Minister for Health (on behalf of the Minister Assisting the Treasurer).

This Bill proposes 3 major changes to the present wholesale sales tax system. First, the wholesale sales tax base is to be broadened, principally with the intention of reducing anomalies by subjecting to tax certain goods that are presently exempt. Secondly, the rate of sales tax payable on records and sound and video tapes, a number of household and personal care items and certain other goods is to be substantially reduced. Finally, several classification anomalies and inconsistencies that presently exist in the sales tax law are to be rectified.

The Committee has no comments on this Bill.

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

D11/85

SALES TAX LAWS AMENDMENT BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 19 September 1985 by the Minister for Health (on behalf of the Minister Assisting the Treasurer).

This Bill will amend several sales tax statutes to make a number of technical changes and correct certain drafting errors that have been identified in connection with anti-avoidance amendments to the sales tax law enacted earlier this year.

The Committee has no comments on this Bill.

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

SALES TAX (NOS. 1-4 AND 6-9) AMENDMENT BILLS 1985

SALES TAX (NO. 5) AMENDMENT BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 19 September 1985 by the Minister for Health (on behalf of the Minister Assisting the Treasurer).

These nine Bills will amend the Sales Tax Acts to rationalise the wholesale sales tax rate structure by reducing the number of rate categories from four to three.

The Committee has no comments on these Bills.

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

D11/85

STATES GRANTS (GENERAL REVENUE) BILL 1985

This Bill was introduced into the House of Representatives on 11 September 1985 by the Treasurer.

The Bill provides for payments to be made to the States in each of the three years 1985-86, 1986-87 and 1987-88 in the form of general revenue grants. Provision is also made for advance payments of assistance to be made in the first six months of 1988-89 pending the passage of legislation to implement such further arrangements as may apply for that year.

The Committee has no comments on this Bill.

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

D11/85

STATES GRANTS (PETROLEUM PRODUCTS) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 11 September 1985 by the Minister for Industry and Commerce.

This Bill proposes to amend the States Grants (Petroleum Products) Act 1965, to give effect to the Government's decisions announced on 7 September and 26 October 1984 to alter the provisions of the petroleum products freight subsidy scheme. This Bill proposes to strengthen the administration of the freight subsidy scheme, especially in its application to claimants for subsidy at safe anchorage locations, and to provide for payments of the freight subsidy on petroleum products produced at inland mini-refineries.

The Committee has no comments on this Bill.

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

STUDENT ASSISTANCE AMENDMENT BILL 1985

This Bill was introduced into the Senate on 11 September 1985 by the Minister for Education.

The Bill amends the Student Assistance Act 1973 which provides the statutory basis for the Tertiary Education Assistance Scheme and the Postgraduate Awards Scheme. Amendments include the replacement of the Student Assistance Review Tribunals by one Tribunal which will generally simplify administrative practice.

The Committee has no comments on this Bill.

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

D11/85

STUDENT ASSISTANCE (LOANS GUARANTEE AND SUBSIDY) REPEAL BILL
1985

This Bill was introduced into the Senate on 11 September 1985
by the Minister for Education.

The Bill is to give effect to the Government's commitment not
to proceed with the student loans scheme provided for by the
Student Assistance (Loans Guarantee and Subsidy) Act 1982.

The Committee has no comments on this Bill.

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

TAXATION LAWS AMENDMENT BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 19 September 1985 by the Minister Assisting the Treasurer.

The Bill proposes amendments to the income tax law to give effect to the Government's decisions to counter the use of non-leveraged finance leases and similar arrangements to achieve tax benefits. It will also introduce statutory loan-back rules that employer-sponsored superannuation funds will be required to follow to secure relevant tax concessions.

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

Sub-clause 34(6) - Retrospectivity

Sub-clause 34(6) applies the amendments made by clause 27 to assessments in respect of income of the year of income in which 15 May 1984 occurred. Clause 27 would insert a new Division 16D in Part III of the Income Tax Assessment Act 1936 the effect of which is to deny deductions for depreciation and certain other allowances to the lessors of plant or other articles where the lease is in effect an arrangement under which all the risks and benefits of ownership are transferred to the lessee. Deductions will be denied -

- . where the lessee or user is a government or a tax-exempt government authority and the arrangement was entered into after 5.00 p.m. on 15 May 1984; or

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

TAXATION LAWS AMENDMENT BILL (NO. 2) 1985

(Cont 2)

where the plant or other articles are used outside Australia for the purpose of producing income which is exempt from tax in Australia and the arrangement was entered into after 5.00 p.m. on 16 December 1984.

The Explanatory Memorandum indicates that these times and dates are the times and dates at which announcements of the respective changes were made.

The Committee is critical of legislation which makes changes, for example, to taxation law retrospective to the date of a Ministerial announcement that such changes are to be made except where that announcement is made in the course of introducing the legislation into the Parliament or where it falls under the general convention associated with measures announced in the Budget or similar statements. Such retrospectivity carries with it the assumption that persons should arrange their affairs in accordance with announcements made by the Executive rather than in accordance with the laws made by the Parliament. It treats the passage of the subsequent retrospective legislation 'ratifying' the Ministerial announcement as a pure formality.

The Committee draws the sub-clause to the attention of Senators in that such a retrospective denial of taxation deductions and other allowances may be considered to trespass unduly on personal rights and liberties.

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

D11/85

TAXATION LAWS AMENDMENT BILL (NO. 2) 1985

(Cont 3)

Clause 45 -New section 13F - Entry and search without warrant

Clause 45 would insert a new section 13F in the Taxation Administration Act 1953 which would permit Commonwealth public servants or State taxation officers authorised by the Commissioner to enter upon any land in the Australian Capital Territory and to have full and free access to all documents in the Territory for the purpose of investigating a matter arising under a State tax law. No judicial authorisation is required and the only safeguard provided is that, under sub-section 13F(3), an officer is not entitled to remain on land if, on request by the occupier, the officer does not produce a certificate of authorisation from the Commissioner.

The Committee draws the provision to the attention of Senators in that by permitting entry upon land and examination of documents without the need for a warrant issued by a magistrate or a justice of the peace it may be considered to trespass unduly on personal rights and liberties.

New Section 13G - Power to obtain information

Clause 45 would also insert a new section 13G in the Principal Act which would enable the Commissioner (or a delegate of the Commissioner pursuant to section 8 of the Act), by notice in writing, to require any person to attend before the Commissioner or an officer authorised by the Commissioner (or the Commissioner's delegate) at a time and place specified in the notice and there answer questions. The Committee has in the past expressed concern at the

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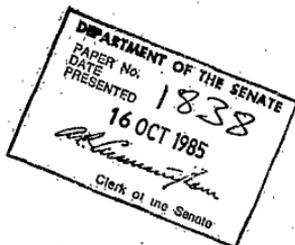
TAXATION LAWS AMENDMENT BILL (NO. 2) 1985

(Cont 4)

conferral of such broad powers without any limitation as to the reasonableness of the time and place at which a person may be required to attend: see for example its comment on the Human Rights and Equal Opportunity Commission Bill 1984, Eleventh Report of 1984.

The Committee draws the provision to the attention of Senators in that by conferring such powers without appropriate limitation it may be considered to trespass unduly on personal rights and liberties.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 12 of 1985

16 OCTOBER 1985

ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator M. Baume
Senator B. Cooney
Senator R.A. Crowley
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.

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The Committee has considered the following Bills:

Australian Bill of Rights Bill 1985

Australian Trade Commission Bill 1985

Australian Trade Commission (Transitional Provisions and Consequential Amendments) Bill 1985

Broadcasting and Television Legislation Amendment Bill (No. 2) 1985

Commonwealth Employees (Employment Provisions) Bill 1985

Companies and Securities Legislation (Miscellaneous Amendments) Bill 1985

Employee Participation Bill 1985

Health Legislation Amendment Bill (No. 2) 1985

Home and Community Care Bill 1985

Home and Community Care (Miscellaneous Amendments) Bill 1985

Human Rights and Equal Opportunity Commission Bill 1985

Human Rights and Equal Opportunity Commission Amendment Bill 1985

Human Rights and Equal Opportunity Commission (Transitional Provisions and Consequential Amendments) Bill 1985

Social Security and Repatriation (Budget Measures) Amendment Bill 1985

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Social Security (Reparation for Persecution) Amendment Bill
1985

Trade Practices Amendment Bill 1985

NOTE: This Digest is circulated to all Honourable
Senators. Any Senator who wishes to draw matters
to the attention of the Committee under its Terms
of Reference is invited to do so.

D12/85

AUSTRALIAN BILL OF RIGHTS BILL 1985

This Bill was introduced into the House of Representatives on 9 October 1985 by the Attorney-General.

The purpose of the Bill is to implement the International Covenant on Civil and Political Rights by enacting an Australian Bill of Rights. The Bill of Rights declares fundamental rights but does not itself give rise to any cause of action or render any person liable to criminal proceedings. It is to operate as a guide to the judicial interpretation of Commonwealth and Territory (other than Northern Territory) laws and is to prevail over inconsistent future Commonwealth and Territory (other than Northern Territory) laws in the absence of express intention to the contrary and over existing Commonwealth or Territory (other than Northern Territory) laws after 5 years. The Human Rights and Equal Opportunity Commission is to be empowered to investigate complaints about governmental practices and to report on Commonwealth, State and Territory laws (or proposed laws) which may infringe the Bill of Rights.

General comment

The Bill will require Commonwealth laws (including laws of the Australian Capital Territory and the external Territories) to be interpreted in a way that is not in conflict with the Bill of Rights set out in clause 8 of the Bill. Laws enacted after the Bill comes into force are not to have any force to the extent that they are in conflict with the Bill of Rights unless such laws provide expressly to the contrary. Five years from the date on which the Bill comes into force any inconsistent laws enacted prior to its commencement are to be deemed to be repealed to the extent of any inconsistency.

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

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AUSTRALIAN BILL OF RIGHTS BILL 1985

(Cont 2)

The Committee is concerned that the operation of the Bill may give rise to considerable uncertainty as to the proper interpretation of Commonwealth laws and, at least after the five year period of grace, as to their validity. This is particularly so since the terms of the Bill of Rights itself are far from certain in their application. Whereas the International Covenant on Civil and Political Rights specifies permissible restrictions in the Articles dealing with particular rights the Bill of Rights relies on a general reservation set out in paragraph 1 of Article 3:

'The rights and freedoms set out in this Bill of Rights are subject only to such reasonable limitations as can be demonstrably justified in a free and democratic society.'

The meaning of this reservation is far from clear. For example Article 19 of the International Covenant provides that the right to freedom of expression shall be subject only to such restrictions as are provided by law and are necessary:

- '(a) For respect of the rights or reputations of others;
- (b) For the protection of national security or of public order (ordre public), or of public health or morals.'

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

D12/85

AUSTRALIAN BILL OF RIGHTS BILL 1985

(Cont 3)

This reservation is clearly intended to cover laws such as laws relating to defamation, official secrets, obscenity and censorship on moral grounds. The ambit of paragraph 1 of Article 3 of the Australian Bill of Rights is, however, less certain. Are such laws 'reasonable limitations' which can be 'demonstrably justified in a free and democratic society' within the terms of that Article? Would, for example, a power granted to a tribunal to censor all television programmes without specifying the grounds for such censorship be held to be demonstrably justified? Are all defamation laws justified or, perhaps, only those which provide that truth alone is a defence? At what point does an official secrets law go beyond what can be 'demonstrably justified in a free and democratic society'?

These are the types of questions which the Bill will leave to the courts to answer. In consequence, following the passage of the Bill there is every reason to believe that wide areas of the law will be placed in question as particular statutory provisions come under challenge for alleged inconsistency with the Bill of Rights. Such uncertainty pending judicial interpretation may be an inevitable concomitant of a Bill of Rights but the Committee draws this aspect of the Bill to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

The Committee also questions whether it is appropriate that the determination of what limitations on fundamental rights are justifiable in a free and democratic society should be left, at least initially, to the judiciary. The courts are not accustomed to dealing with such broad questions of policy and the judges themselves may not welcome the

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

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AUSTRALIAN BILL OF RIGHTS BILL 1985

(Cont 4)

conferral of this jurisdiction. The Committee suggests that such matters, involving the application of changing community standards and the desirable levels of controls on rights and freedoms in our society, may more appropriately be left to the Parliament. Accordingly the Committee draws this aspect of the Bill also to the attention of Senators in that it may be considered to remove what is in effect an exercise of legislative power from the Parliament.

