



AUSTRALIAN SENATE



DEPARTMENT OF THE	
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DATE PRESENTED	- 8 MAR 1984
<i>W. L. ...</i>	
Clerk of the Senate	

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIRST REPORT

7 MARCH 1984

*W. L. ...*

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIRST REPORT

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ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

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

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIRST REPORT

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

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

Customs Tariff (Anti-Dumping) Amendment Bill (No. 2) 1983

Customs Tariff (Anti-Dumping) Miscellaneous Amendments Bill 1983

Income Tax Assessment Amendment Bill (No. 5) 1983

## CUSTOMS TARIFF (ANTI-DUMPING) AMENDMENT BILL (NO. 2) 1983

1. This Bill was introduced into the House of Representatives on 7 December 1983 by the Minister Representing the Minister for Industry and Commerce. The purpose of the Bill is to amend the Customs Tariff (Anti-Dumping) Act 1975 as a consequence of a review of Australia's anti-dumping and countervailing legislation.
2. The Committee drew the attention of Senators to the following clauses of this Bill in its Alert Digest No. 17 of 14 December 1983:

General Comment

3. This Bill, like the Principal Act, gives to the Minister a very wide range of discretions, none of which is reviewable by the Administrative Appeals Tribunal. Some examples from this Bill are proposed new section 4(3)(b), section 5(2)(a) and (b), 5(9), 5A(1) and (2), 8(2A), 10(2A) and (7). In each case the person affected by the decision is the importer of goods, and it may be thought that the Tribunal should be concerned primarily with the rights of Australian residents, although the discretions are subject to control as to the legality of their exercise, under the Administrative Decisions (Judicial Review) Act 1977.
4. The Committee expressed concern that these clauses might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.
5. The Minister for Industry and Commerce has provided a response to the Committee's comments which argues that:

"For the measures to be effective in combatting unfair international trading practices, which operate to the detriment of Australian industry, they need to be put in place without delay.

The decision to take anti-dumping or countervailing action follows a complex of interlocking processes. Any delay to these processes can have serious economic consequences".

6. The Minister has undertaken to seek an examination of "... what, if any, provision should be made for administrative review of the discretion...".
7. The Committee thanks the Minister for this response and the undertaking it contains.

CUSTOMS TARIFF (ANTI-DUMPING) MISCELLANEOUS AMENDMENTS BILL  
1983

8. This Bill was introduced into the House of Representatives on 7 December 1983 by the Minister Representing the Minister for Industry and Commerce. The purpose of the Bill is to amend the Customs Act 1901 and the Industries Assistance Commission Act 1973 to introduce new provisions which emanate from a review of Australia's anti-dumping and countervailing legislation.
9. The Committee drew the attention of Senators to the following clauses of this Bill in its Alert Digest No. 17 of 14 December 1983:

Proposed Section 214B(1) - Powers of Officers

10. Proposed new section 214B of the Customs Act 1901 permits an authorised officer to enter premises, without the consent of the owner and without a judicially authorised search warrant. The Minister's Second Reading speech indicates that the officer is empowered "to enter certain premises on a warrant", but the only "warrant" referred to in the Bill is the production of written evidence of the fact that he is an authorised officer (see proposed new section 214B(2)).
11. The Committee drew this proposed new section to the attention of Senators in that it might have been considered to trespass unduly on personal rights and liberties.
12. The Minister has provided a response which justifies this clause on the grounds that such inspectorial powers are essential if the legislation is to be enforced effectively. Similar powers exist in other similar legislation, e.g. section 155 of the Trade Practices Act 1974.
13. While the Committee recognizes the need for effective enforcement in this area, it remains concerned that no provision for a judicially authorized warrant is made. The "issue" of warrants by telephone is a common practice in other regulatory legislation.
14. The Committee therefore draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

Proposed section 214B(6) - Self-Incrimination

15. This proposed new section is a self-incrimination clause in a form standard for such clauses. Its scope is restricted to offences against section 214. The Committee nevertheless adopts the practice of drawing all such clauses to the attention of the Senate under principle 1(a)(i) in that they might be considered to trespass unduly upon personal rights and liberties.

## INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 5) 1983

16. This Bill was introduced into the House of Representatives by the Treasurer on 7 December 1983. The purpose of this Bill is to make certain amendments to the income tax law to complete the implementation of proposals of the former Government.
17. The Committee draws the attention of the Senate to the following clauses of this Bill:

General Comment - Retrospectivity

18. Most of the provisions of this Bill appear to have retrospective effect, but in some cases the retrospective operation is beneficial to the taxpayer. Those in which the retrospectivity is detrimental to the taxpayer, and the date from which they operate, are:
- proposed new section 26AFA, relating to income from superannuation funds - to 1 July 1977;
  - proposed new section 26AH, relating to amounts received in respect of certain life assurance policies - to Budget night 1982;



- proposed new section 51AD, relating to deductions arising from certain leverage leasing arrangements - to 24 June 1982;
  - proposed new section 82AHA, relating to deductions for property disposed of after twelve months - to 18 December 1981.
19. The Committee draws these clauses to the attention of the Senate under principle 1(a)(i) in that they might be considered to trespass unduly on personal rights and liberties.

Michael Tate  
Chairman

7 March 1984



AUSTRALIAN SENATE



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DAT	28 MAR 1984
PRE	
<i>W. J. ...</i>	
... of the Senate	

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SECOND REPORT  
OF 1984

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SECOND REPORT

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

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

Canned and Frozen Vegetables (Export Inspection Charge)  
Bill 1984

Canned and Frozen Vegetables (Export Inspection Charge)  
Collection Bill 1984

Collective Agreements (Corporations) Bill 1983

Honey (Export Inspection Charge) Bill 1984

Honey (Export Inspection Charge) Collection Bill 1984

Satellite Communications Bill 1984

CANNED AND FROZEN VEGETABLES (EXPORT INSPECTION CHARGE) BILL  
1984

1. This Bill was introduced into the House of Representatives on 29 February 1984 by the Minister for Primary Industry. The purpose of the Bill is to impose a charge on canned or frozen fruit or vegetables in respect of which an export permit has been granted under the Export Control (General) Regulations.
2. The Committee drew the attention of the Senate to the following clause of this Bill:

Clause 5 - Inappropriate Delegation

3. This clause imposes a charge on canned or frozen vegetables which are subject to an export permit. Sub-clause (2) permits exemption to be granted from the charge by regulation.
4. The Committee adopts the practice of drawing such "Henry VIII" clauses to the attention of the Senate under principle 1(a)(iv) in that the power to alter the scope of the Bill by regulation might be considered an inappropriate delegation of legislative power.

CANNED AND FROZEN VEGETABLES (EXPORT INSPECTION CHARGE)  
COLLECTION BILL 1984

5. This Bill was introduced into the House of Representatives by the Minister for Primary Industry on 29 February 1984. The purpose of the Bill is to make

provision for the collection of the charge to be imposed by the Canned and Frozen Vegetables (Export Inspection Charge) Bill 1984.

6. The Committee drew the attention of the Senate to the following clause of this Bill:

Clause 10 - Inappropriate Delegation

7. Clause 10 of this Bill permits the making of regulations to establish the collection procedures for the inspection charge.
8. By paragraph 10(2)(b) provision may be made for the remission or refund of the charge in specified circumstances. The charge may be regarded as a form of taxation. Therefore, it might be considered that the terms and conditions on which any remission or refund are to be granted should be set out in the Bill rather than be left to the Executive to define.
9. The Committee draws this clause to the attention of the Senate under principle 1(a)(iv) in that it may be regarded as a "Henry VIII" clause and as such an inappropriate delegation of legislative power.

COLLECTIVE AGREEMENTS (CORPORATIONS) BILL 1983

10. This Bill was introduced into the Senate by Senator Jack Evans on 14 December 1983. Its purpose is to establish a legal framework for voluntary collective bargaining between associations of employees and corporations, to co-exist with Commonwealth and States laws on conciliation and arbitration.

11. The Committee drew the attention of the Senate to the following clauses of this Bill:

Clause 20 - Burden of Proof

12. Clause 20(1) creates an offence of prejudicing an employee. Clause 20(2) reverses the burden of proof in proceedings arising out of clause 20(1). The Crown is required to prove "all the relevant facts and circumstances, other than the reason alleged in the charge...". The defendant is then required to "prove that the action was not actuated by that reason or taken for that reason".
13. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

Clause 29

14. This clause requires the Industrial Registrar to provide an opinion on request to a party to a collective agreement. Sub-clause 29(3) places the obligation on the party seeking the opinion to communicate that opinion to all other parties to the agreement.
15. The Committee is of the view that such an obligation should rest with the Registrar rather than a private person who may be a party to a dispute.
16. The Committee therefore draws this clause to the attention of the Senate under principle 1(a)(i) in that failure to communicate the opinion might be considered to trespass unduly on personal rights and liberties.



HONEY (EXPORT INSPECTION CHARGE) BILL 1984

17. This Bill was introduced into the House of Representatives by the Minister for Primary Industry on 29 February 1984. Its purpose is to provide for a charge to apply to honey inspected under the provisions of the Export Control Act 1982.
18. The Committee drew the attention of the Senate to the following clause of this Bill:

Clause 5 - Inappropriate Delegation

19. Clause 5 of this Bill is in virtually identical form to clause 5 of the Canned and Frozen Vegetables (Export Inspection Charge) Bill 1984. The Committee's comments on that clause also apply to this Bill.

HONEY (EXPORT INSPECTION CHARGE) COLLECTION BILL 1984

20. This Bill was introduced into the House of Representatives by the Minister for Primary Industry on 29 February 1984. Its purpose is to provide for the collection of charges proposed in the Honey (Export Inspection Charge) Bill 1984.
21. The Committee drew the attention of the Senate to the following clause of this Bill:

Clause 10 - Inappropriate Delegation

22. Clause 10 of this Bill is in virtually identical form to clause 10 of the Canned and Frozen Vegetables (Export and Inspection Charge) Collection Bill 1984. The Committee's comments on that Bill also apply to this Bill.

SATELLITE COMMUNICATIONS BILL 1984

23. This Bill was introduced into the House of Representatives by the Minister for Communications on 29 February 1984. Its purpose is to provide that:
- AUSSAT is to be a wholly owned Commonwealth Company which cannot convert to a public company;
  - twenty-five per cent of the shareholding in AUSSAT may be sold to the Telecommunications Commission with the approval of the Minister;
  - AUSSAT may not be voluntarily wound up or wound up by its shareholders except in accordance with a resolution passed by both Houses of Parliament;
  - the directors of AUSSAT in the performance of their duties are to have regard to the intention of Parliament expressed in the Bill, the requirements of international law and ensure as far as practicable that satellite facilities be provided for the maintenance of air navigation, use by the Australia Broadcasting Corporation and by the Commission for remote telephony and emergency services;

- AUSSAT is not to provide public switched telephone services or public switched data services;
  - persons using the satellite system may erect their own telecommunications facilities for purposes related to the use of the satellite system;
  - the right to use of a satellite facility may not be sold or otherwise disposed of by the approved user to third parties.
24. The Committee drew the attention of the Senate to the following clauses of this Bill:

Clause 15 - Disclosure of Communications

25. Sub-clause 15(2) of this Bill sets out conditions under which the contents of messages or other communications carried out by AUSSAT may be disclosed.
26. Paragraph (d) allows disclosure "in other prescribed circumstances in which the doing of the thing was in the public interest". Neither the Bill nor the Explanatory Memorandum offers any guide to the meaning of public interest as used in this legislation or the circumstances in which regulations under paragraph 15(2)(d) might be made. The Committee is of the view that the phrase "in the public interest" is difficult to define and gives a very broad scope to regulations which may be made for the purposes of paragraph 15(2)(d).
27. The Committee therefore draws this clause to the attention of Senate under principles 1(a)(ii) and (iv) in that it might be considered both to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers and to be an inappropriate delegation of legislative power.

Clause 17

28. This clause limits the class of eligible persons who may use an AUSSAT satellite for the purpose of providing facilities for telecommunications. That class of person is defined "subject to the regulations" [sub-clause 17(1)]. Paragraph 17(3)(d) enables any person to be declared by regulation an eligible person and thus outside the reach of the prohibition contained in clause 17(1).
29. The Committee draws this clause to the attention of the Senate in that it represents a very broad delegation of legislative power which enables the Executive to amend the scope of the Bill. The Committee adopts the practice of drawing all such "Henry VIII" clauses to the attention of the Senate under principle 1(a)(iv).

Michael Tate

Chairman

28 March 1984



AUSTRALIAN SENATE

DEPARTMENT OF THE SENATE	
PAPER No.	591
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<i>W. G. ...</i>	
Clerk of the Senate	



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

THIRD REPORT

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

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

Acts Interpretation Amendment Bill 1984

Bass Strait Freight Adjustment Trust Fund Bill 1984

Canned and Frozen Vegetables (Export Inspection Charge) Bill 1984

Canned and Frozen Vegetables (Export Inspection Charge) Collection Bill 1984

Honey (Export Inspection Charge) Bill 1984

Honey (Export Inspection Charge) Collection Bill 1984

Quarantine Amendment Bill 1984

Torres Strait Fisheries Bill 1983

ACTS INTERPRETATION AMENDMENT BILL 1984

1. This Bill was introduced into the Senate on 8 March 1984 by the Attorney-General. Its purpose is to facilitate the giving of effect to the intentions of the Parliament when Acts of the Parliament fall to be interpreted, by the use of extrinsic material in the interpretation of an Act.
2. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 2 - Application

3. Clause 2 of this Bill provides that the amendments made by it apply to all Acts, whether passed before or after the commencement of this Bill. Although, in relation to many provisions of this Bill, this provision has a beneficial effect, it may cause difficulties when applied to the new s.15AB, inserted by clause 7. For instance, in relation to an Act already passed, the interpretation of a provision may have been regarded as settled, either by the courts or by persons applying those provisions, but such an interpretation might now be challenged, by reliance on any of the extrinsic aids to interpretation permitted to be used by the new s.15AB.
4. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that it may be considered to trespass unduly on personal rights and liberties.

BASS STRAIT FREIGHT ADJUSTMENT TRUST FUND BILL 1984

5. This Bill was introduced into the House of Representatives on 8 March 1984 by the Minister Representing the Minister for Resources and Energy. Its purpose is to establish a trust fund for the purpose of making payments to refiners of crude oil produced from Bass Strait for certain costs incurred in transporting that oil to refineries.
6. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 9 - Ministerial Determination

7. Clause 9(1) of this Bill empowers the Minister to determine the unit freight rate for transporting oil. By paragraphs 10(1)(c) and 10(2)(b), in making the determination the Minister shall "...have regard to such other matters as the Minister thinks appropriate." Where a Minister or official is granted a general discretion to consider any matters which he thinks appropriate without some provision for review it has been the Committee's practice to comment on the provision. In this case, while there may be review of the legality of the exercise of this discretion under the Administrative Decisions (Judicial Review) Act 1977, there is no provision for review of the merits of the decision.
8. The Committee draws this clause to the attention of the Senate under principle 1(a)(iii) in that it may be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

CANNED AND FROZEN VEGETABLES (EXPORT INSPECTION CHARGE)  
BILL 1984, CANNED AND FROZEN VEGETABLES (EXPORT INSPECTION  
CHARGE) COLLECTION BILL 1984, HONEY (EXPORT INSPECTION  
CHARGE) BILL 1984, HONEY (EXPORT INSPECTION CHARGE)  
COLLECTION BILL 1984

9. The Committee commented on each of these pairs of Bills in similar terms in its Alert Digest No.1, 7 March 1984, and its Second Report, 28 March 1984. The Minister Representing the Minister for Primary Industry in the Senate has provided a response to the Committee's comments.

Clauses 5 and 10 - Inappropriate Delegation

10. The Committee expressed concern that clause 5 of each Bill and clause 10 of each Collection Bill allowed exemptions from or refund or remission of the relevant charges to be granted by regulation. The Committee expressed the view that in as much as the charges could be considered to be a form of taxation any variation in their application should be a matter to be determined by the legislature. The relevant part of the Minister's response is reproduced here for the information of the Senate.

Each of the charge Bills imposes charge on these products if an export permit has been granted in respect of them pursuant to Regulation 22 of the Export Control (General) Regulations. All these products are "prescribed goods" under those Regulations and their export is prohibited unless an export permit is held in respect of each consignment.

Cases could arise, however, where an export permit is granted but it may be unreasonable or inappropriate to levy the charge. Examples

that come immediately to mind include goods exported as trade samples for which no monetary return is expected; goods exported for Government purposes (eg to Australian forces stationed overseas); and goods exported to meet humanitarian needs. I emphasise that these examples are illustrative only and it is not possible to determine in advance all circumstances and ad hoc cases that might justifiably be considered to warrant exemption from the charge. Power to exempt by regulation is a more desirable course than attempting to frame the Bill to cater for a variety of circumstances that cannot all be foreseen. Similarly, the power conferred by clause 10 of the Collection Bills, to make provision by regulation for the remission or refund of charge in specified circumstances is preferable to making periodic amendments to the Act to meet contingencies as they arise which warrant remission or refund of charge.

