

Senate Environment, Communications, Information Technology and the Arts Legislation Committee

ALP minority report in respect of issues concerning the Radiocommunications Legislation Amendment Bill 1999 raised by the Scrutiny of Bills Committee Report

The Treasurer announced in a press release of 11th March, 1998, that legislation would be introduced to ensure that those holding spectrum licences, such as mobile phone companies, paid tax in Australia.

This legislative measure was included in the Radiocommunications Legislation Amendment Bill 1999 which was introduced into the House of Representatives on 18th February, 1999 in breach of the Senate's resolution, of 8th November, 1998, namely that a tax measure announced by press release must be introduced into the Parliament no later than six months after the date of the press release.

The Minister for Communications, Information Technology and the Arts, made a statement to the Scrutiny of Bills Committee, on 23rd March, 1999, to the effect that he had been advised by the Treasurer that the date of effect for the legislation announced by press release, despite the Senate's resolution, should be maintained at 11th March, 1998 to preclude problems of "tax avoidance".

In the course of this inquiry, Senator Bishop (A.L.P., W.A.) asked officers of the Department of Communications, Information Technology and the Arts several questions. In essence, these questions required:

- (a) an explanation of why the introduction of the Radiocommunications Legislation Amendment Bill 1999, had been delayed so that it breached the Senate's resolution on legislation by press release, and,
- (b) a request for an estimation of the loss of tax revenue that would result from moving the date of effect of the legislation announced by the Treasurer's press release from the date of the press release to the date of the introduction of the legislation, in accordance with the Senate's resolution.

Despite the fact that officers of the Department of Communications, Information Technology and the Arts apparently sought the advice of Treasury, they were unable, or unwilling, to answer these questions.

In response to the request to estimate the amount of tax revenue lost to Australia by subjecting the Radiocommunications Legislation Amendment Bill 1999 to the resolution of the Senate, the Department of Communications, Information Technology and the Arts was able only to repeat what it had been told by the Australian Taxation Office, namely that it had no idea of the amount of tax revenue, if any, involved.

Despite this extraordinary lack of knowledge on the part of two relevant portfolio Departments, the Department of Communications, Information Technology and the Arts, in its second attempt to answer questions posed by Senator Bishop, stated that it had been "advised" by the Australian Taxation Office that, despite not knowing the amount of revenue involved, it was "important to maintain the date of effect" of the legislation at the date of the Treasurer's press release and therefore the Senate should not apply its resolution regarding legislation by press release.

The Senate, however, should not set aside one of its resolutions simply because two portfolio Departments effectively tell the Senate, without any evidence, that "it is important" to do so.

In its second attempt to respond to questions from Senator Bishop, the Department of Communications, Information Technology and the Arts stated that the Radiocommunications Legislation Amendment Bill 1999 was not introduced in the Spring Sittings of 1998 because of the “need to obtain the Treasurer’s approval to two unrelated radiocommunications measures, including consequential amendments”.

The Bill was therefore delayed because the Treasurer would not approve “consequential amendments”, something which should have taken relatively little time.

Clearly the Department of Communications, Information Technology and the Arts failed to pursue the matter.

The Department of Communications, Information Technology and the Arts stated that it was advised by the Australian Taxation Office that the date of effect of the legislation should be maintained at 11th March, 1998 because “[I]t is necessary to guard against the possibility of non-resident taxpayers taking advantage of their non-resident status to avoid Australian tax.”

It would seem to be as the result of the inattention to detail and disregard for the resolution of the Senate on the part of both Treasury and the Department of Communications, Information Technology and the Arts that the Radiocommunications Legislation Amendment Bill 1999 was not introduced until over five months after the deadline set by the Senate’s resolution regarding legislation by press release had passed.

Consequently non-residents may be able to take advantage of a loophole in the law to avoid paying tax in Australia.

The Department of Communications, Information Technology and the Arts advised that it consulted other portfolios regarding the Radiocommunications Legislation Amendment Bill 1999 in a “timely manner”. It is difficult to understand how the “timely” handling of a bill resulted in it being over five months late. The Department of Communications, Information Technology and the Arts would seem to have been very neglectful regarding the Radiocommunications Legislation Amendment Bill 1999.

It is obvious that the real reason for this neglect, as stated by the Department of Communications, Information Technology and the Arts, was the “need to afford maximum Parliamentary time to consider tax reform issues”. Treasury and the Department of Communications, Information Technology and the Arts apparently pursued GST issues so single-mindedly that they neglected to progress legislation, legislation which the Treasurer had announced would be introduced, that would have the effect of ensuring that spectrum licence holders, such as mobile phone companies paid tax in Australia. This is an extremely unsatisfactory state of affairs.

Labor Senators will pursue these issues and look forward to receiving a proper explanation from the Minister when the Radiocommunications Legislation Amendment Bill 1999 is listed for discussion in the Senate. In particular, Labor Senators will be interested in the alternate proposal put to the Treasurer by the Minister for Communications, Information Technology and the Arts in the Minister’s letters to the Treasurer dated November 10th 1998, and January 6th 1999.

SENATOR MARK BISHOP
ALP WESTERN AUSTRALIA

SENATOR NICK BOLKUS
ALP SOUTH AUSTRALIA