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

Sub-clause 14(4) - Unequal treatment of litigants

Under clause 14 a court will be able to make a declaration that a Commonwealth law is to be deemed to have been in force notwithstanding any inconsistency with the Bill of Rights if it is satisfied that grave public inconvenience or hardship would be caused by the relevant law being deemed to be repealed or held to have no operation to the extent of any conflict with the Bill of Rights. The law will then remain in force for a further 3 months from the date of the declaration, allowing the Parliament to take action to remedy the defect in the law. By virtue of sub-clause 14(4) a declaration under clause 14 will deem the relevant law to have been in force 'for all purposes except the purposes of the proceedings in which the declaration in relation to the enactment was made'. This means that where a declaration is made by a court under clause 14 only the litigant who first successfully draws attention to the inconsistency of a law with the Bill of Rights is to have the benefit of the

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

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AUSTRALIAN BILL OF RIGHTS BILL 1985

(Cont 5)

operation of the Bill: other litigants are to be bound by that law notwithstanding its inconsistency with the Bill of Rights.

The Committee draws the sub-clause to the attention of Senators in that it may be considered in a quite arbitrary and fortuitous fashion to advantage some litigants and disadvantage others.

Sub-clause 24(6) - Payment of costs of adjournment

Clause 24 provides that the courts may not proceed in certain causes involving matters arising under the Bill of Rights unless notice of the matter has been given to the Attorney-General and a reasonable time has elapsed for the Attorney-General to consider intervening in the proceedings. Under sub-clause 24(6) the Attorney-General may authorise the payment by the Commonwealth to a party of an amount in respect of costs arising out of the adjournment of a case in compliance with the clause. It appears that the determination of any amount to be paid under the sub-clause is to be left solely to the discretion of the Attorney-General, rather than to the courts as is usual with matters of costs.

The Committee suggests that parties should be entitled to the fair and reasonable costs of an adjournment under clause 24 as determined by the court in which the cause is heard. Accordingly it draws sub-clause 24(6) to the attention of Senators in that by leaving the payment of costs entirely to

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

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AUSTRALIAN BILL OF RIGHTS BILL 1985

(Cont 6)

the discretion of the Attorney-General it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Sub-clauses 31(1) and (5) and 33(1) - Powers to require information

Sub-clauses 31(1) and (5) and 33(1) empower the Commission, by notice in writing, to require persons to give information, to produce documents, to attend to answer questions or to attend a compulsory conference at a time and place specified in the relevant notice. No limitation is imposed as to the reasonableness of the time within which a person may be required to furnish information or the time or place at which a person may be required to attend although 'reasonable excuse' is a defence in a prosecution for a failure to comply.

The Committee drew attention to a similarly unrestricted provision in clause 21 of the Human Rights and Equal Opportunity Commission Bill 1984 in its Eleventh Report of 1984. It draws attention to sub-clauses 31(1) and (5) and 33(1) in that the failure to require that times and places specified be reasonable may be considered to trespass unduly on personal rights and liberties.

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

D12/85

AUSTRALIAN BILL OF RIGHTS BILL 1985

(Cont 7)

Sub-clause 36(4) - Self incrimination

Sub-clause 36(4) provides that a person is not excused from giving any information, producing a document or answering a question on the ground that the information, the production of the document or the answer to the question might tend to incriminate the person but the information, the production of the document or the answer to the question is not admissible in evidence except in proceedings for the provision of false or misleading information.

Although the sub-clause is in standard form it is the Committee's practice to draw to the attention of Senators all such provisions removing the privilege against self incrimination in that they may be considered to trespass unduly on personal rights and liberties.

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

D12/85

AUSTRALIAN TRADE COMMISSION BILL 1985

This Bill was introduced into the House of Representatives on 11 October 1985 by the Minister for Trade.

The purpose of the Bill is to establish the Australian Trade Commission as a statutory authority.

The Bill provides for the drawing together and integration of the various operational arms of the Trade portfolio into a single statutory authority.

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

Sub-clause 4(2) - Extension to Territories

By virtue of sub-clause 4(2) the Minister may, by notice published in the Gazette, declare that, on a specified day, the Act will cease to extend to an external Territory and after that day the specified Territory will be deemed to be a foreign country for the purposes of the Act. Notices under the sub-clause are not required to be tabled in Parliament and will not be subject to disallowance. Because the sub-clause would permit the Minister by executive instrument to vary the application of the Act it may be characterized as a 'Henry VIII' clause.

The Committee draws the sub-clause to the attention of Senators both in that, as a 'Henry VIII' clause, it may be considered an inappropriate delegation of legislative power and in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny.

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

D12/85

AUSTRALIAN TRADE COMMISSION BILL 1985

(Cont 2)

Sub-clause 33(3) - Definition of 'capital goods'

Under Division 4 of Part V of the Bill the Commission may finance 'eligible export transactions'. By virtue of sub-clause 33(2) such transactions are defined as transactions related to the export of 'capital goods' from Australia. In sub-clause 33(3) the expression 'capital goods' is defined as:

- '(a) machinery; or
- (b) any goods declared by the Minister, in writing, to be capital goods for the purposes of sub-section (2) or goods included in a class of goods declared by the Minister, in writing, to be a class of capital goods for the purposes of that sub-section.'

Declarations by the Minister under the sub-clause are not required to be tabled in Parliament and will not be subject to disallowance (as would be the case, for example, if the remaining content of the definition of 'capital goods' were to be left to be prescribed by regulations).

The Committee draws the sub-clause to the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny.

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

D12/85

AUSTRALIAN TRADE COMMISSION BILL 1985
(Cont 3)

Sub-clause 83(3) - 'Henry VIII' clause

By virtue of sub-clause 83(1) the Commission is not to be subject to taxation under any law of the Commonwealth or of a State or Territory. However, regulations under sub-clause 83(3) may provide that sub-clause 83(1) does not apply in relation to a specified law of the Commonwealth or of a State or Territory: that is, that the Commission is to be subject to taxation under that law.

Because the sub-clause would permit the variation of sub-clause 83(1) by means of regulations it may be characterized as a 'Henry VIII' clause. The Committee draws it to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

Sub-clause 91(1) - Delegation

Sub-clause 91(1) provides that the Commission may delegate all or any of its powers and functions under the Act (other than the power of delegation) to any person. While the Minister may give directions to the Commission under sub-clause 91(2) with respect to the exercise of this power of delegation there is no statutory restriction on the Commission's power to delegate to whomsoever it chooses. The terms of sub-clause 91(1) contrast with the more restricted powers of delegation set out in sub-clauses 90(1) and (2).

The Committee draws the sub-clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

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

D12/85

AUSTRALIAN TRADE COMMISSION (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) BILL 1985

This Bill was introduced into the House of Representatives on 11 October 1985 by the Minister for Trade.

This Bill is complementary to the Australian Trade Commission Bill 1985 and has three main purposes:

- (1) to repeal the existing legislation relating to the Export Finance and Insurance Corporation and the Australian Overseas Projects Corporation;
- (2) to effect consequential amendments to a number of Acts;
and
- (3) to provide for transitional arrangements.

The Committee has no comments on this Bill.

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

D12/85

BROADCASTING AND TELEVISION LEGISLATION AMENDMENT BILL
(NO. 2) 1985

This Bill was introduced into the House of Representatives on 9 October 1985 by the Minister for Communications.

The purpose of this Bill is to implement Government decisions regarding the power of the Australian Broadcasting Tribunal to make program standards and the inquiry procedures of the Tribunal.

The Committee has no comments on this Bill.

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

D12/85

COMMONWEALTH EMPLOYEES (EMPLOYMENT PROVISIONS) BILL 1985

This Bill was introduced into the House of Representatives on 10 October 1985 by Mr. Shack.

The purpose of this Bill is to enable Commonwealth Government employing authorities, in the public interest, to suspend from duty or dismiss Government employees who take industrial action which disrupts the provision of services to the community, and to stand down Government employees who cannot be usefully employed as a result of industrial action taken by Government employees.

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

Clause 8 - Non-reviewable decision

Clause 8 provides that an employing authority may, by instrument in writing, terminate the employment of an employee. Whereas declarations suspending and standing down Commonwealth employees under clauses 4 and 5 respectively are made dependent upon the existence of certain objectively verifiable facts and are therefore susceptible to review as to their legality pursuant to the Administrative Decisions (Judicial Review) Act 1977, the exercise of the power to dismiss employees under clause 8 turns on the opinion of the Minister or the employing authority 'that it is in the public interest' that this power should be exercised. Provided the Minister or the employing authority acted in good faith it would not be possible for the court to go behind that opinion in an action for review of a decision under clause 8 pursuant to the Administrative Decisions (Judicial Review) Act 1977.

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

D12/85

COMMONWEALTH EMPLOYEES (EMPLOYMENT PROVISIONS) BILL 1985
(Cont 2)

The Committee suggests that a decision of such importance should be subject to review on its merits by an independent quasi-judicial tribunal and draws clause 8 to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 9 - Notification of decisions

Clause 9 provides that decisions of an employing authority suspending, standing down or dismissing Commonwealth employees or cancelling or revoking such decisions are to be notified in whatever manner the employing authority 'thinks appropriate'. Given the importance of the decisions involved it is suggested that the employing authority should be required to notify those employees affected personally and in writing.

The Committee draws clause 9 to the attention of Senators in that the failure to specify an appropriate mode of notification may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 13 - Delegation

Clause 13 provides that an employing authority may delegate any of its powers under the Act to 'a person'. Given that the powers of employing authorities under the Act include the power to suspend, stand down or dismiss Commonwealth employees this power of delegation would appear to be undesirably wide.

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

D12/85

COMMONWEALTH EMPLOYEES (EMPLOYMENT PROVISIONS) BILL 1985
(Cont 3)

The Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

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

D12/85

COMPANIES AND SECURITIES LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 1985

This Bill was introduced into the House of Representatives on 11 October 1985 by the Attorney-General.

This Bill makes various amendments to the Commonwealth Acts under the co-operative companies and securities scheme which have been agreed to by the Ministerial Council for Companies and Securities. It will have the effect, when passed by the Commonwealth Parliament, of automatically amending the corresponding State companies and securities legislation.

The Committee has no comments on this Bill.

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

D12/85

EMPLOYEE PARTICIPATION BILL 1985

This Bill was introduced into the Senate on 11 October 1985 by Senator Siddons.

The purpose of this Bill is to encourage the introduction of employee participation in Australian enterprises through reduction in company tax for enterprises classified as employee participation enterprises.

The Committee has no comments on this Bill.

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

D12/85

HEALTH LEGISLATION AMENDMENT BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 9 October 1985 by the Minister for Health.

The Bill seeks to make a number of important changes in a variety of fields relating to the Health portfolio. First, the Bill proposes to increase the competitive ability and the autonomy of the Commonwealth Serum Laboratories. Second, it proposes significant reforms to the medi-fraud provisions of the Health Insurance Act 1973. Third, it provides, under a sunset clause, for the Health Insurance Commission to undertake planning and development of the Australia Card. Finally, it provides for a number of amendments mainly of a technical nature to various aspects of the health function.

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

Clause 49 - New sub-section 128A(5) - Reversal of onus of proof

New section 128A which would be inserted by clause 49 creates an offence where a person makes a statement that is false or misleading in a material particular and capable of being used in connection with a claim for a benefit or payment under the Health Insurance Act 1973. New sub-section 128A(5) provides that it is a defence if a person charged with an offence under the section in relation to a statement made by the person did not know, and could not reasonably be expected to have known, that the statement was -

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

D12/85

HEALTH LEGISLATION AMENDMENT BILL (NO. 2) 1985

(Cont 2)

- (a) false or misleading in a material particular; or
- (b) capable of being used in connection with a claim for a benefit or payment under the Act.