11. The Committee thanks the Minister for his response and acknowledges the force of his argument that the use of regulations in this case is unobjectionable and has certain advantages of administrative convenience. However the Committee is concerned in general with the ever increasing number of Acts of Parliament which depend upon regulations for their application, particularly where the regulation making power is cast in very general terms. The consequent increase in the burden placed on the Parliament must jeopardize its efforts to scrutinize delegated legislation effectively.

QUARANTINE AMENDMENT BILL 1984

12. This Bill was introduced into the House of Representatives on 7 March 1984 by the Minister for Health. Its purpose is to increase the penalties that may be imposed upon persons convicted of offences against the quarantine laws of Australia, and to make minor amendments to overcome deficiencies experienced in the administration of the Act and to make it more responsive to modern situations.
13. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 7 - Review

14. Clause 7 of this Bill inserts a new sub-section 13(2A) and (2B) into the Principal Act. Sub-section 2A provides that a proclamation prohibiting the importation of anything,  
  
    ... may provide that the importation of that thing is prohibited unless a permit granting permission to import that thing is granted by the Director of Quarantine ...
15. Sub-section 2B provides that a permit granted in accordance with sub-section 2A may be made subject to compliance with certain conditions or requirements set out in the permit.
16. The Committee expressed concern in its Alert Digest No.2, 28 March 1984, that the discretion vested in the Director of Quarantine to grant a permit and to attach conditions to the grant of a permit was not subject to review.

17. The Minister for Health has responded to the Committee explaining the purpose underlying the proposed amendments contained in clause 7.

The effect of proposed new sub-sections 13(2A) and (2B) will be that a proclamation prohibiting the importation of goods may provide for the Director of Quarantine or a person authorised in writing by him, to grant a permit for the importation of goods subject to conditions or requirements being met either before or after importation. The new sub-sections do not allow the Director of Quarantine or his delegate to grant a permit overriding a prohibition on the importation of anything. They merely allow for a proclamation to be made under sub-section 13(1) of the Act which may provide for a permit system under which conditions attaching to the importation of the goods referred to in that proclamation may be specified.

However, the response does not consider the question of whether the discretion vested in the Director of Quarantine by proposed sub-section 13(2A) should be subject to review. Thus the Committee draws this clause to the attention of the Senate under principle 1(a)(iii) in that it may be considered to make personal rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

#### TORRES STRAIT FISHERIES BILL 1983

18. The Committee commented on a number of clauses of this Bill in its Alert Digest No.12 of 2 November 1983. The Department of Primary Industry has provided a detailed response to the Committee. It is this Committee's

practice to incorporate in its reports the relevant parts of such responses for the information of the Senate.

Clauses 12,19,20,21,22,24,25,and 26 - Review

19. Each of these clauses gives to the Minister a discretion in relation to the granting, endorsement, transfer, renewal or revocation of licences and of the conditions which should apply to such licences.
20. The Committee expressed concern that no provision was made for review of the merits of the exercise of these discretions.
21. The Department of Primary Industry has responded to these comments as follows:

During consultations between the Commonwealth and Queensland concerning legislative and administrative requirements for implementing the Torres Strait Treaty, Queensland was firmly of the view that, because of established State policies, it could not co-operate with the Commonwealth in the administration of fisheries in the Torres Strait area if there were administrative review provisions in the Bill directly applicable to actions by State officials... The Bill was introduced in its present form with the option of including review provisions at a later date, because of the difficulties outlined above and the need to have all the necessary legislation in place to enable ratification of the Torres Strait Treaty later this year.

It is the Commonwealth's intention that the Torres Strait legislation should in due course be brought into line with administrative review arrangements settled with the States for fisheries generally.



However, from a Commonwealth viewpoint it is undesirable that the Torres Strait legislation - which affects relations with Papua New Guinea - should become the central issue in a disagreement that needs to be considered in the wider fisheries context...

22. The Committee acknowledges the Department's response and draws it to the attention of the Senate.

Clause 57 - Burden of Proof

23. Sub-clause (57)(1) provides that in proceedings under the Act or regulations where an inspector has reasonable grounds for suspecting that fish have been taken from a particular area the court may, in the absence of evidence to the contrary, deem that the fish have been taken in that area. The Committee expressed concern that the effect of this sub-clause was to place the burden of proof on the defendant.
24. In response to the Committee's comments the Department of Primary Industry sought an opinion from the Attorney-General's Department. That opinion is reproduced here in full for the information of the Senate.

The purpose of this memorandum is to reiterate the position taken by this Department previously, namely, that this provision in its current form means "that once the defendant has discharged an evidentiary onus in respect of a matter in paragraph 57(1)(a), sub-clause 57(1) would become inapplicable and the Crown would be put to proof in respect of these matters".

The Committee, in its report on clause 57, does not, in my opinion, accurately reflect the operation of this provision when it states that:

"(i)n such a proceeding (referring to clause 57(1)) it would appear that the burden of proof would then be placed on the defendant". (My inclusion). This is so because, firstly, the burden that is placed on the defendant is only an evidentiary one. Secondly, the evidentiary burden which the defendant is subject to relates only to the matters of clause 57(1)(a)i, ii or iii, and not to the suspicions that the officer has about these matters. Finally, the Committee does not, in my opinion, sufficiently stress the fact that the court has to be satisfied that the officer's suspicions of the existence of the matters in clause 57(1)(a)i, ii, and iii are reasonable.

In conclusion, I would strongly support the statement in the Explanatory Memorandum to the Torres Strait Fisheries Bill, that clause 57(1) "...confirms the persuasive onus borne by the Crown". It is erroneous for the Committee to suggest that the provision "appears to require of the prosecution something less than proof beyond reasonable doubt." This is so since, even if no "evidence to the contrary" is presented by the defendant, the prosecution still has to prove beyond reasonable doubt that the officer suspects on reasonable grounds the matters in clause 57(1)(a)i, ii or iii. On the other hand, if "evidence to the contrary" is presented, then the prosecution has to prove beyond reasonable doubt the existence of the matters in clause 57(1)(a)i,ii or iii.

25. The Committee while accepting the greater part of this opinion remains unconvinced that, in the absence of "evidence to the contrary" presented by the defendant, the prosecution has to prove beyond reasonable doubt that the officers suspicions were reasonable.
26. The Committee generally supports the conclusion of

the Senate Standing Committee on Constitutional and Legal Affairs in its report the Burden of Proof in Criminal Proceedings that "As a matter of legislative policy, provisions imposing an evidential burden of proof on defendants should be kept to a minimum."

Clause 60 - Self-Incrimination

27. Sub-clause (4) is in a virtually standard form for such clauses and its effect is restricted. Nevertheless the Committee adopts the practice of drawing to the attention of the Senate all such clauses under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

Michael Tate  
Chairman  
4 April 1984

DEPARTMENT OF THE SENATE  
PAPER No. 801  
DATE PRESENTED - 9 MAY 1984  
*W. L. ...*



AUSTRALIAN SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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

**FOURTH REPORT  
OF 1984**

**9 MAY 1984**

**ISSN 0729-6258**

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

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

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FOURTH REPORT

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

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

Drafting Instruction No.10 of 1984 from The Office of  
Parliamentary Counsel

Advance Australia Logo Protection Act 1984

Australian Citizenship Amendment Bill 1983

Bounty (Two-Stroke Engines) Bill 1984

Chicken Meat Research Amendment Bill 1984

Income Tax Assessment Amendment Bill (No.2) 1984  
(Treasurer)

Patents Amendment Bill 1984

NOTIFICATION OF APPEAL RIGHTS  
DRAFTING INSTRUCTION NO.10 OF 1984

1. Drafting instructions are issued by the First Parliamentary Counsel to the Office of Parliamentary Counsel to provide guidance in the preparation of legislation.
2. Drafting Instruction No.10 of 1984 states that:

It appears from recent action by the Attorney-General's Department that that Department is no longer insisting, in every case, that, where an Act confers a right of appeal to an administrative tribunal against a decision, the Act should provide in an unqualified way that, if a person is notified of the decision, he should also be notified of the existence of the right of appeal. Pending clarification by the Attorney-General's Department of the policy in this area, the following practice should be adopted as an interim approach.

3. Provisions of the type referred to will continue to be included in Bills "...where there is an established practice of including such a provision of that kind...". The provision will not be included in other Bills unless the instructing Department specifically requests its inclusion.
4. This Committee has consistently supported the inclusion in legislation of appeal rights against administrative decisions and believes that notification of such rights is a necessary part of any appeal process. In the absence of such notification of persons who are affected by a decision the value of rights of appeal is significantly diminished.



5. The Committee believes that this drafting instruction is a retrograde step in the development of the protection of the rights and liberties of individuals against administrative decision making and views it as a most serious occurrence.
6. The Committee has requested clarification of the policy underlying this drafting instruction from the Attorney-General's Department.

#### ADVANCE AUSTRALIA LOGO PROTECTION ACT 1984

7. This Act was introduced into the House of Representatives on 7 March 1984 by the Minister Assisting the Minister for Industry and Commerce. The purpose of the Act is to regulate the use of the Advance Australia Logo to ensure that the logo is used only in accordance with the objectives of the Advance Australia Campaign.
8. The Committee made a number of comments on this legislation while it was before Parliament. The Minister responded to the Committee's comments on 13 April 1984. Although the legislation has passed both Houses the Committee believes that the Minister's comments should be communicated to the Senate.

#### Section 2 - Retrospectivity

9. Sub-section 2(2) of this Act makes the commencement of the operative clauses of the Act retrospective to 13 October 1983, being the date on which the Government announced its intention to introduce this legislation. The Committee drew this section to the attention of the

Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

10. The Minister has responded that:

On 25 August 1983 the Board of Advance Australia notified the Government that unless steps were taken to regulate the unauthorised use of the logo, Advance Australia would be forced to cease operations. To avoid this and to give forewarning to unlicensed users of the logo I announced on 13 October 1983 that legislation would be introduced, effective from that date, to deter further misuse of the logo.

The operation of the legislation will not have the effect of cancelling any licences and to that extent the rights and liberties of users who are licence holders will not be adversely affected by the retrospective operation of the Bill.

Section 10 and Clause 17 - Compensation

11. These sections ensure that control of the copyright ultimately rests with the Commonwealth and that any person to whom the copyright is assigned will be subject to Ministerial direction. Sub-sections 10(4) and 17(4) deny compensation to any person affected by the operation of sub-sections 10(1) and (3) or 17(1) respectively.
12. The Committee drew sub-sections 10(4) and 17(4) to the attention of the Senate under principle 1(a)(i) in that they might be considered to trespass unduly on personal rights and liberties.

## 13. The Minister has stated that:

Clauses 10 and 17 safeguard the public interest in the campaign by providing an effective method of ensuring the campaign proceeds in line with its stated objectives. Advance Australia has agreed to these safeguards.

As mentioned in my Second Reading Speech the Government provided \$5.14 million in the period 1979 to 1981 to the campaign. I should also point out that no payment to the Commonwealth has been, or is likely to be, made for the ownership of the logo by either Advance Australia or a possible assignee. The Government therefore believes that in the circumstances there should be no entitlement to compensation other than that provided for in clause 16.

Section 15 - Immunity

14. This section provides that both the Commonwealth and the Advance Australia Company have immunity from any civil or criminal action in relation to any "purported licence" to the logo granted prior to 13 October 1983.
15. The purpose of the Act is to clarify uncertainty as to Advance Australia's title to the logo and to provide effective copyright protection for the design. In view of the confusion surrounding the title to the logo it is not inconceivable that legal action could arise out of the "purported" granting of a licence.
16. The Committee drew section 15 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.

17. In response to a request from the Committee for details of relevant civil or criminal proceedings the Minister noted that:

... no civil or criminal proceedings of the kind mentioned in clause 15 have been initiated, are at present before the courts or are, to their [Advance Australia's] knowledge being considered. This is not to say proceedings may not arise in the future. However, as a matter of policy payments for licences prior to 13 October 1983 should not be recoverable as the licence holders obtained in fact, if not in law, the exclusive use of the logo.

18. The Committee thanks the Minister for his response on these matters.

#### AUSTRALIAN CITIZENSHIP AMENDMENT BILL 1983

19. This Bill was introduced into the House of Representatives on 7 December 1983 by the Minister for Immigration and Ethnic Affairs. Its purpose is to remove all discriminations from the Australian Citizenship Act 1948, to revise the Oath of Allegiance and to effect certain other changes to the Act.
20. The Committee draws the attention of the Senate to the following clauses of this Bill:

#### Clause 15 - Proposed new sub-section 21(2)

21. Section 19B(1) of the Crimes Act 1914 provides that a court may make an order dismissing a charge against a person or discharging that person, even if that charge is proved, if it is considered inexpedient to inflict

any punishment. Sub-section 21(1) empowers the Minister to deprive certain classes of people of Australian citizenship if they are convicted of specified offences. Sub-section 21(2) has the effect of treating an order under section 19B(1) of the Crimes Act as a conviction within sub-section 21(1). Thus a person on whom no penalty was inflicted under the Crimes Act could, as a result of this amendment, be deprived of citizenship under section 21 of the Australian Citizenship Act.

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

Proposed Section 14 - Unreviewable Discretion

23. This section empowers the Minister to defer consideration of an application for Australian citizenship. The exercise of that discretion is not included within the review provisions of proposed section 52A. Existing discretions in relation to the refusal of application for citizenship under section 23D(1) and the issue or revocation of prescribed evidentiary certificates under section 44A are not reviewable under this proposed section either.
24. The Committee draws proposed section 14 to the attention of the Senate under principle 1(a)(iii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

BOUNTY (TWO-STROKE ENGINES) BILL 1984

25. This Bill was introduced into the House of Representatives on 4 April 1984 by the Minister Assisting the Minister for Industry and Commerce. The purpose of the Bill is to introduce temporary bounty assistance on the production in Australia of two-stroke air-cooled spark ignition engines.
26. The proposed bounty scheme will commence on 12 January 1984 and end on 11 January 1986. Payments under the bounty scheme are to be limited to \$1.2 million per annum.
27. The Bill forms part of a package of assistance measures to be implemented following the Government's decision on the Industries Assistance Commission report entitled "Lawnmowers, Certain Engines and Parts" No.326 of 6 July 1983.
28. In addition to the provisions peculiar to the bounty on the engines, the Bill contains provisions standard to other Bounty Acts providing control and inspection powers for the protection of the revenue and a right to apply to the Administrative Appeals Tribunal for review of certain administrative decisions under the Act.
29. The Committee draws the attention of the Senate to the following clauses of this Bill:

Clause 2 - Retrospectivity

30. This clause makes the commencement of the Bill retrospective to 12 January 1984. The Explanatory Memorandum accompanying the Bill notes that that is the date on which the Government announced its intention to

introduce the bounty. Clause 24 of this Bill prevents retrospective operation of those clauses which create penal offences.

31. However the Committee adopts the practice of drawing all such clauses giving retrospective effect to legislation to the attention of the Senate under principle 1(a)(i) in that they might be considered to trespass unduly on personal rights and liberties.

#### Clause 15 - Inspection

32. This clause empowers authorized officers to enter a number of classes of premises. The only restriction on the power of entry is that it be exercised at "reasonable times". No warrant or specific authorization from a senior officer is required.
33. The classes of premises to which this power applies are registered premises or premises where bountiable items or paperwork relevant to bountiable items are stored. Paragraphs 15(1)(b) and (c) which refer to entry to non-registered premises, in one case based on the opinion of the authorized officer.
34. This Committee has taken the view in the past that where the Government establishes an assistance scheme beneficiaries of that scheme should be subject to appropriate inspection and audit procedures, and has accepted that access to registered premises, paperwork etc, is a necessary part of the inspection process.
35. The Minister Assisting the Minister for Industry and Commerce has provided a response to the Committee's comments on this clause which states in part that;

I am surprised that the Committee has raised this matter again as in its Second Report dated 18 May 1983 the Committee commented "to the extent that such investigation is confined to matters of compliance auditing, the Committee does not see the need to alert the Senate to the possibility of any serious infringement of rights or fundamental liberties."

The officers upon whom these powers are conferred are senior officers in the State and Central Offices of the Department of Industry and Commerce appointed by the Minister pursuant to the provisions of clause 14.

36. As indicated above the Committee continues to accept the need for compliance auditing. The Committee's concern relates specifically to entry without warrant or other authorization into premises that are not registered premises particularly where the entry is based only on the opinion of an authorized officer.
37. Thus the Committee continues to draw this clause to the attention of the Senate under principle 1(a)(i) in that such a right of entry without warrant or other specific authorization might be considered to trespass unduly on personal rights and liberties.

#### Clause 16 - Powers of Officers

38. Sub-clause (1) empowers a Collector, or other authorized officer to demand the attendance of "a person" believed "to be capable of giving information relevant to the operation of this Act in relation to the manufacture..., sale or other disposal, or use of bountiable engines..."