The Senate Standing Committee for Constitutional and Legal Affairs recommended in its Report, 'The Burden of Proof in Criminal Proceedings' (Parliamentary Paper No. 319/1982) that the burden of establishing a defence (the persuasive onus) should not be placed on defendants in criminal proceedings but rather that they should merely be required to bear an evidential onus, that is the onus of adducing evidence of the existence of a defence, the burden of negating which will then be borne by the prosecution. Thus, in the present case, rather than requiring persons charged under section 128A to exculpate themselves by establishing their lack of the relevant knowledge, the preferred course would be merely to require them to adduce evidence that they did not have the relevant knowledge, evidence which the prosecution would then be required to rebut to sustain its charge.

The Committee draws new sub-section 128A(5) to the attention of Senators in that by imposing the persuasive onus of proof on the defendant it may be considered to trespass unduly on personal rights and liberties.

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

D12/85

HOME AND COMMUNITY CARE BILL 1985

This Bill was introduced into the House of Representatives on 9 October 1985 by the Minister Representing the Minister for Community Services.

The Home and Community Care Bill 1985 establishes the framework for a Home and Community Care Program. The Bill authorises the Commonwealth to pay financial assistance to the States and the Northern Territory under agreements with the Commonwealth for the provision of home and community care services.

The Committee has no comments on this Bill.

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

D12/85

HOME AND COMMUNITY CARE (MISCELLANEOUS AMENDMENTS) BILL 1985

This Bill was introduced into the House of Representatives on 9 October 1985 by the Minister Representing the Minister for Community Services.

This Bill will amend four existing Commonwealth Acts to ensure that the Home and Community Care Program to be established by the Home and Community Care Bill 1985 operates as intended. The four Acts to be amended are:

- . the Delivered Meals Subsidy Act 1970;
- . the Home Nursing Subsidy Act 1956;
- . the States Grants (Home Care) Act 1969; and
- . the States Grants (Paramedical Services) Act 1969.

The Committee has no comments on this Bill.

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

D12/85

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION BILL 1985

This Bill was introduced into the House of Representatives on 9 October 1985 by the Attorney-General.

The Bill provides for the establishment of a new Human Rights and Equal Opportunity Commission to replace the existing Human Rights Commission. The new Commission will administer the Racial Discrimination Act 1975 and the Sex Discrimination Act 1984. It will also be the vehicle under which Australia's obligations under the Discrimination (Employment and Occupation) Convention, 1958 (ILO Convention No. 111) will be implemented. The proposed Australian Bill of Rights Act and any future legislation in the human rights area will also be administered through the new Commission.

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

Sub-clauses 21(1) and (5) - Powers to require information

Sub-clauses 21(1) and (5) empower the Commission, by notice in writing, to require persons at a place and at a time specified in the notice to give information, produce documents or attend before a member of the Commission and answer questions. No limitation is imposed as to the reasonableness of time or place although 'reasonable excuse' is a defence in a prosecution for a failure to comply.

The Committee is concerned that the power of the Commission is not limited to requiring persons to give information or produce documents within a reasonable time and to requiring persons to attend at a reasonable time and place. It drew attention in its Eleventh Report of 1984 to clause 21 of the

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

D12/85

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION BILL 1985

(Cont 2)

Human Rights and Equal Opportunity Commission Bill 1984 which was in similar form. The Committee draws attention to sub-clauses 21(1) and (5) in that the failure to stipulate that times and places specified be reasonable may be considered to trespass unduly on personal rights and liberties.

Sub-clause 24(3) - Self incrimination

Sub-clause 24(3) provides that a person is not excused from giving any information, producing a document or answering a question on the ground that the information, the production of the document or the answer to the question might tend to incriminate the person but the information, the production of the document or the answer to the question is not admissible in evidence except in proceedings for the provision of false or misleading information.

Although the sub-clause is in standard form it is the Committee's practice to draw to the attention of Senators all such provisions removing the privilege against self incrimination in that they may be considered to trespass unduly on personal rights and liberties.

Sub-clause 26(3) - Reversal of the onus of proof

Sub-clause 26(2) creates an offence where a person (A) dismisses or refuses to employ a person (B), prejudices a

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

D12/85

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION BILL 1985
(Cont 3)

person (B) in his or her employment or intimidates a person (B) because, inter alia, the person (B) has alleged that a person (C) has done an act or engaged in a practice that is inconsistent with or contrary to any human right. By virtue of sub-clause 26(3) it is a defence to a prosecution of A for an offence under sub-clause (2) if it is proved by A that the relevant allegation by B was false and was not made in good faith.

The Senate Standing Committee for Constitutional and Legal Affairs recommended in its Report, 'The Burden of Proof in Criminal Proceedings' (Parliamentary Paper No. 319/1982) that the burden of establishing a defence (the persuasive onus) should not be placed on defendants in criminal proceedings. It also recommended that provisions imposing an evidential onus on the defendant - that is, the burden of adducing evidence of the existence of some fact constituting a defence - should be kept to a minimum. It suggested that such provisions should be used only where the defendant may be presumed to have peculiar knowledge of the facts in issue or where proof by the prosecution of a particular matter would be extremely difficult or expensive but could be readily or cheaply provided by the defence. Neither of these considerations apply in the present case. Accordingly the Committee is of the view that, if it is desired that a person (A) should not be prosecuted for discriminating against a person (B) who has made baseless and malicious allegations, the fact that the allegations made by B giving rise to the discrimination in question were true and were made in good faith should be made elements of the offence, proof of which would lie on the prosecution.

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

D12/85

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION BILL 1985
(Cont 4)

The Committee draws sub-clause 26(3) to the attention of Senators in that by imposing the persuasive onus of proof on defendants it may be considered to trespass unduly on personal rights.

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

D12/85

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION AMENDMENT BILL
1985

This Bill was introduced into the House of Representatives on 9 October 1985 by the Attorney-General.

This Bill effects a technical change in the functions of the new Human Rights and Equal Opportunity Commission to be established by the Human Rights and Equal Opportunity Commission Bill 1985 to avoid, on the coming into operation of the Australian Bill of Rights Act 1985, a duplication of functions.

The Committee has no comments on this Bill.

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

D12/85

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1985

This Bill was introduced into the House of Representatives on 9 October 1985 by the Attorney-General.

This Bill repeals the Human Rights Commission Act 1981 and contains transitional provisions necessitated by that repeal. It also contains consequential amendments to the Racial Discrimination Act 1975 and the Sex Discrimination Act 1984.

The Committee has no comments on this Bill.

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

D12/85

**SOCIAL SECURITY AND REPATRIATION (BUDGET MEASURES) AMENDMENT
BILL 1985**

This Bill was introduced into the House of Representatives on 9 October 1985 by the Minister for Social Security.

This is an omnibus Bill which deals primarily with Budget measures requiring amendments to existing legislation within the portfolios of the Ministers for Community Services, Social Security and Veterans' Affairs.

The Committee has no comments on this Bill.

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

D12/85

SOCIAL SECURITY (REPARATION FOR PERSECUTION) AMENDMENT BILL
1985

This Bill was introduced into the Senate on 9 October 1985
by Senator Haines.

The intention of this Bill is to exempt from consideration
as "income" for the purposes of the assets test the
reparation payments made by the German Government to
survivors of Nazi concentration camps.

The Committee has no comments on this Bill.

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

D12/85

TRADE PRACTICES AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 9 October 1985 by the Attorney-General.

This Bill is to strengthen and improve the working of the Trade Practices Act 1974 in significant respects. It provides for the amendment of key provisions directed at restrictive trade practices in order to increase their effectiveness. It includes important new provisions to extend the protection afforded to consumers by the Act. The Bill also clarifies the intended meaning of a number of provisions and effects other changes for which experience with the legislation has shown a need.

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

Clause 21 - Reversal of onus of proof

Clause 21 would insert a new section 51A providing that, for the purposes of Division 1 of Part V of the Act, where a corporation makes a representation with respect to any future matter and the corporation does not have reasonable grounds for making the representation, the representation shall be taken to be misleading. By virtue of sub-section 51A(2) the onus of establishing that a corporation had reasonable grounds for making a representation is to rest on the corporation. The making of misleading representations in contravention of Division 1 of Part V of the Act (other than sections 52 and 52A) is a criminal offence under section 79 of the Act.

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

D12/85

TRADE PRACTICES AMENDMENT BILL 1985

(Cont 2)

The Senate Standing Committee for Constitutional and Legal Affairs recommended in its Report, 'The Burden of Proof in Criminal Proceedings' (Parliamentary Paper No. 319/1982) that the burden of establishing a defence (the persuasive onus) should not be placed on defendants in criminal proceedings but rather that they should merely be required to bear an evidential onus, that is the onus of adducing evidence of the existence of a defence, the burden of negating which will then be borne by the prosecution. Thus, in the present case, the corporation might be required to adduce evidence that it had reasonable grounds for making the representation in question, evidence which the prosecution would then be required to rebut to sustain its charge.

The Committee draws the clause to the attention of Senators in that by imposing the persuasive onus of proof on the defendant it may be considered to trespass unduly on personal rights and liberties.

Clause 35 -

New sub-sections 65C(5) and (7) - Lack of parliamentary scrutiny or review

Clause 35 inserts a new Division 1A in Part V of the Act dealing with product safety matters. Under new sub-section 65C(5) the Minister may, by notice in writing in the Gazette, declare goods to be unsafe where it appears to the Minister that the goods will or may cause injury to any

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

D12/85

TRADE PRACTICES AMENDMENT BILL 1985

(Cont 3)

person. Under new sub-section 65C(7), where 18 months have elapsed since the publication of a notice under sub-section 65C(5) and regulations have not been made prescribing a consumer product safety standard in respect of the relevant goods, the Minister may, by notice in writing published in the Gazette, impose a permanent ban on the goods. The supply of goods in contravention of a notice under either sub-section 65C(5) or (7) is an offence under section 79 of the Act carrying penalties of up to \$20,000 in the case of a natural person or up to \$100,000 in the case of a corporation.

Notices under sub-sections 65C(5) and (7) are not required to be tabled in Parliament and are not subject to disallowance. There is no effective form of review by an independent, quasi-judicial tribunal of the Minister's decisions to declare goods unsafe or to ban them. The only avenue of review afforded is that, under new section 65J, a draft of a notice under either sub-section must be prepared and suppliers of the goods in question invited by notice in the Gazette to request a conference with the Commission. Suppliers are, however, given only 10 days to respond and the recommendation of the Commission at the conclusion of a conference with the supplier or suppliers is not binding on the Minister. Where the Minister decides to act otherwise than in accordance with the Commission's recommendation the Minister is required by new section 65P to set out reasons for that decision by notice in writing in the Gazette.

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

D12/85

TRADE PRACTICES AMENDMENT BILL 1985

(Cont 4)

It is unclear to the Committee whether parliamentary review by way of tabling and disallowance or review by an independent quasi-judicial tribunal would be more appropriate in this case. The answer will depend to a great degree on how it is envisaged the new provisions may operate. However the Committee considers that the Minister should not be given an unfettered discretion to declare goods unsafe or to impose a permanent ban without some form of review. Accordingly the Committee draws the new sub-sections to the attention of Senators either in that they may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny or in that they may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

New sub-section 65Q(1) - Lack of limitation as to reasonableness of time or place

Under new sub-section 65Q(1) the Minister or an officer authorised by the Minister may require a corporation by notice in writing to furnish information within a time and in a manner specified in the notice, to produce documents at a time or place specified in the notice. It is not stipulated that the times or places specified in such notices be reasonable.

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

D12/85

TRADE PRACTICES AMENDMENT BILL 1985

(Cont 5)

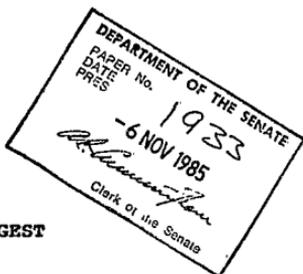
The Committee draws the sub-section to the attention of Senators in that the failure to require that times and places specified be reasonable may be considered to trespass unduly on personal rights and liberties.

New sub-section 65Q(2) - Entry and search without warrant

New sub-section 65Q(2) would empower an officer authorised by the Minister to enter premises, inspect goods, equipment and documents and take samples of goods if the Minister has reason to believe that a corporation supplies goods which will or may cause injury to any person in or from those premises. Authorisation from an independent judicial officer in the form of a warrant is not required.

The Committee draws the sub-section to the attention of Senators in that by permitting the entry and search of premises without warrant it may be considered to trespass unduly on personal rights and liberties.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 13 of 1985

6 NOVEMBER 1985



ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator M. Baume
Senator B. Cooney
Senator R.A. Crowley
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.

The Committee has considered the following Bills:

Australian Capital Territory Stamp Duty Amendment Bill 1985

Bank Account Debits Tax Amendment Bill 1985

Director of Public Prosecutions Amendment Bill (No. 2) 1985

Evidence Amendment Bill 1985

Excise Tariff Amendment Bill (No. 2) 1985

Petroleum Revenue Bill 1985

Pipeline Authority Amendment Bill 1985

Public Service and Statutory Authorities Amendment Bill 1985

Social Security (Poverty Traps Reduction) Bill 1985

Statute Law (Miscellaneous Provisions) Bill (No. 2) 1985

Taxation Laws Amendment Bill (No. 3) 1985

Trade Practices Amendment Bill 1985

Veterans' Entitlements Bill 1985

Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Bill 1985

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

D13/85

AUSTRALIAN CAPITAL TERRITORY STAMP DUTY AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 October 1985 by the Minister Assisting the Treasurer.

In association with the Taxation Laws Amendment Bill (No. 3) 1985, this Bill will give effect to the 1985-86 Budget proposal to impose A.C.T. stamp duty on loan securities. It will also increase the current rates of ACT duty on conveyances of real property. These measures are part of the wider proposal to align A.C.T. taxes better with those levied by the States.

The Committee has no comments on this Bill.

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

D13/85

BANK ACCOUNT DEBITS TAX AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 17 October 1985 by the Minister Assisting the Treasurer.

This Bill will give effect to the proposal announced in the 1985-86 Budget to double the rates of bank account debits tax in the Australian Capital Territory, in lieu of the introduction of a State-type financial institutions duty. The proposal is part of a package designed to bring taxes and charges in the ACT more closely into line with those that commonly apply in the States.

The Committee has no comments on this Bill.

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

D13/85

DIRECTOR OF PUBLIC PROSECUTIONS AMENDMENT BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 16 October 1985 by the Attorney-General.

This Bill provides for amendments to the Director of Public Prosecutions Act 1983 arising from the experience of the operation of the Act since it came into effect on 5 March 1984. The amendments clarify certain functions and powers of the Director as well as giving the Director more flexibility in engaging consultants and persons on short-term contracts.

The Committee has no comments on this Bill.

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

D13/85

EVIDENCE AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 16 October 1985 by the Attorney-General.

This Bill proposes two reforms to the Evidence Act 1905. The first relates to the obtaining of evidence abroad for use in civil or criminal proceedings in Australia under Commonwealth law and the second to the class of persons who are competent to give ancillary evidence to prove business records.

The Committee has no comments on this Bill.

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

D13/85

EXCISE TARIFF AMENDMENT BILL (NO.2) 1985

This Bill was introduced into the House of Representatives on 16 October 1985 by the Minister Representing the Minister for Resources and Energy.

This Bill makes the more important transitional arrangements in the move from the ad valorem royalty and excise regime to a resource rent royalty. It will enable the Commonwealth to determine appropriate levels of excise on the residual crude oil and naturally occurring LPG stocks held by producers at the date on which a resource rent royalty comes into effect.

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

Clause 9 - Retrospectivity

Clause 9 applies the new 'delayed-entry' excise rates provided for in the Bill to crude oil, liquid petroleum and liquefied petroleum gas produced from certain production areas prior to 1 July 1985 but not entered for home consumption before that date. The Explanatory Memorandum indicates that the 'delayed-entry' excise rates are an integral part of the transition to a resource rent royalty taxation arrangement in respect of production from the relevant production areas. However it is not clear whether the 'delayed-entry' rates will result in producers having a greater liability to pay excise on oil or gas produced prior to 1 July this year than they would otherwise have anticipated.

The Committee draws attention to the clause in that the retrospective application of the new 'delayed-entry' excise rates to oil or gas already produced may be considered to trespass unduly on personal rights and liberties.

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

D13/85

PETROLEUM REVENUE BILL 1985

This Bill was introduced into the House of Representatives on 16 October 1985 by the Minister Representing the Minister for Resources and Energy.

This Bill permits the waiving of crude oil excise liability where a State government introduces a resource rent royalty on petroleum developments within its jurisdiction, and where the State also enters into a revenue-sharing agreement with the Commonwealth. It should be read in conjunction with the Excise Tariff Amendment Bill (No. 2) 1985.

The Committee has no comments on this Bill.

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

D13/85

PIPELINE AUTHORITY AMENDMENT BILL 1985

This Bill was introduced into the Senate on 16 October 1985 by the Minister for Resources and Energy.

The purpose of this Bill is to amend the Pipeline Authority Act 1973 to encompass recent Heads of Agreement reached with The Australian Gas Light Company in relation to haulage of gas on the Moomba to Sydney pipeline and construction of a northern lateral pipeline to Bathurst, Orange and Lithgow.

The Committee has no comments on this Bill.

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

D13/85

PUBLIC SERVICE AND STATUTORY AUTHORITIES AMENDMENT BILL 1985

This Bill was introduced into the Senate on 16 October 1985 by the Minister for Education (on behalf of the Minister Assisting the Prime Minister for Public Service Matters).

The Bill has two principal purposes. Firstly it gives effect to the Government's decision to amend the Commonwealth Employees (Redeployment and Retirement) Act 1979 to provide that inefficiency and loss of essential qualifications are grounds upon which redeployment and retirement action can be taken. Secondly it revises the arrangements applying to the engagement of employees under the Public Service Act by providing four separate categories of employees -

- (a) continuing employees;
- (b) short-term employees;
- (c) fixed-term employees; and
- (d) overseas employees.

This scheme will enable appropriate tenure and other provisions to be applied to persons in accordance with the category in which they are engaged.

The Committee has no comments on this Bill.

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

D13/85

SOCIAL SECURITY (POVERTY TRAPS REDUCTION) BILL 1985

This Bill was introduced into the House of Representatives on 16 October 1985 by the Minister for Social Security.

This Bill will give effect to the Statement by the Treasurer, the Hon. Paul Keating, on 19 September 1985 concerning the "Reform of the Australian Taxation System" insofar as it concerns the reduction of poverty traps which affect persons in receipt of social security income support payments.

The Committee has no comments on this Bill.

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

D13/85

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 16 October 1985 by the Attorney-General.

The amendments made by this Bill have a number of purposes such as the tidying up, correction or up-dating of legislation. Other amendments implement changes that are of minor policy significance or are of a routine administrative nature.

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

Clause 3 - Self incrimination

Clause 3 amends the Acts specified in Schedule 1 to the Bill as set out in that Schedule. The Schedule substitutes a new section 9 in the Live-stock Slaughter (Export Inspection Charge) Collection Act 1979 dealing with the refusal or failure to furnish information or returns as required under the Act. New sub-section 9(2) provides that a person is not excused from furnishing a return or information on the ground that it might incriminate the person. The sub-section is subject to the usual proviso that any return or information so furnished is not admissible in evidence against the person except in proceedings for the refusal or failure to furnish information or the provision of false or misleading information.

The Committee commented on similar provisions in the Export Inspection Charges (Miscellaneous Amendments) Bill 1985 and the Grain Legumes Levy Collection Bill 1985 in its Thirteenth Report of 1985 and it draws attention to the justification advanced by the Minister for Primary Industry for such provisions which is reproduced in that Report.

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

D13/85

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 1985
(Cont. 2)

However it is the Committee's practice to draw to the attention of Senators all such provisions removing the privilege against self incrimination in that they may be considered to trespass unduly on personal rights and liberties and it draws attention to new sub-section 9(2) on that ground.

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

D13/85

TAXATION LAWS AMENDMENT BILL (NO. 3) 1985

This Bill was introduced into the House of Representatives on 17 October 1985 by the Minister Assisting the Treasurer.

This Bill will amend the taxation laws in several ways. It represents a start to the Government's legislative programme to give effect to the measures the Treasurer announced on 19 September for reform of the Australian taxation system.

The Committee has no comments on this Bill.

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

D13/85

TRADE PRACTICES AMENDMENT BILL 1985

The Committee initially commented on this Bill in its Alert Digest No. 12 of 1985 (16 October 1985). Its attention has since been drawn to a further aspect of the Bill falling within its Terms of Reference and it therefore draws the attention of Senators to the following clause of the Bill:

Clause 35 -

New section 65F - Non-reviewable decision

Clause 35 inserts a new Division 1A in Part V of the Act dealing with product safety matters. Under new section 65F the Minister may, if it appears to the Minister that goods are goods of a kind which will or may cause injury to any person, by notice in writing in the Gazette require the supplier -

- (i) to recall the goods;
- (ii) to publish notices disclosing defects in the goods, circumstances in which they are dangerous or procedures for their disposal; and/or
- (iii) to inform the public that the supplier undertakes to repair or replace the goods or to refund the price of the goods.

The only avenue of review afforded in respect of a notice under section 65F is that, under new section 65J, a draft of the notice must be prepared and suppliers of the goods in question invited by notice in the Gazette to request a conference with the Commission. Suppliers are, however,

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

TRADE PRACTICES AMENDMENT BILL 1985

(Cont 2)

given only 10 days to respond and the recommendation of the Commission at the conclusion of a conference with the supplier or suppliers is not binding on the Minister. Where the Minister decides to act otherwise than in accordance with the Commission's recommendation the Minister is required by new section 65F to set out reasons for that decision by notice in writing in the Gazette.

The Committee suggests that the decision of the Minister under new section 65F to require the recall of goods should be reviewable by an independent, quasi-judicial tribunal like the Administrative Appeals Tribunal. It draws the new section to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

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

D13/85

VETERANS' ENTITLEMENTS BILL 1985

This Bill was introduced into the House of Representatives on 16 October 1985 by the Minister Representing the Minister for Veterans' Affairs.

The purpose of the Veterans' Entitlements Bill 1985 is to consolidate, rationalise and simplify the entitlements available to members of the veteran community. It represents the most important and comprehensive overhaul of the repatriation system since its establishment over 60 years ago.

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

Clause 84 - Lack of parliamentary scrutiny

Sub-clause 84(6) provides that the Commission may determine a scale of charges in respect of the treatment at its hospitals and institutions of veterans (otherwise than for war-caused injuries or diseases) or persons other than veterans. Under sub-clause 84(7) the Commission may determine that persons in a specified class of persons are to be exempt from paying the charges fixed under sub-clause 84(6). There is no provision for parliamentary scrutiny of the scale of charges or of the exemptions determined by the Commission.

The Committee draws the clause to the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny.

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

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VETERANS' ENTITLEMENTS BILL 1985

(Cont 2)

Clauses 97, 99, 100, 101, 102, 103, 104, 106, 107 and 108 -
Non-reviewable discretions

Under Part VI of the Bill the Commission may grant to a veteran a clothing allowance (clause 97), an attendant allowance (clause 98), a decoration allowance (clause 102), a Victoria Cross allowance (clause 103), a recreation transport allowance (clause 104), special assistance or benefits (clause 106), a temporary incapacity allowance (clause 107) and a loss of earning allowance (clause 108). The Commission may also grant a benefit towards the funeral expenses of a veteran, a dependant of a deceased veteran, or a service pensioner (clauses 99, 100 and 101). There is a right of review in respect of only one of these allowances and benefits, namely the attendant allowance (see clause 134). In respect of the grant of the other allowances and benefits the Commission's decision would be final, subject only to challenge as to its legality pursuant to the Administrative Decisions (Judicial Review) Act 1977. Because no criteria are given for the exercise by the Commission of its discretion in the grant of these allowances and benefits the scope for such review would be limited.