39. The Committee commented on a similar clause in the Bounty (Room Air Conditioners) Bill 1983 in its Second Report of 1983 suggesting that such an unlimited power embracing as it might even retail purchasers could be considered to trespass unduly on personal rights and liberties.
40. As a result of the Committee's comments similar clauses in subsequent bounty bills were drafted to exclude purchasers of products for their own use from the effects of these clauses. (See: Hansard, House of Representatives, 5 October 1983, p.1370-2 and for example, s.15(2) of the Bounty (Tractor Cabs) Act 1983). It would appear that the Bill now under consideration has reverted to the earlier, unsatisfactory, practice.
41. The Minister has commented that:

A provision to exclude purchasers of products for their own use from the effects of clause 16(1) was considered inappropriate in this case. As mentioned in my Second Reading Speech this bounty is designed to assist established manufacturers who were producing the engines at the time of the Government's announcement. The only producer of these engines in Australia at present is Victa Limited. Victa produce about 3500 engines per annum and approximately 99% are used by that firm in the production of their lawnmowers and other lawn equipment. Only about 60 engines per annum are sold to wholesalers or distributors for resale in industrial applications.

Because no engines are sold direct by Victa for retail applications it was considered that there was no reason to include a provision to exclude persons who directly purchase engines for their own use from the effects of this clause.

42. Despite the Minister's explanation the Committee believes that clause 16(1) is far too general in its application, allowing virtually any person who has any role in the manufacture, sale or other disposal, or use, of bountiable engines to be required to appear before the Collector. It could include retail purchasers of Victa products fitted with bountiable engines.
43. The Committee therefore continues to draw this clause to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

Clause 16 - Self-Incrimination

44. Sub-clause (5) is in a standard form removing protection against self-incrimination in proceedings arising out of clause 16(3) or clause 18(3)(a) of the Bill. While recognizing that such clauses appear in all bounty legislation the Committee nevertheless draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

CHICKEN MEAT RESEARCH AMENDMENT BILL 1984

45. This Bill was introduced into the House of Representatives on 7 March 1984 by the Minister for Primary Industry. Its purpose is to provide for moneys collected as penalty for the late payment of levy under the Meat Chicken Levy Collection Act 1969 to be paid into the Research Account.
46. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 2 - Retrospectivity

47. Clause 2(2) of this Bill makes the commencement of clause 3(1) retrospective to 1 July 1969. The purpose of the Bill is to make administrative changes to the management of various funds within the Trust Account.
48. The Department of Primary Industry has provided an explanation of the purpose of the clause:

Section 5 of the Meat Chicken Levy Collection Act 1969 provides for the collection of penalty in cases where levy payments are not made by the due date. Owing to an oversight in drafting, however, which has only recently come to attention, there is no provision in the Chicken Meat Research Act 1969 for such penalties to be paid into the Research Trust Account.

Clause 3(1) of the Bill seeks to provide specifically that penalties shall be paid into the Trust Account. Clause 2(2) of the Bill backdates this provision to 1 July, 1969, the date when the

Trust Account was established. The amendments regularise the payments of penalty into the Trust Account.

The amendments do not apply, retrospectively or in the future, any additional obligation.

49. This explanation answers the Committee's concern satisfactorily.

INCOME TAX ASSESSMENT AMENDMENT BILL (NO.2) 1984

50. This Bill was introduced into the House of Representatives on 4 April 1984 by the Treasurer. The provisions of the Bill would counter some tax avoidance practices associated with contrived employee superannuation funds. The Bill is a result of the rejection by the Senate of similar measures in the Income Tax Assessment Amendment Bill (No.5) 1984.

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

Clause 3 - Retrospectivity

52. Clause 3 inserts a new section 26AFA in the principle Act. The operation of this proposed section is retrospective to 1 July 1977. This retrospectivity reflects the clear policy of the Government.
53. The Committee adopts the practice of drawing all retrospectivity in legislation to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

## PATENTS AMENDMENT BILL 1984

54. This Bill was introduced into the House of Representatives on 28 March 1984 by the Minister for Science and Technology.
55. The purpose of this Bill is to amend the Patents Act 1952 to ensure that Australians can take advantage of the procedures made possible by the Budapest Treaty on the International Recognition of the Deposit of Micro-organisms for the Purposes of Patent Procedure, done at Budapest on 28 April 1977, to which Australia intends to accede. Patent applicants whose invention involves a micro-organism will be enabled, and required in certain circumstances, to make a deposit of the micro-organism in a prescribed depository institution. All international depository authorities under the Budapest Treaty will be included, so that a single deposit in one authority will, under the Treaty, satisfy deposit requirements of patent laws in all other member countries. This obviates the need for costly and cumbersome multiple deposits, and will also give Australian industry more ready access to deposited strains.
56. The Committee drew the attention of the Senate to the following clauses of this Bill:

Clause 6 - Proposed sub-section 131(1A)

57. Proposed sub-section 131(1A) vests in the Commissioner of Patents a discretion to control access to micro-organisms deposited with a prescribed depository. This sub-section refers to prohibition or restriction of access "...in the interests of the defence of the Commonwealth". The Commissioner's exercise of this

discretion is not subject to review by the Administrative Appeals Tribunal and breach of a prohibition or restriction imposed by the Commissioner carries significant criminal penalties. Section 151 of the Principal Act provides for review of a number of other decisions by the Commissioner.

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

Clause 7 - Proposed section 154A

59. Proposed section 154A permits either a court or the Commissioner to declare that a specification does not comply with section 40, thus the requirements for the granting of a patent are not fulfilled. Although in other cases (see, e.g., section 15(2)) there is express provision for an appeal from a decision of the Commissioner in like circumstances, no such provision for appeal is expressly made by proposed new section 154A.
60. The Committee drew this clause to the attention of Senate under principle 1(a)(iii) in that it might be considered to make rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.
61. The Minister for Science and Technology introduced two amendments in the House of Representatives on 8 May 1984 which provided for review of the decisions referred to above. In moving the amendments he stated that:

These two small amendments arise from the eternal vigilance of the Senate Standing Committee on the Scrutiny of Bills.

62. The Committee thanks the Minister both for his amendments and his encomium.

Michael Tate  
Chairman  
9 May 1984.

DEPARTMENT OF THE SENATE  
PAPER No. 1071  
DATE PRESENTED  
- 6 JUN 1984  
*W. L. ...*  
MINISTER OF THE SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

FIFTH REPORT  
OF 1984

6 JUNE 1984



**THE SENATE**

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Extract

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

FIFTH REPORT

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

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

Aboriginal and Torres Strait Islander Heritage (Interim Protection) Bill 1984

Australian Meat and Live-Stock Corporation Amendment Bill 1984

Australian National University Amendment Bill 1984

Canberra College of Advanced Education Amendment Bill 1984

Liquefied Petroleum Gas (Grants) Amendment Bill 1984

Live-Stock Slaughter Levy Collection Amendment Bill 1984

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Members of Parliament (Staff) Bill 1984

Merit Protection (Australian Government Employees) Bill  
1984

National Crime Authority Bill 1983

Property Rights Protection Bill 1984

Public Service Reform Bill 1984

Referendum (Machinery Provisions) Bill 1984

Social Security and Repatriation Legislation Amendment  
Bill 1984

Taxation (Unpaid Company Tax) Assessment Amendment Bill  
(No.2) [No.2] 1984

ABORIGINAL AND TORRES STRAIT ISLANDER  
HERITAGE (INTERIM PROTECTION) BILL 1984

1. This Bill was introduced into the House of Representatives on 9 May 1984 by the Minister Representing the Minister for Aboriginal Affairs. The Aboriginal and Torres Strait Islander Heritage (Interim Protection) Bill 1984 has two main purposes:

- (1) to preserve and protect areas in Australia and Australian waters which are of particular significance to Aboriginals or Islanders in accordance with Aboriginal or Islander traditions; and

- (2) to preserve and protect objects, including Aboriginal or Islander human remains, which are of particular significance to Aboriginals or Islanders in accordance with Aboriginal or Islander traditions.

2. Effect will be given to these purposes by the making of declarations in respect of significant Aboriginal areas and objects. These declarations will set out provisions for the protection and preservation of the areas or objects from injury or desecration.
3. The Committee draws the attention of the Senate to the following clauses of this Bill:

Clauses 10 and 12 - Ministerial Discretion

4. These clauses vest in the Minister a discretion to determine whether areas or objects should be declared for the purposes of the Bill. The legality of the exercise of the discretion may be reviewed under the Administrative Decisions (Judicial Review) Act 1977 and

the declarations have the force of regulations under section 48 of the Acts Interpretation Act. They are, therefore subject to disallowance by either House of Parliament. In considering a declaration, the Parliament may examine all aspects of the declaration including the merit of each case. The Senate may wish to consider whether Parliamentary scrutiny is the most effective means of reviewing the merits of what may be highly complex and contentious decisions.

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

#### Clause 24 - Burden of Proof

6. Sub-clause 24(3) provided that an averment made by a prosecutor that a defendant knew, or ought reasonably to have known, of the existence of a declaration made under Part II of the Bill was prima facie evidence of that fact. The Committee notes that this sub-clause was taken out of the Bill by the House of Representatives and has been replaced by a clause placing the burden of proof in these matters on the prosecution.

#### AUSTRALIAN MEAT AND LIVE-STOCK CORPORATION AMENDMENT BILL 1984

7. This Bill was introduced into the House of Representatives on 10 May 1984 by the Minister for Primary Industry. The Australian Meat and Live-stock Corporation Amendment Bill 1984 is designed to modify the structure of the Corporation and to better delineate

its functions and powers so as to allow it a greater degree of commercial flexibility, especially in the area of its trading and borrowing powers.

8. The Bill proposes to change the structure of the membership of the Corporation so that its membership is no longer representative of particular industry sectors but is composed of persons with specified qualifications and experience relevant to its functions.
9. The Bill confines the functions of the Corporation essentially to activities associated with commerce, viz: identifying and developing market opportunities, and the regulation of, and involvement in, export trading.
10. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 23 - Proposed Section 30V

11. Section 30V deals with the appointment and dismissal of the Managing Director of the Corporation. Proposed paragraph (2)(b) of this section allows the Corporation to terminate such an appointment "...at any time". The Corporation is not required to provide reasons for termination of the appointment nor is it required to give a period of notice of termination. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that such a wide discretion may be considered to make rights liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

## AUSTRALIAN NATIONAL UNIVERSITY AMENDMENT BILL 1984

12. This Bill was introduced into the House of Representatives on 9 May 1984 by the Minister Representing the Minister for Education and Youth Affairs.
13. The main purpose of this Bill is to amend the Australian National University Act 1946 in order to remove restrictions inserted in the Act in 1979 and 1981 on the use of fees collected from students for amenities and services. The present provisions of the University Act restrict the use of general services fees to categories of amenities and services specified in a Statute made by the University Council within the terms of the Act. They restrict these funds being used for socio-political purposes including affiliation with a national association of students. By removing these restrictions in the Act, there would be a return to the situation which existed before the 1979 amendments so that it would be the responsibility of the Council of the University to supervise the use of these funds as an aspect of its responsibility for the management of the University.
14. The Bill also provides for minor amendments to the Act. These include removing sex-discriminatory language from the Act, adding to the membership of the Board of the Institute of Advanced Studies, removing possible legal deficiencies in some aspects of the Act, and amendments undertaken to bring the Act into line with current practice in respect of such matters as the disclosure of interests of members of the University Council and Ministerial approval of payments to the University.
15. The Committee draws the attention of the Senate to the following clause of this Bill:



Clause 2 - Retrospectivity

16. Sub-clause (3) of this clause makes the commencement of clause 18 retrospective to 1 January 1984. Clause 18 repeals section 29A of the principle Act. That section restricted the power of the University Council to distribute fees to student organizations. Only organizations which conformed to certain established criteria could receive funds. The effect of the retrospective repeal of this section is to remove the restrictions so that fees paid by students at the commencement of the current academic year, which at that time could only be used within the constraints of section 29A, will now be applied to any purposes nominated by the Council. A student who paid those fees might regard it as improper that the conditions attaching to their use have been changed in this way.
  
17. The Committee draws this clause 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.

CANBERRA COLLEGE OF ADVANCED EDUCATION  
AMENDMENT BILL 1984

18. This Bill was introduced into the House of Representatives on 9 May 1984 by the Minister Representing the Minister for Education and Youth Affairs.
  
19. The principal purpose of this Bill is to amend the Canberra College of Advanced Education Act 1967 so as to remove restrictions inserted in the Act in 1979 on the ways fees collected from students for the provision of amenities and services can be used. The present

provisions of the College Act restrict the ways in which fees collected for the provision of student amenities and services may be used. Such fees may not be used for socio-political purposes, including affiliation with a national association of students. By removing these restrictions from the Act, it would be the responsibility of the Council of the College to supervise the use of these funds as an aspect of its responsibility for the management of the College.

20. The Bill also provides for minor amendments to the Act. These include removing sex-discriminatory language from the Act, empowering the College to confer honorary degrees at levels approved by the Minister, and enlarging the Council of the College by adding representatives of non-teaching staff and College alumni. The Bill is also intended to bring the College Act into line with current practice in respect of such matters as the disclosure of interests of members of the College Council.
21. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 2 - Retrospectivity

22. Sub-clause (2) of this clause makes the commencement of clause 18 retrospective to 1 January 1984. Clause 18 repeals section 25A of the principle Act. Section 25A is similar in purpose to section 29A of the Australian National University Act 1946. The comments on clause (2) of the Australian National University Amendment Bill 1984 also apply to this Bill.

LIQUEFIED PETROLEUM GAS (GRANTS)  
AMENDMENT BILL 1984

23. This Bill was introduced into the House of Representatives on 2 May 1984 by the Acting Treasurer. The purpose of this Bill is to amend the Liquefied Petroleum Gas (Grants) Act 1980 to extend the operation of the Liquefied Petroleum Gas (LPG) subsidy scheme to 31 March 1987 in a modified form.
24. The subsidy was introduced for three years in 1980 to alleviate sharp price increases in LPG and to encourage conversion to more readily available alternative fuels such as natural gas and electricity. In 1982 a revised version of the scheme was extended for 12 months until 28 March 1984.
25. This Bill proposes to extend the scheme for a further 3 years to counteract possible future sharp increases in the price of LPG which would be faced by consumers if the subsidy were withdrawn.
26. Eligibility for the subsidy will remain unaltered. However, the rate of subsidy will in future be calculated in accordance with a formula based upon a wholesale price for LPG as determined by the Minister for Resources and Energy.
27. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 7 - Retrospectivity

28. Sub-clause 7(3) of this Bill makes the amendments introduced by sub-clause 7(1) retrospective to 22 October 1982 - the commencement date of a previous

amending Act. The changes proposed by sub-clause 7(1) are "to correct a number of errors in that section [7A]".

29. While the retrospectivity does not appear to impose any obligations, the Committee draws this clause 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.

LIVE-STOCK SLAUGHTER LEVY COLLECTION  
AMENDMENT BILL 1984

30. This Bill was introduced into the House of Representatives on 10 May 1984 by the Minister for Primary Industry. The purpose of the Bill is to validate retrospectively payments made to the Northern Territory since 1 July 1978 from the National Cattle Disease Eradication Trust Account, and authorises the continuation of such payments in future.
31. Responsibility for conducting and funding animal disease control measures in the Northern Territory devolved from the Commonwealth to the Territory when it achieved self-Government in 1978.
32. However, the Live-Stock Slaughter Levy Collection Act 1964 as it now stands requires that Trust Account payments may be made only to States and the Commonwealth.
33. However, the Government has received advice that legally the Northern Territory is not embraced within the description of a State as used in the current act and the proposed amendment will place the legality of payments made to the Northern Territory since 1978

beyond question and ensure the legality of future payment for national cattle disease eradication purposes.

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

Clause 2 - Retrospectivity

35. This clause deems the Act to have come into operation on 1 July 1978. The purpose of this Bill is to validate payments already made to the Northern Territory out of the National Cattle Disease Eradication Trust Account. These payments have been made as if the Northern Territory were a State. However, the Government has received legal advice that this practice is invalid. Thus the Bill is made retrospective to the date on which the Territory achieved self-government.
36. While this Bill will not have an adverse effect on any individual, in view of the significant period for which the Bill is made retrospective, the Committee draws it 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.

MEMBERS OF PARLIAMENT (STAFF) BILL 1984

37. This Bill was introduced into the House of Representatives on 9 May 1984 by the Minister Assisting the Prime Minister for Public Service Matters. The purpose of this Bill is to create a legislative scheme for the engagement of consultants to provide services for Ministers of State, and for the employment of staff by Ministers, office-holders in the Government and Opposition, and by Senators and Members.

38. Under Part II of this Bill, Ministerial consultants (either persons or companies) will be engaged by Ministers after approval by the Prime Minister of written agreements specifying the duties to be performed (clause 4). The terms and conditions of the engagement will be determined by the Public Service Board (clause 5) except for superannuation (clause 8). Engagements will be for periods of up to three years, with special provisions for the termination of the consultancy (clause 9). Special provisions will define the rights of officers and employees of the Australian Public Service (APS) who are engaged as consultants.
39. Part III provides that the staff of officeholders (being the holders of the offices defined in clause 3) will be employed upon the approval of the Prime Minister (clause 12) by written agreements (clause 13). The terms and conditions of employment are to be the same as the terms and conditions applying to an officer in the APS having an equivalent classification to that specified in the employment agreement (clause 14) except for superannuation (clause 15) and the termination of the employment (clause 16) or as otherwise varied by the Prime Minister.
40. Under Part IV, staff employed by Senators or Members will be subject to the same requirements as specified in Part III.
41. The Re-integration Assessment Committee in Part V will assess applications made by officers of the Australian Public Service who are engaged or employed under this Bill and who subsequently seek to return to the Service.
42. Provision is made for the application of the Public Service Arbitration Act 1920 to staff employed by Ministers, officeholders and Members of Parliament (clause 31).