The Committee draws these clauses to the attention of Senators in that they may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Clause 105 - Lack of parliamentary scrutiny

Clause 105 empowers the Commission, by instrument in writing, to establish a Vehicle Assistance Scheme for the provision of motor vehicles to veterans and for the payment

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VETERANS' ENTITLEMENTS BILL 1985

(Cont. 3)

of allowances towards the cost of running and maintaining the vehicles so provided. The instruments establishing, varying or revoking the scheme must be approved by the Minister but they are not required to be subjected to any form of parliamentary scrutiny.

The Committee draws the clause to the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny.

Clause 110 - Lack of parliamentary scrutiny

Clause 110 states that a veteran or a dependant of a deceased veteran who travels for the purpose of obtaining treatment and an attendant accompanying such a person are to be entitled to the payment of travelling expenses 'subject ... to such conditions so the Commission determines'. Such determinations by the Commission are not required to be subjected to any form of parliamentary scrutiny.

The Committee draws the clause to the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny.

Clause 116 - Lack of parliamentary scrutiny

Clause 116 empowers the Commission, by instrument in writing, to establish a Veterans' Children Education Scheme to provide education and training for eligible children. As with the Vehicle Assistance Scheme the instruments establishing, varying or revoking the scheme must be approved by the Minister but are not required to be subjected to any form of parliamentary scrutiny.

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

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(Cont. 4)

The Committee draws the clause to the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny.

Paragraph 119(7)(b) - Ministerial determination

Under paragraph 119(7)(b) the Minister for Defence may determine service in the Defence Force of a specified kind to be 'hazardous service'. Where a claim is made in respect of the incapacity from injury or disease of a member of the Forces or the death of such a member which relates to 'hazardous service' rendered by the member the Commission is required to determine that the injury, disease or death was defence-caused unless it is satisfied, beyond reasonable doubt, that there is no sufficient ground for making that determination. If the service of the member of the Forces is not determined to be 'hazardous service' then the member or the dependant of the member does not have the advantage of this criminal standard of proof: the Commission is merely required to decide the issues relevant to the claim to its reasonable satisfaction.

Despite the importance of determinations of 'hazardous service' to the claimants concerned there is no parliamentary scrutiny of such determinations. The Committee drew attention in its Eighth Report of 1985 to the lack of such scrutiny in respect of similar determinations under section 107J of the Repatriation Act 1920 as amended by clause 25 of the Repatriation Legislation Amendment Bill 1985. The Private Secretary to the Minister for Veterans' Affairs responded to this comment on 16 August 1985 indicating that what might be designated as 'hazardous service' had yet to be decided.

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

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(Cont. 5)

'In some circumstances, it might be possible to define it by a generic description of the service (e.g. parachuting duties), at other times on the basis of service with a specific Defence Force group (e.g. service with the Special Air Services Regiment), or by a description of particular incidents (e.g. neutralising an unexploded device).

The Department of Defence has advised, however, that the Minister for Defence may consider a highly sensitive operation should be declared as 'hazardous service'. In these circumstances, issues of national security could require that such a determination not be made public. Even if there were to be a legislative provision requiring the tabling of determinations, it would need some companion provision whereby the Minister for Defence was enabled to issue a conclusive certificate to avoid tabling specific determinations. This in turn raises the further question whether a conclusive certificate would be required to be tabled. Whether legislative provisions of such complexity can be justified in the present circumstances would require further consideration.'

The Committee assumes that it has been concluded that tabling and disallowance of determinations of what constitutes 'hazardous service' cannot be justified since the provision remains unchanged in the present Bill. However the Committee still takes the view that the determinations are of sufficient significance in the scheme of the legislation that some mechanism should be found

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(Cont. 6)

whereby the Parliament may be informed of such determinations (other than those which may concern matters of national security) and may debate the making of a determination or the failure to make a determination in respect of particular service. The Committee also notes that it would be concerned at the use of conclusive certificates if the issue of such certificates were not to be clearly restricted to situations involving considerations of national security.

The Committee draws the provision to the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny.

Clause 122 - Non-reviewable decision

Clause 122 enables the Commission to pay to the legal personal representative of a person who has died or to distribute among the dependants of such a person any accrued amount of pension, allowance or other benefit unpaid at the death of the person or any amount which has become payable after the death in respect of the grant of a claim made before the death of the person. Such an amount may be not insubstantial since the Commission may grant pensions with effect from a date 3 months before the date on which the claim for the pension was lodged with the Department. By virtue of sub-clause 122(4) the Commonwealth is not to be liable to any action, claim or demand in respect of any amount paid or distributed in accordance with the clause. The effect of this clause is to prevent any review of the exercise by the Commission of its discretion under the clause. Thus, for example, if the Commission were to

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

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(Cont. 7)

distribute an amount unequally among the dependants of the deceased, a person who felt aggrieved by that decision would not be able to challenge it.

The Committee draws the clause to the attention of Senators in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Paragraph 127(1)(c) - Reasonableness of time and place

Sub-clause 127(1) empowers the Secretary, by notice in writing, to require persons to furnish information, to produce documents and to appear before a specified officer to give evidence or produce documents. While in each case not less than fourteen days notice must be given for the person to comply with the requirement, there is no limitation as to the reasonableness of the time and place at which a person may be required to appear before an officer. Failure to attend at the time and place notified would constitute an offence carrying a penalty of a fine of up to \$1,000 or 6 months imprisonment or both unless the person concerned was incapable of complying with the notice.

The Committee has expressed its concern in relation to a number of similar provisions that the failure to require that the time and place specified be reasonable may result in the provision operating harshly in some cases. Accordingly the Committee draws the provision to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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

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(Cont. 8)

Clause 128 - Self incrimination

Clause 128 provides that a person is not excused from furnishing information, producing a document or giving evidence on the ground that the information or evidence or the production of the document may tend to incriminate the person. The clause is subject to the usual proviso that any information so furnished, evidence so given or document so produced is not admissible in evidence against the person except in proceedings for a failure to furnish information, give evidence or produce a document or for furnishing information or giving evidence that is false or misleading.

As is its usual practice the Committee draws the clause to the attention of Senators in that the removal of the privilege against self incrimination may be considered to trespass unduly on personal rights and liberties.

Clause 131 - Lack of parliamentary scrutiny

Clause 131 provides for the payment of travelling expenses to persons attending before the Commission to support claims or as witnesses and to persons accompanying such persons as attendants. As in clause 110 the entitlement to travelling expenses is in each case expressed to be 'subject to such conditions as the Commission determines'. There is no provision for parliamentary scrutiny of such determinations. Furthermore, whereas under sub-clauses 131(1), (3), (5) and (7) the relevant travelling expenses are to be prescribed, the travelling expenses to be paid to attendants under sub-clauses 131(2), (4), (6) and (8) are to be such as the Commission 'considers reasonable'. If it is intended that the Commission will determine these expenses in accordance

VETERANS' ENTITLEMENTS BILL 1985

(Cont. 9)

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

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(Cont. 9)

with a standard scale then it is suggested that any such scale should be subject to parliamentary scrutiny. If, on the other hand, the Commission is to determine such travelling expenses on a case by case basis then it is suggested that its decision should be subject to review by an independent, quasi-judicial body like the Veterans' Review Board.

The Committee draws the clause to the attention of Senators both in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny and in that it may make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Paragraph 208(1)(a) - Strict liability

Paragraph 208(1)(a) provides that a person shall not make a false or misleading statement in connection with a claim for a pension, allowance or other benefit under the Act. The more usual form of such a provision would be to create an offence only if a person 'knowingly' makes a false or misleading statement (see, for example, sub-clauses 127(5) and 168(2)). Because the requirement that the person making the statement knows that it is false or misleading has been omitted in paragraph 208(1)(a) it may be thought to create an offence of strict liability: that is, it would be sufficient to secure a conviction if it were proved that the statement was in fact false or misleading even if the person making it believed it to be true.

The Committee draws the provision to the attention of Senators in that it may be considered to trespass unduly on personal rights and liberties.

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(Cont. 10)

General Comment

The Committee notes for the information of Senators that clause 119 continues in force the change in the standard of proof for the determination of veterans' entitlements made by the Repatriation Legislation Amendment Act 1985. By virtue of that change the Commission is required not to grant a claim if it is reasonably satisfied that there is no material before it raising a reasonable hypothesis that the injury, disease or death giving rise to the claim was war-caused. Previously, in order not to grant a claim, the Commission had to be satisfied beyond reasonable doubt that there were insufficient grounds for granting the claim: see Repatriation Commission v. O'Brien (1985) 58 ALR 119 per Gibbs CJ, Wilson and Dawson JJ at 128.

The Committee recognises that this change in the standard of proof for the grant of repatriation benefits is clearly a matter of government policy. The Committee also recognises that in strictly legal terms a claimant bears no onus to prove his or her claim before the Commission. While the Committee therefore takes the view that the change in the standard of proof is not a matter on which it should formally make comment under its Terms of Reference, it draws attention to its concerns with provisions which reverse the traditionally accepted onus of proof in other contexts, most particularly in criminal proceedings: see pages 26 to 32 of the paper on 'The Operation of the Australian Senate Standing Committee for the Scrutiny of Bills 1981-1985', tabled in September, and see also the report of the Senate Standing Committee on Constitutional and Legal Affairs on The Burden of Proof in Criminal Proceedings (Parliamentary Paper No. 319/1982).

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

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VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS AND CONSEQUENTIAL AMENDMENTS) BILL 1985

This Bill was introduced into the House of Representatives on 16 October 1985 by the Minister Representing the Minister for Veterans' Affairs.

The Veterans' Entitlements (Transitional Provisions and Consequential Amendments) Bill 1985 will provide arrangements for the transition from the existing Repatriation Act 1920 and other supplementary legislation to the Veterans' Entitlements Bill 1985.

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

Clauses 42, 43 and 44 - Retrospectivity

The Repatriation Legislation Amendment Act 1985 altered the standard of proof applicable in respect of claims for pensions by requiring that the Repatriation Commission not grant a claim if it was reasonably satisfied that there was no material before it raising a reasonable hypothesis that the injury, disease or death giving rise to the claim for a pension was war-caused. Previously, in order not to grant a claim, the Commission had to be satisfied beyond reasonable doubt that there were insufficient grounds for granting the claim: see Repatriation Commission v. O'Brien (1985) 58 ALR 119 per Gibbs CJ, Wilson and Dawson JJ at 128.

In its Eighth Report of 1985 the Committee drew attention to the fact that sections 69, 70 and 71 of the amending Bill (as it then was) applied the altered standard of proof to claims made before 15 May 1985, to applications for review by the Veterans' Review Board made before 15 May 1985 and to certain applications for review by the Administrative Appeals Tribunal of decisions made before 15 May 1985. The

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VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) BILL 1985

(Cont. 2)

Committee suggested that such retrospective alteration of entitlements might be considered to trespass unduly on personal rights and liberties. The Private Secretary to the Minister for Veterans' Affairs responded to this comment on 16 August 1985 stating that:

'It is a matter of Government policy that the [reasonable hypothesis modification intended to overcome the effect of the High Court decision in O'Brien] should be applied in a consistent manner to all decisions made after the date of effect of the Amendment Act. It is the Government's view that personal rights flow from the determination of Commonwealth liability to pay a pension rather than the mere act of lodging a claim.'

Clauses 42, 43 and 44 of the present Bill are similar in effect to sections 69, 70 and 71 of the Repatriation Legislation Amendment Act 1985 although the Committee is pleased to note that the terms of these clauses have been clarified so as to overcome any doubts similar to those which the Committee also raised in its Eighth Report concerning the continued application of the more advantageous criminal standard of proof to claims lodged before 15 May 1985. The Committee indicates as a matter of record that it accepts the Government's view that the application of the altered standard of proof in the determination of claims and appeals after the date on which the amending legislation came into operation does not involve any retrospectivity (even though such claims and appeals may have been lodged or initiated prior to the commencement of the amending legislation).