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

Clause 14 and Clause 21 - Ministerial Discretion

44. Sub-clause (3) of each of these clauses vests in the Prime Minister an unreviewable discretion to vary the terms and conditions of employment of the staff of members of Parliament. Clause 14 refers to staff of holders of parliamentary offices and clause 21 refers to the staff of Senators and Members of the House of Representatives.
45. The Committee draws these clauses to the attention of the Senate under principle 1(a)(iii) in that such unreviewable discretions may be considered to make personal rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

MERIT PROTECTION (AUSTRALIAN GOVERNMENT EMPLOYEES)  
BILL 1984

46. This Bill was introduced into the House of Representatives on 9 May 1984 by the Minister Assisting the Prime Minister for Public Service Matters. The purpose of the Merit Protection (Australian Government Employees) Bill 1984 is to provide for the setting up of an independent grievance authority to be known as the Merit Protection and Review Agency.
47. At present the Public Service Board makes a wide range of personnel management rules for the Australian Public Service (APS) and at the same time adjudicates on grievances arising from their administration, sometimes when it or its delegates are the initial decision-makers. These two functions do not fit

comfortably together. It is proposed, therefore, to establish a new, independent statutory authority to be responsible for handling the grievances of public servants which are now dealt with under the aegis of the Board. It is also proposed that the various statutory appeal and review committees which deal with, for example, APS promotion appeals and discipline appeals be established under the auspices of the Agency. Under proposed legislation the Agency will comprise a full-time Director and up to four other members, two of whom may also be full-time.

48. An important element of the proposed legislation is that it includes provisions to enable the various appeal, review and grievance avenues to be extended to areas of Commonwealth employment outside the APS.
49. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 85 - Henry VIII

50. Paragraph (1)(k) of this clause permits regulations to be made prescribing the application of the Bill "...to the other areas of Commonwealth employment that are not comprehended by the APS or by the definition of 'Commonwealth authority'". Regulations may also be made modifying and adapting the provisions of the Bill as they will apply to those areas of Commonwealth authority.
51. The Committee adopts the practice of drawing all "Henry VIII" clauses to the attention of the Senate under principle 1(a)(iv) in that such clauses might be considered to be inappropriate delegation of legislative power.



## NATIONAL CRIME AUTHORITY BILL 1983

52. This Bill was introduced into the Senate by the Attorney-General on 10 November 1983. The purpose of the Bill is to establish a National Crime Authority with the function of investigating certain categories of organised crime and official corruption, with a view to prosecution where appropriate.
53. The Committee first commented on this Bill in its Fourteenth report of 30 November 1983. Since that date the Bill has been considered by a standing Committee of the Senate and extensive amendments to it proposed by the Government and by Opposition parties.
54. The Committee originally drew the attention of the Senate to the following clauses:

Clause 14

55. This clause protects the Authority against any legal challenge to any action or thing done by it in pursuance of a reference if the basis of the challenge is that necessary approval of the Intergovernmental Committee or consent of the Minister had not been obtained or was not lawfully given. The only exception to this is a proceeding instituted by the Attorney-General of the Commonwealth or of a State.
56. The Committee again draws this clause to the attention of the Senate under principle 1(a)(iii) in that it might be considered to make rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

Clause 21

57. Sub-clause (15) withdrew from a defendant in an action for defamation the defence that a report was a fair and accurate reflection of proceedings before the Authority. The Committee notes that it is intended to remove the sub-clause from the Bill.
58. The Committee has considered the amendments to the Bill to be moved by the Attorney-General and draws the attention of the Senate to the following proposed new clause.

Clause 17A - Henry VIII Provision

59. This clause refers to the powers of the Authority to require information from certain Commonwealth agencies. Sub-clause (4) creates an offence of failing to comply to a request from the Authority. The only exemptions from compliance are where provisions in legislation ensuring confidentiality, for example in the Income Tax Assessment Act 1936, and these provisions are listed in a Schedule to the National Crime Authority Bill.
60. Sub-clause (6) allows the Schedule of provisions to be altered by regulation either by inserting in or omitting from the Schedule a reference to a provision of a law. Thus the intent of the legislature in exempting certain categories of information could be altered by regulation.
61. The Committee draws this Henry VIII clause to the attention of the Senate under principle 1(a)(iv) in that it might be considered to be an inappropriate delegation of legislative power.

PROPERTY RIGHTS PROTECTION BILL 1984

62. This Bill was introduced into the Senate on 10 May 1984 by Senator Janine Haines. The purpose of this Bill is to protect private property from unjust acquisition by State Governments.
63. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 7 - Retrospectivity

64. Clause 7 of the Bill states that just compensation will be payable to a person for the unjust acquisition of property if that acquisition occurred after 13 November 1980, being the day on which the International Covenant on civil and political rights entered into force for Australia.
65. The Committee notes that it is the clear policy intention of the Bill that it have retrospective effect. Nevertheless the Committee draws this clause 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

PUBLIC SERVICE REFORM BILL 1984

66. This Bill was introduced into the House of Representatives on 9 May 1984 by the Minister Assisting the Prime Minister for Public Service Matters. The principal purpose of this Bill is to implement the decisions the Government has taken to reform the Australian Public Service.

67. The most significant proposals contained in the Bill are in Part II - amendments of the Public Service Act - and relate to the following decisions of the Government:

- to amend the appointment provisions for Permanent Heads (now to be described as Secretaries of Departments) (Clause 27);
- to permit the transfer, unattachment and redeployment of Secretaries of Departments (Clauses 81-83);
- to establish a Senior Executive Service to provide for a group of staff who will undertake the higher level policy advising, managerial and professional responsibilities, with provisions for selection, promotion, transfer and retirement designed to meet the circumstances of senior management (Clauses 16,25,31 and 85-88);
- to empower Secretaries to create, abolish and reclassify offices in Departments in accordance with classification guidelines developed by the Board and within numbers and salary profile controls administered by the Department of Finance (Clause 17);
- to provide a clear statement of the objects of the Public Service Act (Clause 4);
- to provide a clear statement of merit principles in the Act and to proscribe any form of unjustifiable discrimination (Clause 23);
- to provide for the conduct of Personnel Management Reviews (Clause 10);

- to provide for Departments and prescribed authorities to formulate equal employment opportunity programs to promote equality of employment opportunity, including measures for designated groups and to provide for the extension of such programs to other areas of Commonwealth employment (Clause 11);
- to provide for Departments and prescribed authorities to prepare industrial democracy plans to further participative decision-making within Departments (Clause 12);
- to provide for the introduction of permanent part-time work in the Public Service (Clause 19);
- to streamline the promotion process by making provision for promotions to be made following advice from Joint Selection Committees, with promotions made in accordance with that advice not being subject to appeal (Clause 44).

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

Proposed Section 22B and Section 22C - Henry VIII Clause

69. Sub-section (14) of section 22 and sub-section (13) of section 22C are expressed in the same wording as clause 85(1)(k) of the Merit Protection (Australian Government Employees) Bill 1984 considered above. Each sub-section enables the relevant parts of the legislation to be applied by regulation to Commonwealth officers employed under legislation other than the Public Service Act 1922.

Proposed Section 29E - Henry VIII Clause

70. This proposed section allows the provisions of legislation to be modified if necessary and applied to part-time offices and officers within the APS.

Proposed Section 76Q(2)(b) - Henry VIII

71. Section 76Q deals with benefits payable to officers who retire under the provisions of proposed section 76L. Section 76Q(2)(b) enables the regulations to apply the provisions of the Superannuation Act 1976, subject to modification and adaptation, to the benefits payable under this Bill, thus altering this Bill and extending the scope of the Superannuation Act.
72. The Committee draws the attention of the Senate to each of these "Henry VIII" clauses under principle 1(a)(iv) in that they might be considered to be inappropriate delegation of legislative power.

REFERENDUM (MACHINERY PROVISIONS) BILL 1984

73. This Bill was introduced into the House of Representatives on 9 May 1984 by the Special Minister of State. The purpose of this Bill is to repeal the Referendum (Constitution Alteration) Act 1906 and subsequent amending Acts, make machinery provision for voting at referendums (including voting by electors in the Territories), make changes to referendum provisions consequential upon the passage of the Commonwealth Electoral Legislation Amendment Act 1983, and incorporate modifications to current referendum procedures.

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

Clause 45 - Burden of Proof

75. Under clause 45, paragraph (11)(b) an elector who fails to respond to a notice issued in accordance with clause 45(3) is guilty of an offence. The purpose of the notice is to require the elector to show cause why proceedings for failing to vote should not be instituted against him. The Divisional Returning Officer is required to prepare a list of electors who failed to vote in a referendum. Any certified extract from that list is prima facie evidence that a notice under clause 45(3) was received by the electors whose names appear on it.
76. In any prosecution under clause 45(11)(b) the prosecution is required merely to produce a certified list prepared under clause 45(3). It is then for the accused person to prove that a notice under sub-clause (3) was not received and that no offence had been committed.
77. The Committee draws the attention of the Senate under principle 1(a)(i) to this clause in that such a shifting of the burden of proof to the defendant might be considered to trespass unduly on personal rights and liberties.

SOCIAL SECURITY AND REPATRIATION LEGISLATION  
AMENDMENT BILL 1984

78. This Bill was introduced into the House of Representatives on 10 May 1984 by the Minister Representing Minister for Social Security.

79. This Bill would amend seven Acts. The more important amendments are as follows -

1. Social Security Act 1947 -

- . eligibility for remote area allowances would be extended in certain circumstances;
- . some restrictions upon the granting of pensions would be removed; and
- . eligibility for supplementary assistance or supplementary allowance (rent assistance) would be extended in some circumstances.

2. Social Security Legislation Amendment Act 1983 -

two minor corrections would be made;

- . to ensure that administrative arrangements made to implement the personal care subsidy introduced under the 1983-84 Budget in Part III of the Aged or Disabled Persons Homes Act 1954 would have their intended legal effect; and
- . to ensure that a family income supplement under Part V of the Social Security Act 1947 would be payable to the wife (in general) in a low income family as from 1 May 1984.

3. Repatriation Act 1920 -

- . consequential amendments would be made so that the Act remains in line with corresponding provisions of the Social Security Act 1947, particularly in respect of remote area allowance.



4. Aged or Disabled Persons Homes Act 1954 -
  - . a respite care subsidy would be introduced which is payable to approved organizations providing respite care to aged or disabled persons who normally live with relatives or friends.
  
5. Compensation (Commonwealth Government Employees) Act 1971 -
  - . a secrecy provision would be inserted to protect the confidentiality of the affairs of persons to whom the Act relates;
  - . limitations would be placed on the recovery of compensation by the Commonwealth out of common law damages relating to a loss for which compensation under the Act is not payable;
  - . the disqualification from receiving compensation would be removed where an employee receives compensation (other than worker's compensation) under a law of a State or Territory;
  - . elements of sex discrimination would be removed to bring the Act more into line with the spirit of the Sex Discrimination Act 1984.
  
6. Handicapped Persons Assistance Act 1974 -
  - . the approval of a maintenance project would become possible after completion of the project (eg emergency repairs).
  
7. Seamen's Compensation Act 1911 -
  - . elements of sex discrimination would be removed to bring the Act more into line with the spirit of the Sex Discrimination Act 1984.
  
80. The Committee draws the attention of the Senate to the following clause of this Bill:

Clause 2 - Retrospectivity

81. A number of parts of this legislation are made retrospective in their operation by this clause. Generally the period of retrospectivity is minor - to the date of introduction of the legislation. However the commencement of clause 46 is made retrospective to 27 October 1982 and of Part III to 24 October 1983.
82. Retrospectivity in both cases is to validate current administrative practice and does not disadvantage any person. Nevertheless the Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that such retrospectivity might be considered to trespass on personal rights and liberties.

TAXATION (UNPAID COMPANY TAX) ASSESSMENT  
 AMENDMENT BILL 1984 (NO.2) [NO.2] 1984

83. This Bill was entitled Taxation (Unpaid Company Tax) Assessment Amendment Bill 1983 (No.4) in the House of Representatives. This Bill was introduced into the House of Representatives on 2 May 1984 by the Acting Treasurer. The Taxation (Unpaid Company Tax) Assessment Amendment Bill 1983 is identical to the Bill by the same title that was introduced on Budget night 1983.
84. This Bill will amend the unpaid company tax recoupment law to:
- extend the scope of the legislation so that personal income tax avoided by former owners of companies stripped of pre-tax profits will be subject to recoupment, but only in relation to revenue profits of years in respect of which company tax was evaded;

- ensure that liability for recoupment tax will not be escaped by reason of an ultimately unsuccessful post-sale or pre-sale tax avoidance scheme;
- authorise the Commissioner of Taxation to name in his annual report persons who fail to pay an assessed recoupment tax liability in respect of unpaid company tax;
- remove the test which requires that an arrangement which rendered a company unable to pay its tax must be identified before a recoupment tax liability can be established;
- vary the evidentiary provision so as to make it constitutionally valid; and
- correct minor technical defects.

General Comment

85. This Bill is in exactly the same form as the Bill of the same title introduced into the House of Representatives by the Treasurer on 23 August 1983. The Committee's comments on that Bill in its Sixth Report of 14 September 1983 are therefore relevant to this Bill.
86. The Committee draws the attention of the Senate to the following clause of the Bill:

Clause 22 - Evidence

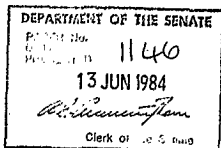
87. Clause 21 of the Bill, which will come into force when the Bill receives the Royal Assent, substitutes a new section 23 in the Principal Act. This substitution, in the words of the Explanatory Memorandum, is necessary "... in the light of some doubt of a constitutional kind

that has arisen about the legislation, and of technical deficiencies in the existing section 23 ... A feature of the new section will be that the certificate for which it provides will in all circumstances be prima facie, rather than conclusive, evidence."

88. Clause 22 provides for the Principal Act to be amended to revert to the original position where a certificate is conclusive evidence in section 23, presumably when the doubts about the legislation have been resolved. Clause 22 is to come into force on a date to be fixed by Proclamation. Thus Clause 22 in effect provides a means for amending an Act by Proclamation. The Committee draws this clause to the attention of the Senate under principle 1(a)(iv) in that it may be considered an inappropriate delegation of legislative power.

Michael Tate  
Chairman

6 June 1984



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTH REPORT  
OF 1984

13 JUNE 1984

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTH REPORT  
OF 1984

13. JUNE 1984

ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

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

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SIXTH REPORT

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

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

Extradition (Commonwealth Countries) Amendment Bill 1984

Extradition (Foreign States) Amendment Bill 1984

Income Tax Assessment Amendment Bill (No.3) 1984

Repatriation Legislation Amendment Bill 1984



EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL 1984

1. This Bill was introduced into the Senate by the Attorney-General on 30 May 1984.
2. The purpose of this Bill is to amend the Extradition (Commonwealth Countries) Act 1966 which, in conjunction with the domestic legislation of other Commonwealth countries regulates extradition between Australia and all other Commonwealth countries. This legislation is based on a scheme agreed to by Commonwealth Law Ministers in 1966. In 1983 Commonwealth Law Ministers agreed to certain amendments to that scheme to improve its operation. Those changes which require amendment to the Extradition (Commonwealth Countries) Act 1966 are incorporated in this Bill. The Bill also incorporates amendments which are considered necessary to resolve difficulties which have arisen in the practical operation of the legislation and to tidy up the drafting and organisation of the legislation.
3. The Committee draws the attention of the Senate to the following clauses of this Bill:

Clause 4 - Henry VIII

4. This clause inserts a new section 4 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. This clause will remove the need for amending the Principal Act whenever Australia becomes party to a Treaty..." (Explanatory Memorandum p.3)

5. The Committee draws all such Henry VIII clauses to the attention of the Senate under principle 1(a)(iv) in that they might be considered to be an inappropriate delegation of legislative power.

Clause 8 - Unreviewable Discretion

6. Proposed section 12(2)(b) 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 decision. However no avenue for review of the merits of the Attorney-General's decision is available under this amendment.
7. The Committee draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be considered to make personal rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.

EXTRADITION (FOREIGN STATES) AMENDMENT BILL 1984

8. This Bill was introduced into the Senate by the Attorney-General on 30 May 1984.
9. The purpose of the Bill is to amend the Extradition (Foreign States) Act 1966 which regulates Australia's extradition relations with non-Commonwealth countries. The amendments are similar to those made to the Extradition (Commonwealth Countries) Act. The Bill also incorporates amendments which are considered necessary to resolve difficulties which have arisen in the practical operation of the legislation and to tidy up the drafting and organisation of the legislation.

Clauses 4 and 7

10. The comments on clauses 4 and 8 of the Extradition (Commonwealth Countries) Amendment Bill 1984 apply to clauses 4 (new section 4A) and 7 (new section 15(2)(b)) of this Bill.

INCOME TAX ASSESSMENT AMENDMENT BILL (NO.3) 1984

11. This Bill was introduced into the House of Representatives by the Minister Assisting the Treasurer on 30 May 1984.
12. There are two major purposes of this Bill:
  - . to introduce new taxation arrangements for retirement and kindred payments (effective for payments made on or after 1 July 1983); and

. to strengthen section 26(a) of the Income Tax Assessment Act which imposes tax on profits made on the sale of property acquired for the purpose of resale at a profit.

13. Other minor purposes include measures to:

. give effect to the taxation concession for investors of share capital to licensed venture capital companies;

. tax the income of friendly societies from the investment of their funds from life, disability and accident insurance business, on a basis broadly comparable with life assurance companies;

. clarify the operation of the income tax law with respect to deductions for repairs to property that is used only partly for the purpose of producing assessable income;

. reduce the paperwork burden of the prescribed payments system by removing the requirement for deduction forms to be lodged with income tax returns;

. authorise deductions for capital contributions to the cost of railway rolling-stock owned by a government or tax exempt government authority that is used for the transport of petroleum or minerals; and

. exempt from tax rent subsidy payments made to persons to assist with their rent costs under the Commonwealth/State mortgage and rent relief scheme.

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

Clause 60 - Retrospectivity

15. This clause gives retrospective effect to a number of the amendments made by this Bill. Clause 6 will have effect from 17 August 1982. However the clause widens the range of income exempt from tax and is thus unobjectionable. Clause 60 also states that the changes made by various provisions of the Bill shall apply to assessable income for the year commencing 1 July 1983. Most of these changes were foreshadowed in the Government's Economic Statement of 19 May 1983 while others were announced on Budget night in August of 1983. Income tax on the various types of payments referred to in the relevant clauses is not assessable until the end of the financial year, thus these provisions may also be regarded as acceptable.
16. The Committee continues to take the view that the Senate should be alerted to retrospectivity in legislation and thus notes this clause under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

REPATRIATION LEGISLATION AMENDMENT BILL 1984

17. This Bill was introduced into the Senate by Minister for Veterans' Affairs on 29 May 1984.
18. The purpose of this Bill is to amend the following Acts: Repatriation Act 1920; Interim Forces Benefits Act 1947; Repatriation (Far East Strategic Reserve) Act 1956; Repatriation (Special Overseas Service) Act 1962; and Seamen's War Pensions and Allowances Act 1940.

19. The main amendments are to:

- . abolish Repatriation Boards (clause 6);
- . provide that the Repatriation Commission will be responsible for primary decision on claims and applications for disability pensions, of applications for increases in the rates of pensions payable and of claims for service pension (clause 12, proposed Section 29A), (clause 15, proposed Section 90A);
- . establish a veterans' Review Board to operate as the intermediate level of review of decisions of Repatriation Commission delegates in respect of disability pension matters (clause 19);
- . provide for appeal delegates of the Repatriation Commission to operate as the intermediate level of review of decisions of primary delegates in respect of service pension matters (clause 15, proposed section 90C);
- . abolish the Repatriation Review Tribunal (clause 19);
- . provide for the Administrative Appeals Tribunal to operate as the final level of review on the merits of all claims for disability pensions and service pensions and all applications for increases in the rates of disability pensions payable (clause 19, proposed Part IIIB);
- . provide for the Veterans' Review Board to operate as the intermediate level of review and the Administrative Appeals Tribunal as the final level of

review on the merits in respect of claims and applications for pensions under the Seamen's War Pensions and Allowances Act 1940 (clauses 38-47).

20. The Committee drew the attention of the Senate to the following clause of this Bill:

Clause 13 - Review of Decisions

21. This clause proposes to insert a new section 31 in the Principal Act. It provides that the Repatriation Commission may, on a variety of grounds, review its own decisions. The Committee expressed concern that where such a review is undertaken by the Commission and the decision under review is affirmed then, it appeared that under sub-clause 31(7), further avenues for review are closed off. If the Commission pre-empts other avenues of appeal and affirms its decision then a pensioner may have no rights of appeal.
22. The Committee drew this clause to the attention of the Senate under principle 1(a)(iii) in that it might be considered to make personal rights and liberties unduly dependent on non-reviewable administrative decisions.
23. The office of the Minister for Veterans' Affairs has provided a response to the Committee's comments, the relevant parts of which are reproduced here for the information of the Senate:

. Section 31 empowers the Commission to undertake internal reviews of its own motion.

. The purposes for which the power would be exercised are:

- (a) quality control of decision making by the delegates of the Commission to ensure the correct and consistent application of the legislation;
- (b) to allow the Commission a power to settle claims previously rejected by a Commission delegate and which are the subject of an application for review to either the VRB or the AAT. In other words, satisfactory settlement of a claim would obviate the need for a formal review hearing;
- (c) to make a variation to the date of effect of a decision where there has been an error in the date set by the VRB;
- (d) to vary a decision of the Commission, where such a decision was based on false evidence.

. The right of the Commission to intervene in such matters has been severely fettered in the proposed amendment. The existing provision is very much open-ended.

. The circumstances in which the Commission might intervene other than those listed above could be where it was requested to review a matter by the Minister following Ministerial representations. In those circumstances, it would be possible that the Commission may review a matter and affirm the original decision. In such circumstances, the original decision, which adversely affected the claimant's rights would remain on foot and would be a decision that would be reviewable by the AAT providing the normal time limits had not expired.



. The authority for the above proposition is Gee's case, a social Security matter before a presidential bench of the AAT reported in 3ALD 132 at 139.

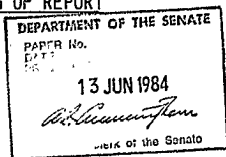
. If the time limits had expired, then the matter would not have been reviewable by the Commission, i.e., the circumstances posited by the Scrutiny of Bills Committee would not arise.

24. The Committee notes that, in fact, the amendment would not remove a claimant's rights of appeal and is therefore unobjectionable.

Michael Tate  
Chairman

13 June 1984

SCRUTINY OF BILLS COMMITTEE - TABLING OF REPORT



CHAIRMAN:

MR PRESIDENT,

I PRESENT THE SIXTH REPORT OF THE STANDING COMMITTEE  
FOR THE SCRUTINY OF BILLS CONCERNING:

EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL  
1984

EXTRADITION (FOREIGN STATES) AMENDMENT BILL 1984

INCOME TAX ASSESSMENT AMENDMENT BILL (NO.3) 1984

REPATRIATION LEGISLATION AMENDMENT BILL 1984

AND MOVE THAT THE REPORT BE PRINTED.

(WHEN MOTION AGREED TO)

CHAIRMAN:

MR PRESIDENT,

ON BEHALF OF THE COMMITTEE, I LAY ON THE TABLE SCRUTINY  
OF BILLS ALERT DIGEST No.8 DATED 13 JUNE 1984.

SCRUTINY OF BILLS COMMITTEE - TABLING OF REPORT

CHAIRMAN:

Mr PRESIDENT,

DEPARTMENT OF THE SENATE	
PAPER No.	133/1332
DATE PRESENTED	22 AUG 1984
<i>Mr. Lawrence</i>	

I PRESENT THE SEVENTH REPORT OF THE STANDING  
COMMITTEE FOR THE SCRUTINY OF BILLS CONCERNING:

BIOLOGICAL CONTROL BILL 1984

DEFENCE LEGISLATION AMENDMENT BILL 1984

I ALSO LAY ON THE TABLE SCRUTINY OF BILLS ALERT DIGEST NO.9  
DATED 22 AUGUST 1984

Mr PRESIDENT,

I MOVE THAT THE REPORT BE PRINTED.



AUSTRALIAN SENATE



DEPARTMENT OF THE SENATE  
PAPER No. 1331  
DATE PRESENTED 22 AUG 1984  
*W. G. ...*  
Chairman

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SEVENTH REPORT  
OF 1984

22 AUGUST 1984

THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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ISSN 0729-6258

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MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

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

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

SEVENTH REPORT

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

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

Biological Control Bill 1984

Defence Legislation Amendment Bill 1984

BIOLOGICAL CONTROL BILL 1984

1. This Bill was introduced into the House of Representatives by the Minister for Primary Industry on 6 June 1984.

2. The Biological Control Bill 1984 has the following main purposes:

(1) to provide an opportunity for equitably assessing proposed biological control activities to ensure that they are in the public interest, by

. publishing proposals with a view to obtaining public comment

. where appropriate, ordering public inquiries to investigate and report on the implications of proposals

. providing for review of administrative decisions;

(2) to authorise the release of biological control agents and to ensure that where biological control activities are approved in terms of the Bill, they are not subject to legal proceedings intended to prevent the activities from being undertaken;

(3) to authorise existing biological control programs

. which may nevertheless in some cases be subject to the assessment procedures applying to new proposals;

(4) to provide for action to be taken in the event of emergencies developing which could be prevented by immediate implementation of biological control;



(5) to provide a nexus with complementary legislation in the States and the Northern Territory to ensure that the administration and legal status of biological control has a uniform basis throughout Australia.

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

Clause 36 and 37 - Immunity from Legal Process

4. Where an organism is released in accordance with the procedures set out in this legislation the persons releasing the organism will not be liable at law for any loss or injury that may result, nor can the release of the organism be delayed by a court order. However, the legislation sets out extensive procedures which must be followed prior to the release of an organism and provides for review by the Administrative Appeals Tribunal of the various decisions taken by the Commonwealth Biological Control Authority. Provision is also made for compensating persons adversely affected by the release of organisms. In addition where the correct procedures are not followed prior to release, normal channels of legal redress are open to the citizen.
5. Thus although at first sight these clauses might be considered objectionable to the Committee in view of the extensive processes of review available they are considered acceptable.

Clause 33 - Unreviewable Discretion

6. Clause 31 enables the Authority to declare organisms released prior to the commencement of the legislation as subject to the legislation. Where the Authority is contemplating such a declaration it may under clause 33 conduct an inquiry into the proposal. A decision not to

conduct an inquiry under clause 33 is not reviewable. Decisions not to hold inquiries under clauses 19 and 28 are, in contrast, reviewable under clause 56.

7. The Committee drew this clause to the attention of Senators in its Alert Digest No.8 in that it might be considered to make rights, liberties and/or obligations unduly dependent on non-reviewable administrative decisions.
8. The Office of the Minister for Primary Industry has provided a response to the Committee's comments on this Bill which states, with regard to clause 33, that:

In view of the fact that this decision is similar to those under clauses 19 and 28 and that these decisions are reviewable under clause 56, the Minister will seek to have the Bill amended in the House of Representatives to provide that a decision under clause 33 may be reviewed under clause 56.

The amendment proposed removes the Committee's objection to this clause.

Clause 51 - Burden of Proof

9. Sub-clause (2) creates an offence of dismissing, threatening or prejudicing a person in his or her employment, as a result of that person's participation in an inquiry before a Commission established under this legislation.
10. As a result of sub-clause (3) in any proceedings arising out of sub-clause (2) the burden of proof that a person was not dismissed, threatened or prejudiced in his or her employment is placed on the defendant - the employer.

11. The Committee drew this clause to the attention of Senators in that it might be considered to trespass unduly on personal rights and liberties.
12. The response to the Committee's comments notes that this provision is in similar form to provisions of other pieces of legislation and that:

In the present case it would be difficult or impossible to successfully prosecute where the burden of proof is not reversed. The Minister's intention is that procedures concerning inquiries under the Biological Control Bill 1984 should be consistent with similar provisions under existing legislation.

The Committee has accepted similar clauses in the past where the specific circumstances warrant such a departure from normal practice, for example the Radio Communications Bill 1983 (Alert Digest No.10, 1983) and accepts the validity of the Minister's policy intentions in this case.

#### DEFENCE LEGISLATION AMENDMENT BILL 1984

13. This Bill was introduced into the House of Representatives by the Minister for Defence on 4 May 1984.
14. This Bill deals with the following matters:
  - it establishes an independent Defence Force Remuneration Tribunal, with power to determine financial conditions of service for members of the Defence Force and the establishment of a Defence Force Advocate;

- it makes a minor expansion of the power of the Minister for Defence to determine financial conditions of service for members of the Defence Force;
- it increases the proportion of his retirement pay that a member of the Defence Force may commute on retirement (in order to moderate the effect of recent changes in the rules for the taxation of lump sum payments);
- it abolishes the annual training obligation of members of the Emergency Force Components of the Defence Force;
- it changes the title of Chief of Defence Force Staff to Chief of the Defence Force;
- it enacts into the Defence Force Discipline Act 1982 provisions of the Criminal Investigation Bill 1981 (which would have applied to the investigation of offences under that Act if that Bill had not lapsed when Parliament was dissolved in 1983);
- it enacts into the Defence Force Discipline Act 1982 certain matters that had originally been intended to be provided for by subordinate legislation;
- it amends the Defence Force Discipline Act 1982 to clarify the operation of certain provisions of the Act;
- it amends the Defence Force Discipline Act 1982 to correct certain omissions or to include certain new matters;
- it amends the Defence Force Discipline Act 1982 to require the operation of the Act to be reviewed after it has been in force for 3 years;

- it abolishes the requirement for collectors of military uniforms, badges, etc, to have an official permit issued under the Defence Act 1903;
- it abolishes the obsolescent Defence Force Retirement Benefits Board;
- it applies certain provisions of the Audit Act 1901 to accounting and financial reporting requirements for the Services' Trust Funds and the RAAF Veterans' Residences Trust;
- it validates certain matters relating to the transfer of certain Instructor Officers of the Navy;
- it makes consequential amendments and drafting changes to defence legislation and related Acts.

15. The Committee drew the attention of the Senate to the following clauses of this Bill:

Clauses 35 and 36 - Rules

16. These clauses amend section 68(2) of the Defence Force Discipline Act 1982. At present that section requires that the specific effects of certain general punishments, for example reduction in rank or restriction of privileges, are to be set out in regulations. They are therefore disallowable by the Parliament.
17. The result of the amendment will be that the regulations will now set out general guidelines within which the chief of staff may determine the particular effects of certain punishments. While the guidelines embodied in the regulations will be disallowable the rules themselves will not be.

18. Proposed section 68A(2) to be inserted by clause 36 establishes a similar process of making rules subject to regulations relating to the conditions which may apply to custodial punishments.
19. The Committee drew these clauses to the attention of Senators in its Alert Digest No.5 of 1984 in that they might be considered to be an inappropriate delegation of legislative power.
20. The Minister of Defence has indicated that he will amend this Bill to give the Rules in question the legal status of regulations, requiring that they be tabled in Parliament and be subject to the usual procedure for disallowance.
21. The Committee thanks the Minister for his response to its comments.

Michael Tate  
Chairman

22 August 1984

DEPARTMENT OF THE SENATE  
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- 5 SEP 1984  
*William Fisher*  
Clerk of the Senate



AUSTRALIAN SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

EIGHTH REPORT  
OF 1984

5 SEPTEMBER 1984

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THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

EIGHTH REPORT  
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

EIGHTH REPORT

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

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

Extradition (Commonwealth Countries) Amendment Bill 1984

Extradition (Foreign States) Amendment Bill 1984

EXTRADITION (COMMONWEALTH COUNTRIES) AMENDMENT BILL 1984

EXTRADITION (FOREIGN STATES) AMENDMENT BILL 1984

1. The Committee commented on these Bills in its Sixth Report of 13 June 1984. The Attorney-General has responded to these comments.

Clause 4 - Henry VIII

2. This clause inserts a new section 4 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. This clause will remove the need for amending the Principal Act whenever Australia becomes party to a Treaty ..." (Explanatory Memorandum p.3)
3. The Committee commented that the clause might be considered to represent an inappropriate delegation of legislative power.
4. The Attorney-General's response notes that the power granted by the amendment will be rarely used and will 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 the 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.

5. 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.
6. The Committee therefore continues to draw this clause to the attention of the Senate under principle 1(a)(iv) in that it might be considered to be an inappropriate delegation of legislative power.

Clause 8 - Unreviewable Discretion

7. Proposed section 12(2)(b) to be inserted by this clause vests in the Attorney-General a sole 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.
8. The Attorney-General has provided a lengthy response which is quoted here 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.

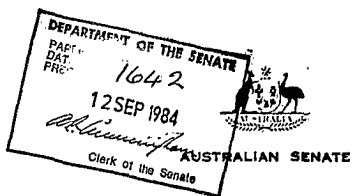
One reason for the amendment is that decisions of the courts on what constitutes an offence of a political character are singularly unhelpful and that, not surprisingly in view of this, there are great difficulties in providing an adequate definition of this type of offence. To provide that the decision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

9. 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. The Committee notes that the Minister for Immigration and Ethnic Affairs is advised by the Determination of Refugee Status (D.O.R.S.) Committee in making his decision and draws this to the attention of the Senate.

Michael Tate

Chairman

5 September 1984



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

NINTH REPORT  
OF 1984

12 SEPTEMBER 1984

THE SENATE.