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VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) BILL 1985

(Cont. 3)

Clause 59

Reasonableness of time and place

Clause 59 amends the Acts set out in the Schedule including the Seamen's War Pensions and Allowances Act 1940. New paragraph 30(1)(c) to be inserted in that Act is in similar form to paragraph 127(i)(c) of the Veterans' Entitlements Bill 1985 and the Committee's comment on that paragraph also applies to this provision.

Self incrimination

New section 31 to be inserted in the Act is in similar form to clause 128 of the Veterans' Entitlements Bill 1985 and the Committee's comment on that clause also applies to this section.

Strict liability

New paragraph 58(1)(a) is in similar form to paragraph 208(1)(a) of the Veterans' Entitlements Bill 1985 and the Committee's comment on that paragraph also applies to this provision.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 14 of 1985

13 NOVEMBER 1985



ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator M. Baume
Senator B. Cooney
Senator R.A. Crowley
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.

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The Committee has considered the following Bills:

Atomic Energy Amendment Bill 1985

Australian Nuclear Science and Technology Organisation
Bill 1985

Australian Nuclear Science and Technology Organisation
(Transitional Provisions) Bill 1985

Petroleum (Submerged Lands) (Cash Bidding) Amendment
Bill 1985

Postal Services Amendment (Continuance of Postal
Services) Bill 1985

NOTE: This Digest is circulated to all Honourable
Senators. Any Senator who wishes to draw
matters to the attention of the Committee
under its Terms of Reference is invited to do
so.

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ATOMIC ENERGY AMENDMENT BILL 1985

This Bill was introduced into the Senate on 6 November 1985 by the Minister for Resources and Energy.

This legislation will repeal almost all of the existing Atomic Energy Act 1953, including the provisions establishing the Australian Atomic Energy Commission and the outmoded and offensive security provisions. A new statutory authority, the Australian Nuclear Science and Technology Organisation, will be created under separate legislation, to be introduced concurrently with this Bill, to replace the Commission.

The Committee has no comments on this Bill.

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

AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION BILL
1985

This Bill was introduced into the Senate on 6 November 1985 by the Minister for Resources and Energy.

The purpose of this Bill is to establish a successor organisation to the existing Australian Atomic Energy Commission which was established under the Atomic Energy Act 1953.

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

Clause 40 - Delegation

Clause 40 permits the Minister to delegate to 'a person' all or any of the Minister's powers under the Act other than the power of delegation and the powers of the Minister to appoint deputies for members of the Executive and to give directions to the Executive.

The Committee has expressed concern on a number of occasions in relation to unrestricted powers of delegation. While some steps have been taken in the present case to restrict the powers which may be delegated the Committee questions whether it is really intended that the Minister will delegate the power to appoint an acting Deputy Chairperson (clause 17) or the power to appoint the members of the Australian Nuclear Science and Technology Advisory Council (clause 38) and if so to whom? The Committee also suggests that if powers such as the power to approve estimates of expenditure (clause 26), the power to approve entry into contracts for amounts exceeding \$200,000 (clause 29) and the power to determine the constitution and functions of the Joint Consultative

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Committee to be established under clause 43 are to be delegated then they should only be capable of being delegated to senior Departmental officers and not to any person.

The Committee draws the clause to the attention of Senators in that by permitting such unrestricted delegation it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

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

AUSTRALIAN NUCLEAR SCIENCE AND TECHNOLOGY ORGANISATION
(TRANSITIONAL PROVISIONS) BILL 1985

This Bill was introduced into the Senate on 6 November 1985 by the Minister for Resources and Energy.

The purpose of this Bill is to make certain transitional provisions in consequence of the enactment of the Australian Nuclear Science and Technology Organisation Act 1985. The legislation will provide for the continuation of the body corporate from its present form as the Australian Atomic Energy Commission to the new body corporate, the Australian Nuclear Science and Technology Organisation.

The Committee has no comments on this Bill.

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

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PETROLEUM (SUBMERGED LANDS) (CASH BIDDING) AMENDMENT BILL
1985 [NÖ. 2]

This Bill was introduced into the Senate on 6 November 1985 by the Minister for Resources and Energy.

This reintroduced Bill proposes the amendment of the Petroleum (Submerged Lands) Act 1967 to provide for a cash bidding system for the award of petroleum exploration permits in highly prospective offshore areas.

This Bill is in exactly the same form as the similarly titled Bill introduced into the Senate on 28 March 1985. In its Alert Digest No. 3 of 1985 (17 April 1985) the Committee drew the attention of Senators to the following clause of the Bill:

Clause 5 - Proposed section 22B -Non-reviewable decision

Proposed sub-sections 22B(1) and (2) would give the Joint Authority (comprising the Commonwealth Minister and the relevant State Minister) a discretion to reject applications for permits to explore for petroleum. No mechanism is provided for review of the exercise of this discretion. The Committee drew the attention of Senators to the fact that, as the criteria for rejecting an application were not specified, the scope for review under the Administrative Decisions (Judicial Review) Act 1977 was limited. The Minister for Resources and Energy responded:

'While the criteria for rejecting an application are not specified in the legislation, I draw your attention to sub-section 22A(3) of the Bill. This sub-section places an obligation on the Joint Authority to publish in the Gazette, at the time

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applications are invited, certain information including the matters that the Joint Authority will take into account in determining whether to reject an application. Should the Joint Authority reject an application under sub-section 22B(1) or (2) on grounds other than those that were published in the Gazette, then that decision is open to challenge, and any decision to award the permit to another applicant would also be liable to be set aside if challenged.'

The Committee thanks the Minister for this response which answers its concerns in relation to the clause.

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

POSTAL SERVICES AMENDMENT (CONTINUANCE OF POSTAL SERVICES)
BILL 1985

This Bill was introduced into the Senate on 7 November 1985 by Senator Lewis.

This legislation provides that where the Minister, after consultation with the Australian Postal Commission, is satisfied that, by reason of an industrial dispute or for any other reason, the Commission is unable to operate its postal services in such a manner as will meet the social, industrial and commercial needs of the Australian people for postal services, whether throughout Australia or in a particular part of Australia, the Minister may suspend the monopoly provision relating to the carriage of mail applying to Australia Post.

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

Clause 3 - Henry VIII clause

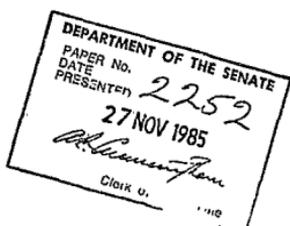
Clause 3 would insert a new sub-section 85(3) in the Principal Act permitting the Minister, by notice in the Gazette, to suspend the operation of the offence provision in sub-section 85(1) if the Minister is satisfied that the Commission, by reason of an industrial dispute or for any other reason, is unable to operate its postal services in such a manner as will meet the social, industrial and commercial needs of the Australian people.

Insofar as it permits the Minister, by Executive instrument, to suspend the operation of a law passed by Parliament, the clause may be characterised as a 'Henry VIII' clause. As is its usual practice with all such clauses the Committee draws

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the provision to the attention of Senators in that it may be considered an inappropriate delegation of legislative power while leaving the question whether it may be considered justifiable in all the circumstances to the Parliament.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 15 of 1985

27 NOVEMBER 1985



ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator M. Baume
Senator B. Cooney
Senator R.A. Crowley
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.

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The Committee has considered the following Bills:

- Australia Bill 1986 [1985]
- Australian Trade Commission Bill 1985 [No. 2]
- Australian Trade Commission (Transitional Provisions and Consequential Amendments) Bill 1985 [No. 2]
- Australia (Request and Consent) Bill 1985
- Child Care Amendment Bill 1985
- Commonwealth Education Institutions (Overseas Students) Amendment Bill 1985
- Commonwealth Tertiary Education Commission Amendment Bill 1985
- Customs and Excise Legislation Amendment Bill (No. 2) 1985
- Customs Tariff Amendment Bill (No. 2) 1985
- Customs Undertakings (Penalties) Amendment Bill 1985
- Federal Airports Corporation Bill 1985
- Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Amendment Bill 1985
- Judicial and Statutory Officers (Remuneration and Allowances) Amendment Bill 1985
- Quarantine (Validation of Fees) Bill 1985
- Sales Tax Assessment Bill (No. 11) 1985
- Sales Tax Bill (No. 11A) 1985
- Sales Tax Bill (No. 11B) 1985
- Sales Tax (Exemptions and Classifications) Amendment Bill (No. 2) 1985
- Social Security (Proportional Portability of Pensions) Amendment Bill 1985

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States Grants (Education Assistance - Participation and Equity) Amendment Bill (No. 2) 1985

States Grants (Schools Assistance) Amendment Bill 1985

States Grants (Tertiary Education Assistance) Amendment Bill (No. 3) 1985

Taxation Laws Amendment Bill (No. 4) 1985

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

AUSTRALIA BILL 1986 [1985]

This Bill was introduced into the House of Representatives on 13 November 1985 by the Attorney-General.

The Australia Bill 1986 bears the date '1986' since it is intended that it should commence operation at the same time as the proposed Australia Act 1986 of the United Kingdom Parliament the terms of which are set out in the Schedule to the Australia (Request and Consent) Bill 1985. In brief, the Australia Act 1986 of the Commonwealth Parliament and the Australia Act 1986 of the United Kingdom Parliament will provide that the latter Parliament shall no longer have power to make laws for Australia. They will remove restrictions under United Kingdom law on the legislative powers of the States and remove other existing or possible limitations derived from the former colonial status of the States. The proposed Australia Acts also deal with the exercise of powers and functions of the Queen in respect of the States. They will terminate all responsibilities of the United Kingdom Government in relation to State matters. They will also terminate appeals to the Privy Council from State courts.

The Committee has no comments on this Bill.

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

AUSTRALIAN TRADE COMMISSION BILL 1985 [NO. 2]

This Bill was introduced into the House of Representatives on 12 November 1985 by the Minister for Trade.

This Bill is in the same form as the Australian Trade Commission Bill 1985 introduced into the House of Representatives on 11 October 1985. It has been withdrawn and reintroduced owing to a procedural error. The Committee's comments on the withdrawn Bill in its Alert Digest No. 12 of 1985 (16 October 1985) apply also to the reintroduced Bill.

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

AUSTRALIAN TRADE COMMISSION (TRANSITIONAL PROVISIONS AND
CONSEQUENTIAL AMENDMENTS) BILL 1985 [NO. 2]

This Bill was introduced into the House of Representatives on 12 November 1985 by the Minister for Trade.

This Bill is in the same form as the Australian Trade Commission (Transitional Provisions and Consequential Amendments) Bill 1985 introduced into the House of Representatives on 11 October 1985. It has been withdrawn and reintroduced owing to a procedural error. The Committee had no comments on the withdrawn Bill in its Alert Digest No. 12 of 1985 (16 October 1985) and it has no comments on the reintroduced Bill.

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

AUSTRALIA (REQUEST AND CONSENT) BILL 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Attorney-General.

This Bill provides the request and consent of the Parliament of the Commonwealth of Australia required under the Statute of Westminster 1931 for the enactment by the United Kingdom of the proposed Australia Act 1986 set out in the Schedule.

The Committee has no comments on this Bill.

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

CHILD CARE AMENDMENT BILL 1985

This Bill was introduced into the Senate on 14 November 1985 by the Minister for Community Services.

This Bill proposes to amend the Child Care Act 1972 to alter the nature of operational assistance to child care centres funded under the Act. It would change the basis on which such assistance is paid, the method of calculating grants payable and the rates of payment.

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

Clause 3 -

New sub-section 11(7) - Henry VIII clause

Under new sub-section 11(7) the amount of grant payable to eligible organisations in respect of child care centres is to be determined on the basis of a rate of \$16 per week for each place at the centre for children under 3 years or \$11 per week for children over 3 years or, in each case, 'such greater amount per week as is determined by the Minister from time to time by notice in writing published in the Gazette'.