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

NINTH REPORT

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

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

Petroleum Retail Marketing Sites Amendment Bill 1984

Sales Tax (Exemptions and Classifications) Amendment Bill 1984

Social Security and Repatriation (Budget Measures and Assets Test) Bill 1984

## PETROLEUM RETAIL MARKETING SITES AMENDMENT BILL 1984

1. This Bill was introduced into the Senate by the Minister for Industry and Commerce on 22 August 1984.
2. The Bill proposes to simplify the administration of the Petroleum Retail Marketing Sites Act 1980 and clarify its application to retail sites operated by major oil companies (referred to as prescribed corporations) principally by:
  - replacing the current percentage-based application test for determining whether a particular site is subject to the Act, with a more precise volume-based test;
  - removing current exemptions from quota for market-research and training sites, and clarifying the remaining exemptions for diesel fuel and temporarily operated sites;
  - adding new provisions to define which motor fuels and which sales of those motor fuels will be subject to the Act;
  - altering the application of the Act from a basis of sales made on a particular day to a basis of sales made during a particular month, to accord more closely with commercial practice and to reduce the administrative requirements on prescribed corporations;
  - repealing the section relating to associates to clarify that direct company operation is not restricted where the only link between companies is that they are associates;

- amending the pecuniary penalty provisions to ensure that each site operated in excess of quota, and each contravention of the returns provisions of the Act, constitutes a separate contravention, liable to a separate pecuniary penalty; and
  - introducing a new transitional provision to protect incumbent commission agents at sites which a prescribed corporation ceases to operate directly during the eighteen month phasing period (1 January 1985 to 30 June 1986) effected by the new quota allocation scheme.
3. A number of matters relating to the precise application of this Bill are to be fixed by regulation rather than specified in the Bill itself.
4. The Committee draws the attention of the Senate to the following clauses of this Bill:

Clause 3

5. Paragraph (f) of this clause leaves the definition of "prescribed oil company" to be made by regulation. Under proposed new sub-section 3(6) to be inserted by this clause "prescribed number" may likewise be defined by regulation. This latter definition is important in that it refers to quantities of fuel sold and the volume of fuel sold at a site is integral to the definition of that site, as a retail site for the purposes of the legislation.

Clause 5

6. Proposed sub-clause 7(2) to be inserted by clause 5 states that the criteria which determine the operation of a retail site shall include the sale of a quantity of fuel which may be determined by regulation.

Clause 6

7. Proposed sub-section 10(2) states that the maximum number of retail outlets which a prescribed oil company may operate in any given month is to be set out in regulations. At present the number of retail outlets which prescribed corporations may operate is contained in a schedule to the principal act. Any change in the schedule can only be made by amending legislation.
8. The Committee drew the attention of the Senate to each of these clauses under principle 1(a)(iv) in that they might be considered to be inappropriate delegations of legislative power.
9. The Minister for Industry and Commerce has provided a lengthy and detailed response to the Committee's comments. It is reproduced here for the information of the Senate.

"The Government believes that it is important for the effective administration of this legislation which deals with a complex and constantly changing industry that some matters be capable of alteration by process of regulation.

The volume threshold tests set out in sub-clause 3(6) (relating to exempt category diesel-fuel sites) and 7(2) (relating to quota sites) are part

of the government's policy to base the means for ascertaining which sites are to be subject to the quota restrictions of the Act on a prescribed level of monthly retail sales.

As indicated in the Second reading Speech introducing the Bill to the Senate on 22 August 1984, the monthly volume threshold tests are less cumbersome administratively for both the Government and the oil companies, and, at the same time, are more definitive than the current tests which relate to the percentage of daily retail sales. Although the new volume levels have been set at a level to provide sufficient disincentives for an oil company to direct-operate a retail site outside its quota allocation, or to abuse one of the exemptions to direct company operation, it is important that the levels bear some relation to the throughput of commercially viable retail outlets.

Too low a level might impinge upon a company's wholesale operations (which the Sites Act is not intended to restrict), and too high a level would result in little or no restriction on a company's retail operations (which would be contrary to the Government's partial divorcement policy).

The ability to prescribe volume-levels by regulation is desired to ensure that the restrictions intended by the legislation keep pace with the dynamics of the industry.

Two further matters noted by the Committee relate to paragraph 3(f), concerning the definition of "prescribed oil company", and clause 6 (proposed

sub-section 10(2)) concerning the maximum number of permitted retail sites in relation to each prescribed oil company.

The definition of prescribed oil company is consequent upon the amendments proposed to the definition of "prescribed corporation", which set out the new criteria for bringing companies within the ambit of the Sites Act. The Government has decided that all oil companies should come within the ambit of the Act if they have or acquire an independent source of refined petroleum, either through a local refinery or by the importation of refined product.

The Government's decision in this regard was taken in the interests of fairness to all groups within the industry, so that the same rules might apply to all corporations possessing the same essential characteristics. The Government believes however, that the application of the Act generally, and the application of the quota restrictions of the Act specifically, should form two distinct steps.

An oil company might become a prescribed corporation for the purposes of the Act if it has or acquires an independent source of refined product. It might only become subject to divorcement through a quota scheme however, if it chooses to direct-operate sites in the retail market.

The Government believes there would be considerable difficulty inherent in carrying out the latter step by an amending Bill on each occasion that the situation arises. It considers that this would be more efficiently handled by prescribing both the

company and the quota to which it is subject, by regulation. Experience indicates the changes in the industry occur far too quickly to accommodate the divorce program other than by way of regulation."

10. The Committee acknowledges the need for flexibility in the administration of this scheme and notes that, since regulations may be disallowed by the Parliament, some measure of Parliamentary scrutiny of the powers delegated to the Minister is retained.

SALES TAX (EXEMPTIONS AND CLASSIFICATIONS) AMENDMENT BILL  
1984

11. This Bill was introduced into the House of Representatives by the Minister Assisting the Treasurer on 21 August 1984
12. The Bill proposes to amend the Sales Tax (Exemptions and Classifications) Act 1935 to:
  - introduce a 6th Schedule into the Act covering goods upon which a sales tax of 10% is to be imposed;
  - remove certain anomalies and make certain structural changes in the classification of goods between the various schedules of the Act; and
  - ensure that the exemptions from sales tax of certain goods for export and for import are not used for tax avoidance purposes.



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

Clause 2 - Retrospectivity

14. Sub-clause 2 of this clause makes the commencement of proposed sub-sections 4(1) and 5(3) retrospective to 8 May 1984. These amendments impose sales tax on currently exempt items. 8 May 1984 was the date on which the Treasurer announced the proposed change.
15. The Committee has in the past adopted the practice of overlooking brief periods of retrospectivity in legislation particularly where no new taxes, charges or other obligations are imposed, for example the backdating of changes made as a result of budget decisions to Budget night is generally acceptable. However where new charges are imposed retrospectively and the backdating is to the date of a Ministerial announcement the Committee believes that it should be reported. Thus this clause is drawn to the attention of the Senate under principle 1(a)(i) in that retrospectivity may be considered to trespass unduly on personal rights and liberties.

SOCIAL SECURITY AND REPATRIATION (BUDGET MEASURES AND ASSETS TEST) BILL 1984

16. This Bill was introduced into the House of Representatives by the Minister Representing Minister for Social Security on 21 August 1984.

17. The purpose of the Bill is to provide for the major Budget measures for 1984-85 requiring the amendment of the Social Security Act 1947, the Repatriation Act 1920 and the Seamen's War Pensions and Allowances Act 1940, and for the introduction of a separate assets test upon pensions and service pensions under those Acts which are currently income tested.
18. The Committee draws the attention of the Senate to the following clause of this Bill which amends the Repatriation Act 1920.

Clause 61 - Proposed Section 121B - Self-Incrimination

19. Proposed section 121A defines the powers of the Repatriation Department to obtain information relevant to the payment of a pension. Persons may be required to provide information which affects the payment of their own or another person's pension.
20. Proposed section 121B is in the now standard form, withdrawing protection against self-incrimination for any person required to furnish information under sections 121 and 121A. The evidence given may not however be used in any criminal proceedings other than those arising out of sub-sections 121(5) and 121A(3). These sub-sections create offences of refusal to comply with a direction to provide information and of supplying false information.
21. Whilst recognizing the extensive indemnity attached to the abrogation of the privilege the Committee nevertheless draws this clause to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

Michael Tate  
Chairman

12 September 1984

DEPARTMENT OF THE SENATE  
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*William Ferguson*  
AUSTRALIAN SENATE



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TENIH REPORT  
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TENTH REPORT

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

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

Bank Account Debits Tax Administration Amendment Bill 1984  
Bounty (Agricultural Tractors) Amendment Bill 1984  
and Bounty (Tractor Cabs) Amendment Bill 1984  
Bounty (Computers) Bill 1984  
Bounty (Electric Motors) Bill 1984  
Income Tax Assessment Amendment Bill (No. 2) 1984

BANK ACCOUNT DEBITS TAX ADMINISTRATION  
AMENDMENT BILL 1984

This Bill was introduced in to the House of Representatives by the Minister Assisting the Treasurer.

The purpose of the Bill is to amend the Bank Account Debits Tax Law to:

exempt debits made to an account of certain non-profit organisations;

exempt debits made in relation to a minor or insignificant business activity of certain government bodies (including local municipal councils).

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

Clause 3 - Regulations

Sub-clause 3(1)(a) of this Bill would repeal and replace the definitions of 'excepted goods' and 'excepted services' in the principal Act. In so doing, it would permit these definitions to be given any content solely by means of regulations. Although the principal Act, as it now stands, permits the extension of the definition of these terms by regulation, there is an indication, in the reference to goods or services which form a minor or insignificant part of a body's activities, of the classes of goods and services intended to be exempt. Under the proposed amendment, there is no such indication.

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

BOUNTY (AGRICULTURAL TRACTORS) AMENDMENT BILL 1984  
BOUNTY (TRACTOR CABS) AMENDMENT BILL 1984

These Bills were introduced into the House of Representatives on 22 August 1984 by the Minister Representing the Minister for Industry and Commerce in that Chamber.

The purpose of these Bills is to continue short term bounty assistance to the agricultural tractors and tractor cab industries in Australia until 31 December 1984 or until the Government's decision on the Industries Assistance Commission reports on the industries are announced.

The Committee commented on these Bills in the Alert Digest No. 10 of 5 September 1984. Since that comment a response has been received from the Minister for Industry and Commerce. The relevant parts of that response are included here for the information of the Senate.

The Committee drew the attention of the Senate to the following clause of both Bills:



Clause 3 - Inappropriate Delegation

These clauses extend bounty assistance to the industries in question, which should have ended on 9 June 1984, until 31 December 1984 or until the Government's decisions on the IAC reports on those industries become available, being a date not later than 30 June 1985. The Minister is empowered to determine within those limits, the actual date of Termination by notice in the Gazette.

The Committee expressed concern that the discretion granted to the Minister might be considered an inappropriate delegation of legislative power.

The Minister's response merely restates the purpose of the Bill.

As mentioned in the Second Reading Speech this provision is to enable the period of the Principal Act to be terminated, when, or extended until, the Government's decision on the Industries Assistance Commission report on long term assistance to the agricultural tractor industry in Australia is announced. The IAC's final report was received on 18 June 1984 and it is expected that the Government's decision on the long term assistance arrangements for the industry will be announced within a few months.

The Committee thanks the Minister for his response and notes that the IAC's reports were received on 18 June 1984 and remains concerned that the Minister may extend assistance for almost twelve months after receipt of that report without further recourse to the legislature.

## BOUNTY (COMPUTERS) BILL 1984

This Bill was introduced into the House of Representatives by the Minister representing the Minister for Industry and Commerce on 5 September 1984.

The purpose of this Bill is to introduce bounty assistance, for a 6 year period from 6 July 1984, on the production in Australia of certain computer hardware, computer sub-assemblies and electronic microcircuits. The Bill supersedes the Automatic Data Processing Equipment Bounty Act 1977.

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

Clause 5 - Delegation

Sub-clause 5(1) empowers the Minister by notice in the Gazette to extend the range of equipment on which bounty is payable. Sub-clause (4) permits such a notice to have retrospective effect in relation to the inclusion (but not the exclusion) of equipment within the terms of the Bill.

The Committee recognizes that this clause is beneficial to recipients of the bounty but nevertheless draws sub-clause 5(4) to the attention of Senators in that the delegation of the power to make regulations having a retrospective effect is considered to be an inappropriate delegation of legislative authority.

Clause 25

Sub-clause 25(1) gives to a collector or other authorized officer power to require a person to attend and answer questions in relation to the manufacture of bountiable products. The Committee has had misgivings about similar clauses in the past - see, most recently, the Fourth Report of 1984, paras 38-43, in relation to the Bounty (Two-Stroke Engines) Bill. The Explanatory Memorandum to this Bill states that 'the purchase of equipment from a manufacturer in itself would not be sufficient ground to require a purchaser to provide information'. Although the Memorandum gives no reason to support this view, such a reason may lie in the fact that, in the legislation to which the Committee has in the past objected the information to be provided related to the manufacture, 'sale or other disposal, of use' of the equipment - see Bounty (Room Air Conditioners) Act 1983, s.16(1). The non-inclusion of these words from the present Bill may have the effect claimed for them, but it is by no means as clear as the author of the Explanatory Memorandum appears to believe.

The Committee draws this clause to the attention of the Senate under principle 1(a)(ii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

Clause 25(5) - Self-Incrimination

Sub-clause (5) of this clause removes the protection against self-incrimination for any person giving information in accordance with sub-clause 25(1). However any answer to a question or other material which tends to incriminate the person can only be used in proceedings arising out of clauses 25 and 27 of the Bill. These clauses refer to the provision of misleading information.

This clause is in a standard form and is widely used in legislation. Nonetheless the Committee draws it to the attention of the Senate under principle 1(a)(i) in that it might be considered to trespass unduly on personal rights and liberties.

#### BOUNTY (ELECTRIC MOTORS) BILL 1984

This Bill was introduced into the House of Representatives by the Minister representing the Minister for Industry and Commerce on 5 September 1984.

The purpose of this Bill is to pay temporary bounty assistance on the production in Australia of certain integral electric motors for 12 months from 17 July 1984 or until the Government's decision on the Industries Assistance Commission's report on long term assistance to the industry is announced.

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

#### Clause 3 - Inappropriate Delegation

Sub-clause (2) of this clause permits the Minister to extend the bounty period beyond 16 July 1985 by notice published in the Gazette. The notice is not subject to Parliamentary review. The Explanatory Memorandum states that this is a mechanism to enable the bounty to be terminated on the date that the Government's decision on the I.A.C. report on assistance to the industry is announced.

The Committee drew the attention of Senators to a similar provision in the Bounty (Agricultural Tractors) Amendment Bill 1984 in its Alert Digest No. 10, 1984. That provision, in contrast to the one under discussion, restricted the Ministerial discretion to determining a termination date being a date not later than 30 June 1985. This Bill places no such 'upper-limit' on the extension which the Minister may grant.

The Committee draws this clause to the attention of the Senate under principle 1(a)(iv) in that a decision to extend the period of financial assistance to an industry, which is not subject to Parliamentary scrutiny might be considered to be an inappropriate delegation of legislative power.

The Committee also draws attention to sub-clauses 7(1) and (2) which are similar in effect to sub-clause 6(6) of the Bounty (Computers) Bill; to sub-clause 27(1) which is similar to sub-clause 25(1) of that Bill and to sub-clause 27(5) which is similar to sub-clause 25(5) of that Bill. The comments made on the clauses of the Bounty (Computers) Bill 1984 apply equally to the relevant clauses of this Bill.

#### INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 2) 1984

This Bill was introduced into the House of Representatives by the Minister Assisting the Treasurer on 5 September 1984.

The purpose of the provisions of this Bill would counter some tax avoidance practices associated with contrived employee superannuation funds.

This Bill is, in all material respects, identical to a Bill of the same title introduced on 4 April 1984 and reported by the Committee in its Fourth Report, 9 May 1984.

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

Clause 3 - Retrospectivity

This clause inserts a new section 26 AFA into the principal Act. The operation of the proposed section is retrospective to 1 July 1977.

The Committee adopts the policy of drawing all such examples of retrospectivity to the attention of the Senate under principle 1(a)(i) in that they might be considered to trespass unduly on personal rights and liberties.

Michael Tate

Chairman

3 October 1984

SCRUTINY OF BILLS COMMITTEE - TABLING OF REPORT

CHAIRMAN:

MR PRESIDENT,

I PRESENT THE TENTH REPORT OF THE STANDING COMMITTEE  
FOR THE SCRUTINY OF BILLS CONCERNING:

BANK ACCOUNT DEBITS TAX ADMINISTRATION AMENDMENT  
BILL 1984

BOUNTY (AGRICULTURAL TRACTORS) AMENDMENT BILL 1984  
AND BOUNTY (TRACTOR CABS) AMENDMENT BILL 1984

BOUNTY (COMPUTERS) BILL 1984

BOUNTY (ELECTRIC MOTORS) BILL 1984

INCOME TAX ASSESSMENT AMENDMENT BILL (NO. 2) 1984

I ALSO LAY ON THE TABLE SCRUTINY OF BILLS ALERT DIGEST NO. 12  
DATED 3 OCTOBER 1984.

MR PRESIDENT,

I MOVE THAT THE REPORT BE PRINTED.



AUSTRALIAN SENATE

DEPARTMENT OF THE SENATE  
PAPER No. 1925  
DATE 10 OCT 1984  
PRCS: 1984  
10 OCT 1984  
*R. Hutchinson*  
Clerk of the Senate



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

ELEVENTH REPORT  
OF 1984.

10 OCTOBER 1984



THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

ELEVENTH REPORT

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10 OCTOBER 1984

ISSN 0729-6258

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

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

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

ELEVENTH REPORT

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

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

Air Navigation Amendment Bill (No. 2) 1984  
Air Navigation (Charges) Amendment Bill 1984  
Australian Waters (Nuclear-Powered Ships and  
Nuclear Weapons Prohibition) Bill 1984  
Bounty (Computers) Bill 1984  
Bounty (Electric Motors) Bill 1984  
Foreign Ownership and Control Register Bill 1984  
Human Rights and Equal Opportunity Commission  
Bill 1984  
Meat Export Charge Bill 1984  
Meat Export Charge Collection Bill 1984  
Statute Law (Miscellaneous Provisions) Bill  
(No. 2) 1984  
Taxation Laws Amendment Bill 1984  
Wheat Marketing Bill 1984

AIR NAVIGATION AMENDMENT BILL (NO. 2) 1984

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Aviation.

The purpose of the Bill is to amend the Air Navigation Act 1920 to give the Commonwealth power to suspend or cancel international airline licences in certain circumstances.

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

Clause 2

This clause inserts new sub-sections 13(c) and (d) in the principal Act. These sub-sections give to the Minister the discretion to determine matters relating to overseas airlines operating in Australia and if necessary cancel their licences. The matters subject to determination include the general operations of the airline and the standards of aircraft operated by an airline and consideration of fair competition in international airline services.

A decision to cancel a licence to operate in Australia could be a very serious matter for the airline and its employees. The Committee is concerned that the exercise of this discretion is not subject to review of its merits and therefore draws this clause to the attention

of the Senate under principle 1(a) (iii) in that it may be considered to make rights, liberties or obligations unduly dependent on non-reviewable administrative decisions.

AIR NAVIGATION (CHARGES) AMENDMENT BILL 1984

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Aviation.

This Bill proposes to:

- . improve the Commonwealth's ability to collect air navigation charges;
- . place payment and penalty provisions on a more commercial basis; and
- . introduce separate airport and airway charges.

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

Clause 5 - Discretion

This clause inserts a new section 5A into the principal Act. The new section gives to "... the Minister, the Secretary or an [authorized] officer of the Department ..." the power to remit or refund all or part of a charge or penalty payable under the Act "... as that person thinks just in all the circumstances ..." Clause 7(1) of the Bill proposes to insert a new paragraph 8A into Schedule I of the principal Act granting a similar unfettered discretion. The Committee is concerned that such discretions should be granted in general terms and therefore draws them to the attention of the Senate under principle 1(a) (ii) in that they might be considered to make rights, liberties and/or obligations unduly dependent on insufficiently defined administrative powers.

AUSTRALIAN WATERS (NUCLEAR-POWERED SHIPS AND NUCLEAR WEAPONS PROHIBITION) BILL 1984

This Bill was introduced into the Senate on 11 September 1984 by Senator Chipp.

The purpose of this Bill is to prohibit vessels (ships or aircraft) carrying nuclear weapons or powered by nuclear means entering Australian waters or airspace.

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

Clause 6 - Discretion

Sub-clause (2) gives the Minister a discretion to take action including the use of force to prevent contravention of this legislation. The exercise of that discretion is reviewable only as to its legality under the Administrative Decisions (Judicial Review) Act 1977. No provision is made for review of the merits of the exercise of the discretion nor is any requirement to report the exercise of the discretion to Parliament included in the legislation.

Sub-clause (4) protects "the Commonwealth, the Minister or any other person ..." against legal liability for actions taken by virtue of an instrument issued under sub-section (2). All such actions are deemed to be lawfully taken.

The Committee draws this clause to the attention of the Senate under principles 1(a) (i) and (iii) in that sub-clause (4) might be considered to trespass unduly on personal rights and liberties and sub-clause (2) to make those rights and liberties dependent upon non-reviewable administrative decisions.

## BOUNTY (COMPUTERS) BILL 1984

This Bill was introduced into the House of Representatives by the Minister representing the Minister for Industry and Commerce on 5 September 1984.

The purpose of this Bill is to introduce bounty assistance, for a 6 year period from 6 July 1984, on the production in Australia of certain computer hardware, computer sub-assemblies and electronic microcircuits. The Bill supersedes the Automatic Data Processing Equipment Bounty Act 1977.

The Committee drew attention to the following clause of this Bill:

Clause 25

This clause is in similar form to sub-clause 27 (1) of the Bounty (Electric Motors) Bill 1984 and the comments and response apply to it. Sub-clause 25 (1) gives to a collector or other authorized officer power to require a person to attend and answer questions in relation to the manufacture of bountiable products. The Committee has had misgivings about similar clauses in the past - see, most recently, the Fourth Report of 1984, paras 38-43, in relation to the Bounty (Two-Stroke Engines) Bill. The Explanatory Memorandum to this Bill states that 'the purchase of equipment from a manufacturer in itself would not be sufficient ground to require a purchaser to provide information'. Although the Memorandum gives no reason to support this view, such a reason may lie in the fact that, in the legislation to which the Committee has in the past objected the information to be provided related to the manufacture, 'sale or other disposal, of use' of the equipment - see Bounty (Room Air Conditioners) Act 1983, s.16(1). The non-inclusion of these words from the present Bill may have the effect claimed for them, but it is by no means as clear as the author of the Explanatory Memorandum appears to believe.

The Committee drew this clause to the attention of the Senate under principle 1(a) (ii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

The Minister has responded to the Committee's comments by noting that the authorized officer must have "reasonable grounds" to believe a person is capable of giving relevant information before they are required to attend. The effect of this limitation will in the Minister's view restrict the clause's application to those involved in the manufacturing process.

The Committee thanks the Minister for his response.

#### BOUNTY (ELECTRIC MOTORS) BILL 1984

This Bill was introduced into the House of Representatives by the Minister representing the Minister for Industry and Commerce on 5 September 1984.

The purpose of this Bill is to pay temporary bounty assistance on the production in Australia of certain integral electric motors for 12 months from 17 July 1984 or until the Government's decision on the Industries Assistance Commission's report on long term assistance to the industry is announced.

The Committee drew attention to the following clause of this Bill:

#### Clause 3 - Inappropriate Delegation

Sub-clause (2) of this clause permits the Minister to extend the bounty period beyond 16 July 1985 by notice published in the Gazette. The notice is not subject to Parliamentary review. The Explanatory Memorandum states that this is a



mechanism to enable the bounty to be terminated on the date that the Government's decision on the I.A.C. report on assistance to the industry is announced.

The Committee drew the attention of Senators to a similar provision in the Bounty (Agricultural Tractors) Amendment Bill 1984 in its Alert Digest No. 10, 1984. That provision, in contrast to the one under discussion, restricted the Ministerial discretion to determining a termination date being a date not later than 30 June 1985. This Bill places no such 'upper-limit' on the extension which the Minister may grant.

The Committee drew this clause to the attention of the Senate under principle 1(a) (iv) in that a decision to extend the period of financial assistance to an industry, which is not subject to Parliamentary scrutiny might be considered to be an inappropriate delegation of legislative power.

In responding to the Committee's comments the Minister has pointed out that, while there is no time limit on the extension of payment of bounty there is an upper limit of \$300,000 on the total amount of bounty that may be paid to any single producer during the total period of the proposed Act. The Committee acknowledges that this provides an effective limit on the Minister's discretion and thanks the Minister for this response.

FOREIGN OWNERSHIP AND CONTROL REGISTER BILL 1984

This Bill was introduced into the Senate on 13 September 1984 by Senator Jack Evans.

This Bill seeks to establish a public register of foreign corporations which own or control major Australian properties or other assets.

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 sub-section 12 (1).

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

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION BILL 1984

This Bill was introduced into the Senate on 12 September 1984 by the Attorney-General.

The purpose of this Bill is to seek to establish a new Human Rights and Equal Opportunity Commission, through which the Racial Discrimination Act 1975 and the Sex Discrimination Act 1984 will be administered.

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

Clause 21

This clause would give the Commission power to require any person believed to be capable of giving oral or printed information to appear before the Commission or to provide relevant documents. The clause does not impose any limitation on the grounds of reasonableness on the time and place at which a person may be required to attend. This Committee has, in the past, expressed concern at broad powers to require persons to appear before Tribunals - see for example the Committee's Second Report, 18 May 1983 para 17.

The Committee draws this clause to the attention of the Senate under principles 1(a) (i) and (ii) in that such ill-defined powers might be considered both to trespass on personal rights and liberties and make rights, liberties and obligations unduly dependent on inadequately defined administrative powers.

Clause 24 - Self Incrimination

Sub-clause (2) of this clause is an extended version of standard clauses withdrawing the individuals right to protection against self-incrimination, while providing general immunity from prosecution. A person is not excused from giving information, producing a document or answering a question on the grounds that to do so

- i) would disclose legal advice furnished to a Minister or person acting on behalf of the Commonwealth or an authority of the Commonwealth;
- ii) contravene any other Act or be contrary to the public interest;
- iii) make the person liable to a penalty; or
- iv) tend to incriminate the person.

As is common with such clauses information given cannot be used in any proceedings other than proceedings for an offence of giving false information.

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

Clause 31 - Ministerial Discretion

Sub-clause (2) of this clause gives to the Minister a discretion to determine whether a "... distinction, exclusion or preference ... in employ or occupation

constitutes discrimination for the purposes of the Act." The Minister's determination is not subject to administrative review nor does it have the character of a regulation, thus it is not reviewable by the Parliament.

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

MEAT EXPORT CHARGE BILL 1984.

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Primary Industry.

The purpose of this Bill is to impose a charge on the export from Australia of meat that is intended for human consumption.

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

Clause 3 - Definitions

The definitions of "meat" and "meat product" contained in sub-clause (1) may be extended by regulation. The purpose of the Bill is to impose charges on meat or meat products for export, thus it might be considered that the classes of products subject to the charges should not be subject to alteration by regulation. The Committee draws this clause to the attention of the Senate under principle 1(a)(iv) in that it might be considered to be an inappropriate delegation of the taxing powers of the Parliament.

MEAT EXPORT CHARGE COLLECTION BILL 1984.

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Primary Industry.

The purpose of this Bill is to make provision for the collection of charges to be imposed by the Meat Export Charge Act.

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

Clause 9 - Discretion

Sub-clause (3) states that the Minister or an authorized person may for reasons they think sufficient, remit the whole or part of a penalty payable under the legislation. A remission shall not exceed \$1000. The exercise of this discretion is not reviewable as to the merits of any decision. The Committee is concerned that the level of penalties payable under this legislation can be altered in specific cases, particularly by a Departmental Officer and, therefore, draws this clause to the attention of Senators in that it might be considered to be an inappropriate delegation of legislative power.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL  
(NO. 2) 1984

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister Representing the Attorney-General.

The purpose of this Bill is to correct or update various pieces of legislation, and to implement changes that are of minor policy significance or are of routine administrative nature.

The Committee draws attention to various amendments contained in Schedule 1 of the Bill:

Aboriginal Councils and Associations Act 1976.

Proposed section 59A of this Act gives to the Registrar the discretion to register an Association while exempting it from the requirements of section 59 of the Act and also to impose other requirements in relation to the management of the Association as the Registrar thinks appropriate.

The intent of this provision is beneficial to Aboriginal Associations. However, in as much as the Registrar's exercise of his discretion is not reviewable on the merits the Committee draws the provision to the attention of the Senate under principle 1(a) (iii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.



Copyright Act 1968

Proposed S.10A of this Act permits the Attorney-General by notice in the Gazette to declare certain institutions for the purpose of the Act. At present this is done by regulations which are subject to Parliamentary scrutiny and disallowance.

The Committee draws the provision to the attention of the Senate under principle 1(a)(v) in that it might be considered that under it the exercise of legislative power will be subject to insufficient parliamentary scrutiny.

TAXATION LAWS AMENDMENT BILL 1984.

This Bill was introduced into the House of Representatives on 13 September 1984 by the Treasurer.

The purpose of this Bill is to strengthen existing mechanisms for the collection of tax, and increase levels of penalty of breaches of taxation laws.

This Bill makes amendment to a number of laws relating to taxation. The Committee draws attention to the following amendments:

Taxation Administration Act 1953

Clause 297 - Reversal of Onus

Clause 297 proposes to insert new sections 8K, 8L, 8Y (2) and (3). Each of these sections contains a reversal of the burden of proof. For example sub-section 8K (2) places the onus on a defendant to prove that he lacked guilty intent in providing a false or misleading statement. Section 8L (2) is in a similar form. Section 8Y relates to the liability of officers of corporations. Where a corporation commits a taxation offence the management of the corporation shall be deemed to have committed that offence.

In such a case the defendant must prove that he was not involved in, or aware of, the offence.

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

Clause 297 - Averment

Proposed section 82L states in S.S. (1) that "In a prosecution for a prescribed taxation offence a statement or averment contained in the information ... is prima facie evidence of the matter ..."  
This has the effect of shifting the onus on to the defendant to rebut the matters stated in the averment.

GENERAL COMMENT

The Committee notes the recommendation of the Senate Standing Committee on Constitutional and Legal Affairs in its report The Burden of Proof in Criminal Proceedings (P.P. 319, 1982) that the imposing of evidential burdens on a defendant and the use of averments should be kept to a minimum and used only in clearly defined and restricted circumstances.

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

General Comment

This Bill proposes to insert in a number of the Acts which it seeks to amend a provision by which a person becomes liable to pay a penalty, on making a false statement etc., even though the person might have no reason to believe that the statement was false. In each provision the Commissioner of Taxation is given the discretion to remit all or part of the penalty.

A typical example of the provision is proposed section 70, sub-section (2) and (6) of the Australian Capital Territory Taxation (Administration) Act 1984, at page 4 of this Bill. Other examples are on pages 14, 24-25, 31-32, 60, 67, 85-86, 98, 100, 164 and 174. The exercise of the discretion is not reviewable as to its merits.

The Committee draws all these provisions to the attention of the Senate under principles 1(a) (ii) and (iii) in that such a discretion to remit a penalty should not be given without some guidance as to its exercise as in its present form might be considered to make rights, liberties and obligations unduly dependent on both non-reviewable administrative decisions and insufficiently defined administrative powers.

WHEAT MARKETING BILL 1984

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Primary Industry.

The purpose of this Bill is to implement the new wheat marketing arrangements.

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

Clause 60 - Self-Incrimination

Sub-clause (4) is a standard clause withdrawing the individuals right to refuse to answer a question or provide material in that it might tend to incriminate the person while providing general immunity against prosecution. Material so furnished may only be used in proceedings under this Act which relate to refusal to provide information or supply documents or the provision of misleading information.

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

MICHAEL TATE  
Chairman

10 October 1984

Would you mind  
tabling this on  
behalf of Senator  
Tate at the completion  
of papers?

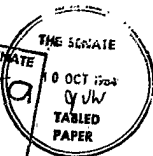
Sen. Tate is still  
involved with the  
Judge C'ee.

Dabbish,



AUSTRALIAN SENATE

DEPARTMENT OF THE SENATE  
PAPER No. \_\_\_\_\_  
DATE 19 25 84  
PRCS: 11 11 11  
10 OCT 1984  
*R. Hutchinson*  
Clerk of the Senate



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

ELEVENTH REPORT  
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THE SENATE

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

- (1) (a) That a Standing Committee of the Senate, to be known as the Standing Committee for the Scrutiny of Bills, be appointed to report, in respect of the clauses of Bills introduced into the Senate, and in respect of Acts of the Parliament, whether such Bills or Acts, by express words or otherwise -
- (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make such rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions;
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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

ELEVENTH REPORT

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

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

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Australian Waters (Nuclear-Powered Ships and  
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Human Rights and Equal Opportunity Commission  
Bill 1984  
Meat Export Charge Bill 1984  
Meat Export Charge Collection Bill 1984  
Statute Law (Miscellaneous Provisions) Bill  
(No. 2) 1984  
Taxation Laws Amendment Bill 1984  
Wheat Marketing Bill 1984

AIR NAVIGATION AMENDMENT BILL (NO. 2) 1984

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Aviation.

The purpose of the Bill is to amend the Air Navigation Act 1920 to give the Commonwealth power to suspend or cancel international airline licences in certain circumstances.

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

Clause 2

This clause inserts new sub-sections 13(c) and (d) in the principal Act. These sub-sections give to the Minister the discretion to determine matters relating to overseas airlines operating in Australia and if necessary cancel their licences. The matters subject to determination include the general operations of the airline and the standards of aircraft operated by an airline and consideration of fair competition in international airline services.