Because it permits the rate set by the legislation to be varied by executive instrument the sub-section may be characterized as a 'Henry VIII' clause and the Committee therefore draws it to the attention of Senators in that it may be considered an inappropriate delegation of legislative power.

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

COMMONWEALTH EDUCATION INSTITUTIONS (OVERSEAS STUDENTS)
AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Minister Representing the Minister for Education.

The purpose of the Commonwealth Education Institutions (Overseas Students) Amendment Bill 1985 is to amend the Australian National University Act 1946 and the Canberra College of Advanced Education Act 1967 to empower the charging of fees for overseas students.

The Committee has no comments on this Bill.

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

COMMONWEALTH TERTIARY EDUCATION COMMISSION AMENDMENT BILL
1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Minister Representing the Minister for Education.

The purpose of the Commonwealth Tertiary Education Commission Amendment Bill is to amend the legislation governing the operations of the CTEC to give effect to Government decisions taken following consideration of the report by the CTEC Chairman on the structure of the Commission and arrangements for co-ordination and consultation with States and institutions.

The Committee has no comments on this Bill.

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

CUSTOMS AND EXCISE LEGISLATION AMENDMENT BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

This Bill proposes various amendments to the Customs Act 1901 and the Excise Act 1901. The most important measures are the amendments required to facilitate the introduction of inwards duty free shopping and the amendments required to enable a full rebate of the excise on diesel fuel to be paid to eligible primary producers.

The Committee has no comments on this Bill.

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

CUSTOMS TARIFF AMENDMENT BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

The purpose of this Bill is to enact a wide range of changes to the Customs Tariff Act 1982.

The Bill includes three clauses relating to sections of the Principal Act and eight clauses which correspond to Schedules to the Bill. These Schedules incorporate changes -

- (a) introduced in the House of Representatives as Customs Tariff Proposals Nos. 5-6 (1985);
- (b) initially introduced by Gazette Notice and subsequently introduced as Customs Tariff Proposals Nos. 7-9 (1985);
or
- (c) which are being introduced by this Bill.

The Committee has no comments on this Bill.

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

CUSTOMS UNDERTAKINGS (PENALTIES) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

This Bill proposes several technical and formal amendments to the Customs Undertakings (Penalties) Act 1981 as a consequence of the changes made to the tender quota provisions in Part XV of the Customs Act 1901 by the Customs and Excise Legislation Amendment Act 1985.

The Committee has no comments on this Bill.

FEDERAL AIRPORTS CORPORATION BILL 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Minister for Aviation.

The purpose of the Bill is to establish the Federal Airports Corporation as a Commonwealth statutory authority charged with developing, operating and maintaining selected airports.

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

Sub-clause 4(2) - Henry VIII clause

Sub-clause 4(1) provides that the Act is not to extend to the Territory of Norfolk Island. Under sub-clause 4(2), however, the application of the Act may be extended to Norfolk Island by the Minister by notice in the Gazette. Because it permits the variation of the application of the Act by executive instrument the sub-clause may be characterised as a 'Henry VIII' clause and the Committee therefore draws it to the attention of Senators in that it may be considered to be an inappropriate delegation of legislative power.

Sub-clause 45(2) - Lack of parliamentary scrutiny

Under sub-clause 45(2) the Minister may declare, by notice in the Gazette, that the Corporation is not liable to pay stamp duty or any similar tax under a Commonwealth, State or Territory law on a specified dealing with a security, on any other document executed by or on behalf of the Corporation for the purposes of raising money or on transactions involving securities or documents which fall within a specified class of transactions or documents.

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

The Committee has in the past argued that the decision to relieve a statutory authority from the obligation to pay taxes under Commonwealth, State or Territory laws should be subject to parliamentary scrutiny (see, for example, its comment on proposed new section 50 inserted by clause 8 of the Snowy Mountains Engineering Corporation Amendment Bill 1985 in its Eighth Report of 1985). The Committee therefore draws sub-clause 45(2) to the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny.

Clause 56 - Lack of parliamentary scrutiny

Clause 56 empowers the Corporation, subject to the approval of the Minister, to make determinations fixing or varying aeronautical charges, that is, charges for the use by aircraft of Federal airports and for services provided by the Corporation such as the handling of cargo. In exercising the power to disapprove of a determination the Minister is required by sub-clause 56(6) to have regard to the duties and responsibilities of the Corporation under the legislation. These include, pursuant to sub-clause 7(2), the requirement that the Corporation endeavour to earn a reasonable return on its assets and to pay reasonable dividends to the Commonwealth. It may be thought, therefore, that the aeronautical charges are to be set on a purely commercial basis and that the determinations fixing or varying such charges should not be subject to any legislative requirement for parliamentary scrutiny. If, however, the charges were not to be merely a fee for service but were to include an element of revenue raising for the other activities of the Corporation some requirement for parliamentary scrutiny might be thought appropriate. Charges for the use of aerodromes are presently set out in the Air Navigation (Charges) Act 1952 and are therefore subject to the fullest degree of parliamentary scrutiny.

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

The Committee draws clause 56 to the attention of Senators in that it may be considered to subject the exercise of legislative power insufficiently to parliamentary scrutiny.

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

INCOME TAX (COMPANIES, CORPORATE UNIT TRUSTS AND SUPERANNUATION FUNDS) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 15 November 1985 by the Minister Assisting the Treasurer.

This Bill will amend the Income Tax (Companies, Corporate Unit Trusts and Superannuation Funds) Act 1985 to declare and impose the rate of tax payable by trustees of public trading trusts within the meaning of the proposed Division 6C of Part III of the Income Tax Assessment Act 1936.

The Committee has no comments on this Bill.

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

JUDICIAL AND STATUTORY OFFICERS (REMUNERATION AND ALLOWANCES)
AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Special Minister of State.

The purpose of this Bill is to amend the Judicial and Statutory Officers (Remuneration and Allowances) Act 1984 to give effect to the Government's decision to accept Reports Nos. 2 and 3 of the Remuneration Tribunal's 1985 Review.

The Committee has no comments on this Bill.

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

QUARANTINE (VALIDATION OF FEES) BILL 1985

This Bill was introduced into the House of Representatives on 20 November 1985 by the Minister for Primary Industry.

The purpose of this Bill is to validate the collection of certain human, animal and plant quarantine fees for which there has been no authority under the Quarantine Act 1908.

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

Clauses 4, 5 and 7 - Retrospectivity

Clauses 4, 5 and 7 each set out to validate certain fees which have been levied by the Commonwealth without proper authority. The lack of authority dealt with by clauses 4 and 5 arose because of -

- (a) the failure on the part of the Department of Health to table a determination of fees (referred to in the Bill as 'Notice A') in Parliament as required by paragraph 48(1)(c) of the Acts Interpretation Act 1901 with the result that the determination was void and of no effect;
- (b) defects in determinations made earlier this year by the Minister for Primary Industry; and
- (c) in the case of clause 5, the fact that 'Notice A' had the unintended effect of revoking all previously existing fees.

The lack of authority dealt with by clause 7 arose because the Department of Health believed it had authority to collect certain fees pursuant to section 64 of the Quarantine Act

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

1908 but the Department of Primary Industry, which now has the administration of that Act as it relates to plant and animal quarantine, has decided with the benefit of closer scrutiny that there was no legislative authority for the collection of those fees.

Because some \$2.5 million worth of fees are said to be at stake in relation to the absence of proper authority dealt with by clause 4 alone it is clear that there was no alternative in this case but to pass retrospective validating legislation. However the Committee observes that the requirement that delegated legislation be tabled and thus subject to parliamentary scrutiny should not be taken lightly. It should not be assumed that the Parliament will readily pass validating legislation to overcome a failure to comply with the statutory requirements such as occurred with 'Notice A'. In this connection the Committee also suggests that clause 5 proceeds from a misconception as to the effect of a failure to comply with the tabling requirement. Sub-section 48(3) of the Acts Interpretation Act 1901 states that if delegated legislation is not laid before each House of Parliament it is to be 'void and of no effect'. In the Committee's view this means void ab initio, not, as the author of the Explanatory Memorandum appears to believe, void from the last sitting day on which the determination could have been tabled. This latter interpretation would severely diminish the power of the Parliament to scrutinise delegated legislation since it would enable the Executive to make an iniquitous measure with no intention of tabling it but holding the view that it would at least be in force from the day of making until the last sitting day on which it could be tabled in compliance with the law. This would be a matter of months in some cases. The Committee intends to raise this aspect of the Bill with the Minister for Primary Industry.

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

SALES TAX ASSESSMENT BILL (NO. 11) 1985

This Bill was introduced into the House of Representatives on 21 November 1985 by the Treasurer.

The Bill provides for the assessment and collection of sales tax on alcohol, tobacco and perfume purchased at inwards duty free shops by the passengers and crew on international flights arriving in Australia to the extent that such purchases exceed the relevant duty free allowances. Sales tax is also payable on such goods purchased by persons other than travellers entitled to the relevant duty free allowance and by the proprietor of an inwards duty free shop on goods applied for his or her own use.

The Committee has no comments on this Bill.

SALES TAX BILL (NO. 11A) 1985

This Bill was introduced into the House of Representatives on 21 November 1985 by the Treasurer.

This Bill formally imposes the sales tax, being a duty of excise, payable under the Sales Tax Assessment Bill (No. 11) 1985.

The Committee has no comments on this Bill.

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

SALES TAX BILL (NO. 11B) 1985

This Bill was introduced into the House of Representatives on 21 November 1985 by the Treasurer.

This Bill formally imposes the sales tax, being neither a duty of excise nor a duty of customs, payable under the Sales Tax Assessment Bill (No. 11) 1985.

The Committee has no comments on this Bill.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT BILL
(NO. 2) 1985

This Bill was introduced into the House of Representatives on 21 November 1985 by the Treasurer.

This Bill will amend the Sales Tax (Exemptions and Classifications) Act 1935 -

- . to exempt from sales tax purchases of alcohol and perfume for re-sale through inwards duty free shops to passengers and crew arriving in Australia on international flights; and
- . to expand the scope of the existing exemption from sales tax for certain goods imported by such incoming travellers to include goods purchased at inwards duty free shops.

The Committee has no comments on this Bill.

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

SOCIAL SECURITY (PROPORTIONAL PORTABILITY OF PENSIONS)
AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 20 November 1985 by the Minister for Social Security.

This Bill is part of a package of measures designed to provide improved social security assistance to people who move between countries. The package includes provision to enter into a reciprocal social security agreement with each of Australia's major migrant source countries, and indeed any country that is interested in a reciprocal agreement with Australia.

The Committee has no comments on this Bill.

STATES GRANTS (EDUCATION ASSISTANCE - PARTICIPATION AND EQUITY) AMENDMENT BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Minister Representing the Minister for Education.

The purpose of this Bill is to amend the States Grants (Education Assistance - Participation and Equity) Act 1983:

- (i) to supplement for cost increases the grants available to government and non-government education authorities in the States and the Northern Territory to conduct projects and programs under the Participation and Equity Program (PEP) in the years 1985 and 1986; and
- (ii) to put into effect the Government's decision to extend the program to 1987 and to spread the funds currently provided for 1986 evenly over 1986 and 1987. The present Act as amended provides funds for PEP activities in 1984, 1985 and 1986.

The Committee has no comments on this Bill.

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

STATES GRANTS (SCHOOLS ASSISTANCE) AMENDMENT BILL 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Minister Representing the Minister for Education.

This Bill implements the Government's decisions on specific purpose and capital programs for schools in 1986 which were announced at the tabling of the Commonwealth Schools Commission's Report for 1986 on 15 October 1985.

The Committee has no comments on this Bill.

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

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STATES GRANTS (TERTIARY EDUCATION ASSISTANCE) AMENDMENT BILL
(NO. 3) 1985

This Bill was introduced into the House of Representatives on 13 November 1985 by the Minister Representing the Minister for Education.

The purpose of this Bill is to amend the States Grants (Tertiary Education Assistance) Act 1984 to complete the Government's 1986 tertiary education program in the States and Northern Territory, to provide additional grants for higher education for 1987 for enrolment growth flowing from increased intakes in 1986 and to provide cost supplementation for existing grants.

The Committee has no comments on this Bill.

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

TAXATION LAWS AMENDMENT BILL (NO. 4) 1985

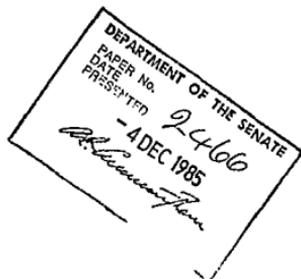
This Bill was introduced into the House of Representatives on 15 November 1985 by the Minister Assisting the Treasurer.

The Bill amends the Income Tax Assessment Act 1936 to put in place four of the reform proposals announced in the Treasurer's statement of 19 September 1985 on 'Reform of the Australian Taxation System'. These are:

- (i) the denial of income tax deductions for entertainment expenses;
- (ii) the introduction of rules requiring the substantiation of employment-related expenses and car and travel expense claims;
- (iii) the extension of the company tax system to public unit trusts which carry on a trade or business; and
- (iv) the replacement of immediate deductibility of capital expenditure by primary producers on conserving and conveying water by provision for writing off such expenditure over 5 years.

The Committee has no comments on this Bill.

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



SCRUTINY OF BILLS ALERT DIGEST

NO. 16 of 1985

4 DECEMBER 1985



ISSN 0729-6851

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

Senator M.C. Tate, Chairman
Senator A.J. Missen, Deputy Chairman
Senator M. Baume
Senator B. Cooney
Senator R.A. Crowley
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.

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The Committee has considered the following Bills:

Great Barrier Reef Marine Park Amendment (Prohibition of Mining or Drilling Activities) Bill 1985

Income Tax Assessment Amendment Bill (No. 2) 1985

Protection of Movable Cultural Heritage Bill 1985

Repatriation Legislation Amendment (Extension of Operation) Bill 1985

Subsidy (Grain Harvesters and Equipment) Bill 1985

NOTE: This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the Committee under its Terms of Reference is invited to do so.

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GREAT BARRIER REEF MARINE PARK AMENDMENT (PROHIBITION OF MINING OR DRILLING ACTIVITIES) BILL 1985

This Bill was introduced into the Senate on 28 November 1985 by Senator Sanders.

The purpose of this Bill is to prohibit the carrying out of operations ancillary to the recovery of minerals and drilling or mining generally in the Great Barrier Reef Marine Park without parliamentary approval.

The Committee has no comments on this Bill.

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

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INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 2) 1985

This Bill was introduced into the House of Representatives on 29 November 1985 by the Minister Assisting the Treasurer.

The Bill modifies the water conservation and conveyance provisions of the Income Tax Assessment Act 1936 as proposed to be amended by the Taxation Laws Amendment Bill (No. 4) 1985 in order to allow capital expenditure to be written off over 3 years instead of 5 years as originally proposed.

The Committee has no comments on this Bill.

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

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PROTECTION OF MOVABLE CULTURAL HERITAGE BILL 1985

This Bill was introduced into the House of Representatives on 27 November 1985 by the Minister for Arts, Heritage and Environment.

The purpose of the Bill is to provide for the protection of Australia's heritage of important movable cultural objects by introducing export controls and to extend protection to the cultural heritage of other countries through import controls.

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

Sub-clauses 3(5) and 7(1) - Inappropriate delegation of legislative power

The Bill would establish controls on the import of objects forming part of the 'movable cultural heritage' of a foreign country and on the export of objects that constitute the movable cultural heritage of Australia. Sub-clause 3(5) defines 'movable cultural heritage', in relation to a foreign country, as a reference to objects that are of importance to the country for -

- ' (a) ethnological, archaeological, historical, literary, artistic, scientific or technological reasons; or
- (b) any other prescribed reasons. '

Sub-clause 7(1) defines the movable cultural heritage of Australia by reference to specified categories of objects concluding with -

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' (j) any other prescribed categories. '

As the concept of movable cultural heritage lies at the heart of the Bill the Committee suggests that it may be inappropriate to permit the content of this concept to be enlarged by regulations.

The Committee therefore draws paragraphs 3(5)(b) and 7(1)(j) to the attention of Senators in that they may be considered an inappropriate delegation of legislative power.

Clause 24 - Delegation

Clause 24 provides that the Minister may delegate to 'a person' any of the Minister's powers under the Act, other than the power of delegation. The Committee has expressed concern on a number of occasions in relation to such unrestricted powers of delegation. In the present case the Committee notes that the powers to be capable of delegation include -

- . the appointment of the National Cultural Heritage Committee;
- . the power to make arrangements with State Ministers in relation to the exercise of the powers of inspectors under the Act by officers of the State; and
- . the power to give directions as to the disposal of forfeited protected objects.

The Committee suggests that if these powers are to be delegated at all they should be delegated only to the senior officers of the Minister's Department.

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

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The Committee draws the clause to the attention of Senators in that by permitting such unrestricted delegation of the Minister's powers it may be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Paragraph 32(1)(b) - Entry and search without warrant

Paragraph 32(1)(b) would permit an inspector to enter without warrant upon any land or upon or into any premises, structure, vessel, aircraft or vehicle on or in which the inspector believes on reasonable grounds that any thing forfeited or connected with an offence against the Act is situated and to seize any such thing found upon the land or in the premises, structure, vessel, aircraft or vehicle if -

- ' (c) the inspector believes on reasonable grounds that it is necessary to do so in order to prevent the exportation or importation of that thing or the concealment, loss or destruction of any thing forfeited or connected with an offence against this Act; and
- (d) the ... entry is made in circumstances of such seriousness and urgency as to require and justify immediate search or entry without the authority of an order of a court or of a warrant issued under this Act.'

The Committee has in the past recognised that whether such a provision for search and entry without warrant in circumstances of seriousness and urgency is justified is a question of policy: see its comment on clause 60 of the Criminal Investigation Bill 1981 in its First Report of 1982. It draws paragraph 32(1)(b) to the attention of Senators in

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that such a power of entry and search without warrant may be considered to trespass unduly on personal rights and liberties.

Clauses 36, 37 and 38 - Forfeiture of protected objects

Clauses 36, 37 and 38 deal with procedures for the forfeiture of protected objects and the disposal of objects so forfeited. Two aspects of these provisions are of concern to the Committee: first, objects may be forfeited by purely administrative procedures without the intervention of a court, and, secondly, the disposal of forfeited objects is left entirely to the discretion of the Minister.

The operation of the provisions may best be illustrated by way of example. Let us suppose that an Australian protected object is stolen from its owner and an attempt is made to export it from Australia. It thereby becomes liable to forfeiture under sub-clause 9(2). The inspector who seizes the object is given a discretion by sub-clause 36(2) to notify the owner or the person who had the possession, custody or control of the object immediately before it was seized (in this case the thief) that the object has been seized and that it will be forfeited unless, within 30 days after the service of the notice, the person on whom the notice is served claims the object or brings an action for recovery of the object. As in this case the thief will have good reasons for not coming forward the object in question may be forfeited to the Commonwealth without any requirement that a court determine that the object is in fact a protected object and without any requirement that a court determine whether in fact the person attempting to export the object was its rightful owner. The owner may, indeed, remain blissfully unaware of the entire proceedings. By virtue of

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section 38, on forfeiture all title and interest in the object vests in the Commonwealth and the disposal of the object is left to the discretion of the Minister.

By way of a second example let us suppose that the rightful owner is, by good fortune, served with a notice under sub-clause 36(2) and brings an action for the recovery of the object. On this occasion a court intervenes but it is merely permitted to determine whether the object is liable to forfeiture under sub-clause 9(2): that is, whether the object is a protected object and whether an attempt has been made to export it from Australia otherwise than in accordance with a permit or certificate of exemption. Where a court determines that an object is liable to forfeiture it is required by sub-clause 37(3) to order that the object is forfeited. Once again, title and interest in the object would vest in the Commonwealth and its return to its rightful owner would appear to depend on the Minister's goodwill.

The Committee suggests, first, that an object should only be forfeited on the order of a court and not, as is proposed, on the basis of the belief of an inspector and the failure of the owner or the person who had the possession, custody or control of the object immediately before it was seized to take steps within a limited time to recover the object. The inspector seizing the object should be required to satisfy a court that the object is in fact a protected object and that an attempt has been made to export it (or that, being a protected object of a foreign country the Government of which has requested its return, it has been imported, as the case may be). Secondly, a register should be established of the owners of objects on the National Cultural Heritage Control List so that where such objects are seized in the course of an attempt to export them the owners may be notified as a matter of course and not merely at the discretion of the inspector seizing the object as is proposed under sub-clause

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

36(2). Thirdly an object so seized should be returned to its owner unless the owner is convicted under sub-clause 9(3) of knowingly exporting or attempting to export the object. The Committee notes that there is already the power to order forfeiture in such circumstances under sub-clause 37(4).

The Committee draws sub-clauses 36, 37 and 38 to the attention of Senators in that by permitting protected objects to be forfeited otherwise than by order of a court and by leaving the disposal of such objects to the discretion of the Minister rather than by requiring their return to their lawful owners in appropriate circumstances the clauses may be considered to trespass unduly on personal rights and liberties.

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

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REPATRIATION LEGISLATION AMENDMENT (EXTENSION OF OPERATION)
BILL 1985

This Bill was introduced into the House of Representatives on 29 November 1985 by the Minister Representing the Minister for Veterans' Affairs.

The Bill would extend the period of operation allowed to certain provisions of the Repatriation Legislation Amendment Act 1985 by a 'sunset clause' which was inserted by the Senate in May this year from 6 months to 12 months.

The Committee has no comments on this Bill.

D16/85

SUBSIDY (GRAIN HARVESTERS AND EQUIPMENT) BILL 1985

This Bill was introduced into the House of Representatives on 27 November 1985 by the Minister Representing the Minister for Industry, Technology and Commerce.

This Bill proposes assistance by way of subsidy on grain harvesters and certain parts for grain harvesters produced in Australia. The subsidy period is 21 August 1985 to 31 December 1990. The Bill also contains provision for the payment of a special subsidy on certain imported grain harvesters and parts.

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

Sub-clauses 6(1) and 7(1) - Inappropriate delegation of legislative power

By virtue of clause 13 subsidy is to be payable to a manufacturer on the basis of the 'value added' to the harvester by the manufacturer. Sub-clause 7(1) of the Bill provides for the 'value added' to be ascertained by deducting from the 'sales value' certain specified costs and 'such costs (if any) as are prescribed'. Sub-clause 6(1) provides in turn for the 'sales value' of equipment to be ascertained by deducting from the price certain costs and amounts and, in addition, 'such cost or amount (if any) as is prescribed'.

While the Committee has in the past recognized the need for flexibility in such bounty schemes to take account of technological change and market conditions - see, most recently, its comments on clauses 6, 7 and 8 of the Bounty (Metal Working Machines and Robots) Bill 1985 in its Fourteenth Report of 1985 - it is concerned that the formulae

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

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for determining the subsidy to be paid under the present Bill should be so open-ended. Accordingly it draws sub-clauses 6(1) and 7(1) to the attention of Senators in that by permitting unspecified costs and amounts to be incorporated into the formulae for 'sales value' and 'value added' by regulation they may be considered to delegate legislative power inappropriately.

Sub-clause 28(5) - Self incrimination

Sub-clause 28(5) states that a person is not excused from answering a question or producing documents on the ground that the answer or the production of the documents might tend to incriminate the person. The sub-clause includes the usual proviso that such an answer or the production of such a document is not admissible in evidence against the person in criminal proceedings other than proceedings relating to the furnishing of information that is, to the knowledge of the person, false or misleading in a material particular.

Although the sub-clause is in standard form the Committee draws it to the attention of Senators as is its usual practice with all such clauses removing the privilege against self-incrimination in that the sub-clause may be considered to trespass unduly on personal rights and liberties. However the Committee also draws attention to the response it received from the Minister for Industry, Technology and Commerce to the similar comment it made on sub-clause 28(5) of the Bounty (Agricultural Tractors and Equipment) Bill 1985, reproduced in its Fourteenth Report of 1985.

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