A decision to cancel a licence to operate in Australia could be a very serious matter for the airline and its employees. The Committee is concerned that the exercise of this discretion is not subject to review of its merits and therefore draws this clause to the attention

of the Senate under principle 1(a) (iii) in that it may be considered to make rights, liberties or obligations unduly dependent on non-reviewable administrative decisions.

AIR NAVIGATION (CHARGES) AMENDMENT BILL 1984

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Aviation.

This Bill proposes to:

- . improve the Commonwealth's ability to collect air navigation charges;
- . place payment and penalty provisions on a more commercial basis; and
- . introduce separate airport and airway charges.

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

Clause 5 - Discretion

This clause inserts a new section 5A into the principal Act. The new section gives to "... the Minister, the Secretary or an [authorized] officer of the Department ..." the power to remit or refund all or part of a charge or penalty payable under the Act "... as that person thinks just in all the circumstances ..." Clause 7(1) of the Bill proposes to insert a new paragraph 8A into Schedule I of the principal Act granting a similar unfettered discretion. The Committee is concerned that such discretions should be granted in general terms and therefore draws them to the attention of the Senate under principle 1(a) (ii) in that they might be considered to make rights, liberties and/or obligations unduly dependent on insufficiently defined administrative powers.

AUSTRALIAN WATERS (NUCLEAR-POWERED SHIPS AND NUCLEAR WEAPONS PROHIBITION) BILL 1984

This Bill was introduced into the Senate on 11 September 1984 by Senator Chipp.

The purpose of this Bill is to prohibit vessels (ships or aircraft) carrying nuclear weapons or powered by nuclear means entering Australian waters or airspace.

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

Clause 6 - Discretion

Sub-clause (2) gives the Minister a discretion to take action including the use of force to prevent contravention of this legislation. The exercise of that discretion is reviewable only as to its legality under the Administrative Decisions (Judicial Review) Act 1977. No provision is made for review of the merits of the exercise of the discretion nor is any requirement to report the exercise of the discretion to Parliament included in the legislation.

Sub-clause (4) protects "the Commonwealth, the Minister or any other person ..." against legal liability for actions taken by virtue of an instrument issued under sub-section (2). All such actions are deemed to be lawfully taken.

The Committee draws this clause to the attention of the Senate under principles 1(a) (i) and (iii) in that sub-clause (4) might be considered to trespass unduly on personal rights and liberties and sub-clause (2) to make those rights and liberties dependent upon non-reviewable administrative decisions.

## BOUNTY (COMPUTERS) BILL 1984

This Bill was introduced into the House of Representatives by the Minister representing the Minister for Industry and Commerce on 5 September 1984.

The purpose of this Bill is to introduce bounty assistance, for a 6 year period from 6 July 1984, on the production in Australia of certain computer hardware, computer sub-assemblies and electronic microcircuits. The Bill supersedes the Automatic Data Processing Equipment Bounty Act 1977.

The Committee drew attention to the following clause of this Bill:

Clause 25

This clause is in similar form to sub-clause 27 (1) of the Bounty (Electric Motors) Bill 1984 and the comments and response apply to it. Sub-clause 25 (1) gives to a collector or other authorized officer power to require a person to attend and answer questions in relation to the manufacture of bountiable products. The Committee has had misgivings about similar clauses in the past - see, most recently, the Fourth Report of 1984, paras 38-43, in relation to the Bounty (Two-Stroke Engines) Bill. The Explanatory Memorandum to this Bill states that 'the purchase of equipment from a manufacturer in itself would not be sufficient ground to require a purchaser to provide information'. Although the Memorandum gives no reason to support this view, such a reason may lie in the fact that, in the legislation to which the Committee has in the past objected the information to be provided related to the manufacture, 'sale or other disposal, of use' of the equipment - see Bounty (Room Air Conditioners) Act 1983, s.16(1). The non-inclusion of these words from the present Bill may have the effect claimed for them, but it is by no means as clear as the author of the Explanatory Memorandum appears to believe.

The Committee drew this clause to the attention of the Senate under principle 1(a) (ii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon insufficiently defined administrative powers.

The Minister has responded to the Committee's comments by noting that the authorized officer must have "reasonable grounds" to believe a person is capable of giving relevant information before they are required to attend. The effect of this limitation will in the Minister's view restrict the clause's application to those involved in the manufacturing process.

The Committee thanks the Minister for his response.

#### BOUNTY (ELECTRIC MOTORS) BILL 1984

This Bill was introduced into the House of Representatives by the Minister representing the Minister for Industry and Commerce on 5 September 1984.

The purpose of this Bill is to pay temporary bounty assistance on the production in Australia of certain integral electric motors for 12 months from 17 July 1984 or until the Government's decision on the Industries Assistance Commission's report on long term assistance to the industry is announced.

The Committee drew attention to the following clause of this Bill:

#### Clause 3 - Inappropriate Delegation

Sub-clause (2) of this clause permits the Minister to extend the bounty period beyond 16 July 1985 by notice published in the Gazette. The notice is not subject to Parliamentary review. The Explanatory Memorandum states that this is a

mechanism to enable the bounty to be terminated on the date that the Government's decision on the I.A.C. report on assistance to the industry is announced.

The Committee drew the attention of Senators to a similar provision in the Bounty (Agricultural Tractors) Amendment Bill 1984 in its Alert Digest No. 10, 1984. That provision, in contrast to the one under discussion, restricted the Ministerial discretion to determining a termination date being a date not later than 30 June 1985. This Bill places no such 'upper-limit' on the extension which the Minister may grant.

The Committee drew this clause to the attention of the Senate under principle 1(a) (iv) in that a decision to extend the period of financial assistance to an industry, which is not subject to Parliamentary scrutiny might be considered to be an inappropriate delegation of legislative power.

In responding to the Committee's comments the Minister has pointed out that, while there is no time limit on the extension of payment of bounty there is an upper limit of \$300,000 on the total amount of bounty that may be paid to any single producer during the total period of the proposed Act. The Committee acknowledges that this provides an effective limit on the Minister's discretion and thanks the Minister for this response.



FOREIGN OWNERSHIP AND CONTROL REGISTER BILL 1984

This Bill was introduced into the Senate on 13 September 1984 by Senator Jack Evans.

This Bill seeks to establish a public register of foreign corporations which own or control major Australian properties or other assets.

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 sub-section 12 (1).

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

HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION BILL 1984

This Bill was introduced into the Senate on 12 September 1984 by the Attorney-General.

The purpose of this Bill is to seek to establish a new Human Rights and Equal Opportunity Commission, through which the Racial Discrimination Act 1975 and the Sex Discrimination Act 1984 will be administered.

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

Clause 21

This clause would give the Commission power to require any person believed to be capable of giving oral or printed information to appear before the Commission or to provide relevant documents. The clause does not impose any limitation on the grounds of reasonableness on the time and place at which a person may be required to attend. This Committee has, in the past, expressed concern at broad powers to require persons to appear before Tribunals - see for example the Committee's Second Report, 18 May 1983 para 17.

The Committee draws this clause to the attention of the Senate under principles 1(a) (i) and (ii) in that such ill-defined powers might be considered both to trespass on personal rights and liberties and make rights, liberties and obligations unduly dependent on inadequately defined administrative powers.

Clause 24 - Self Incrimination

Sub-clause (2) of this clause is an extended version of standard clauses withdrawing the individuals right to protection against self-incrimination, while providing general immunity from prosecution. A person is not excused from giving information, producing a document or answering a question on the grounds that to do so

- i) would disclose legal advice furnished to a Minister or person acting on behalf of the Commonwealth or an authority of the Commonwealth;
- ii) contravene any other Act or be contrary to the public interest;
- iii) make the person liable to a penalty; or
- iv) tend to incriminate the person.

As is common with such clauses information given cannot be used in any proceedings other than proceedings for an offence of giving false information.

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

Clause 31 - Ministerial Discretion

Sub-clause (2) of this clause gives to the Minister a discretion to determine whether a "... distinction, exclusion or preference ... in employ or occupation

constitutes discrimination for the purposes of the Act." The Minister's determination is not subject to administrative review nor does it have the character of a regulation, thus it is not reviewable by the Parliament.

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

MEAT EXPORT CHARGE BILL 1984.

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Primary Industry.

The purpose of this Bill is to impose a charge on the export from Australia of meat that is intended for human consumption.

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

Clause 3 - Definitions

The definitions of "meat" and "meat product" contained in sub-clause (1) may be extended by regulation. The purpose of the Bill is to impose charges on meat or meat products for export, thus it might be considered that the classes of products subject to the charges should not be subject to alteration by regulation. The Committee draws this clause to the attention of the Senate under principle 1(a)(iv) in that it might be considered to be an inappropriate delegation of the taxing powers of the Parliament.

MEAT EXPORT CHARGE COLLECTION BILL 1984.

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Primary Industry.

The purpose of this Bill is to make provision for the collection of charges to be imposed by the Meat Export Charge Act.

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

Clause 9 - Discretion

Sub-clause (3) states that the Minister or an authorized person may for reasons they think sufficient, remit the whole or part of a penalty payable under the legislation. A remission shall not exceed \$1000. The exercise of this discretion is not reviewable as to the merits of any decision. The Committee is concerned that the level of penalties payable under this legislation can be altered in specific cases, particularly by a Departmental Officer and, therefore, draws this clause to the attention of Senators in that it might be considered to be an inappropriate delegation of legislative power.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL  
(NO. 2) 1984

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister Representing the Attorney-General.

The purpose of this Bill is to correct or update various pieces of legislation, and to implement changes that are of minor policy significance or are of routine administrative nature.

The Committee draws attention to various amendments contained in Schedule 1 of the Bill:

Aboriginal Councils and Associations Act 1976.

Proposed section 59A of this Act gives to the Registrar the discretion to register an Association while exempting it from the requirements of section 59 of the Act and also to impose other requirements in relation to the management of the Association as the Registrar thinks appropriate.

The intent of this provision is beneficial to Aboriginal Associations. However, in as much as the Registrar's exercise of his discretion is not reviewable on the merits the Committee draws the provision to the attention of the Senate under principle 1(a) (iii) in that it might be considered to make rights, liberties and/or obligations unduly dependent upon non-reviewable administrative decisions.

Copyright Act 1968

Proposed S.10A of this Act permits the Attorney-General by notice in the Gazette to declare certain institutions for the purpose of the Act. At present this is done by regulations which are subject to Parliamentary scrutiny and disallowance.

The Committee draws the provision to the attention of the Senate under principle 1(a)(v) in that it might be considered that under it the exercise of legislative power will be subject to insufficient parliamentary scrutiny.



TAXATION LAWS AMENDMENT BILL 1984.

This Bill was introduced into the House of Representatives on 13 September 1984 by the Treasurer.

The purpose of this Bill is to strengthen existing mechanisms for the collection of tax, and increase levels of penalty of breaches of taxation laws.

This Bill makes amendment to a number of laws relating to taxation. The Committee draws attention to the following amendments:

Taxation Administration Act 1953

Clause 297 - Reversal of Onus

Clause 297 proposes to insert new sections 8K, 8L, 8Y (2) and (3). Each of these sections contains a reversal of the burden of proof. For example sub-section 8K (2) places the onus on a defendant to prove that he lacked guilty intent in providing a false or misleading statement. Section 8L (2) is in a similar form. Section 8Y relates to the liability of officers of corporations. Where a corporation commits a taxation offence the management of the corporation shall be deemed to have committed that offence.

In such a case the defendant must prove that he was not involved in, or aware of, the offence.

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

Clause 297 - Averment

Proposed section 82L states in S.S. (1) that "In a prosecution for a prescribed taxation offence a statement or averment contained in the information ... is prima facie evidence of the matter ..."  
This has the effect of shifting the onus on to the defendant to rebut the matters stated in the averment.

GENERAL COMMENT

The Committee notes the recommendation of the Senate Standing Committee on Constitutional and Legal Affairs in its report The Burden of Proof in Criminal Proceedings (P.P. 319, 1982) that the imposing of evidential burdens on a defendant and the use of averments should be kept to a minimum and used only in clearly defined and restricted circumstances.

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

General Comment

This Bill proposes to insert in a number of the Acts which it seeks to amend a provision by which a person becomes liable to pay a penalty, on making a false statement etc., even though the person might have no reason to believe that the statement was false. In each provision the Commissioner of Taxation is given the discretion to remit all or part of the penalty.

A typical example of the provision is proposed section 70, sub-section (2) and (6) of the Australian Capital Territory Taxation (Administration) Act 1984, at page 4 of this Bill. Other examples are on pages 14, 24-25, 31-32, 60, 67, 85-86, 98, 100, 164 and 174. The exercise of the discretion is not reviewable as to its merits.

The Committee draws all these provisions to the attention of the Senate under principles 1(a) (ii) and (iii) in that such a discretion to remit a penalty should not be given without some guidance as to its exercise. In its present form it might be considered to make rights, liberties and obligations unduly dependent on both non-reviewable administrative decisions and insufficiently defined administrative powers.

WHEAT MARKETING BILL 1984

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister for Primary Industry.

The purpose of this Bill is to implement the new wheat marketing arrangements.

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

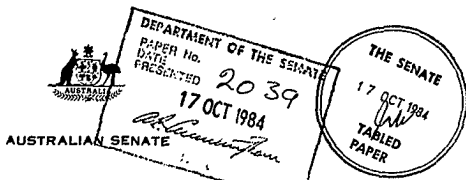
Clause 60 - Self-Incrimination

Sub-clause (4) is a standard clause withdrawing the individuals right to refuse to answer a question or provide material in that it might tend to incriminate the person while providing general immunity against prosecution. Material so furnished may only be used in proceedings under this Act which relate to refusal to provide information or supply documents or the provision of misleading information.

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

MICHAEL TATE  
Chairman

10 October 1984



SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TWELFTH REPORT  
OF 1984

17 OCTOBER 1984

THE SENATE

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SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

MEMBERS OF THE COMMITTEE

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

TERMS OF REFERENCE

Extract

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

SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

TWELFTH REPORT

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

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

PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 1984.



PETROLEUM (SUBMERGED LANDS) AMENDMENT BILL 1984.

This Bill was introduced into the House of Representatives on 13 September 1984 by the Minister Representing the Minister for Resources and Energy.

The purpose of the Bill is to establish an unauthorised area for shipping around the Bass Strait petroleum production facilities, and transfer from the designated authority to the Joint Authority power to exercise control over rates of petroleum production.

The Committee drew attention to the following clause in its Alert Digest No. 12 of 3 October 1984:

Clause 24 - Proposed section 140C

Proposed sub-section (2) of this new section would give to the Designated Authority a discretion to authorize, upon application, the entry of a ship into an area otherwise to be avoided. By sub-section (3) authority to enter an area may be made subject to conditions. No mechanism for review of the exercise of these discretions is provided for. These provisions are similar to proposed S.140B (2) and (3) included in a Bill of the same name which the Committee commented on in the Alert Digest No. 15 of 11 November 1982.

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

The Minister for Resources and Energy has provided a response to the Committee's comment which provides both a general statement of policy on the question of review of decisions under this legislation and a specific comment on proposed section 140C. The response is reproduced here for the information of the Senate:

"The review of the exercise of discretionary powers under the Petroleum (Submerged Lands) Act by the Administrative Appeals Tribunal (AAT) has been the subject of recent correspondence between the Attorney-General and me. As a result of the correspondence it has been agreed that the Act be amended in 1985 to provide a review mechanism which is both consistent with Commonwealth policy and acceptable to the States/Northern Territory. The following general principles, which are consistent with the approach adopted in the Fishing Legislation Amendment Act 1984, will provide the basis for those amendments:

. Areas Adjacent to the States/NT

- decisions taken by the Joint Authority should not be subject to review by the AAT. As a policy making body comprising Commonwealth and State Ministers it would not be appropriate to subject a Joint Authority decision to Commonwealth administrative review;
- decisions taken by a Designated Authority or by State/NT officials acting as delegates of a Designated Authority should not be reviewed by the AAT. It is considered inappropriate for the AAT to be given jurisdiction over the exercise of powers by State/NT Ministers and officials where those powers are exercised in their own right;

- decisions by the Commonwealth Minister to refer certain types of decisions from a Designated Authority to a Joint Authority (the Section 8E referral arrangements) are purely procedural and should not be subject to AAT review.

. Areas Adjacent to Commonwealth Territories

- decisions made personally by the Commonwealth Minister acting either as the Designated Authority or alone as the Joint Authority should be subject to AAT review. Decisions made by Commonwealth officials acting as delegates of the Minister should be subject to AAT review following reconsideration by the Minister;
- decisions made by State/NT Ministers or officials acting as delegates of the Commonwealth Minister should be subject to reconsideration by the Commonwealth Minister or a Commonwealth official delegated to review decisions. A decision made following such reconsideration should then be reviewable by the AAT.

Applying these general principles to section 140C, decisions taken by the Designated Authority to authorise entry into the area to be avoided would not be reviewed by the AAT. This is because it is considered inappropriate for the AAT to be given jurisdiction over the exercise of powers by State/NT Ministers where those powers are exercised in their own right."

The Committee thanks the Minister for his response.

MICHAEL TATE  
Chairman

17 October 1984