

National economy (clause 33)

26.1 Clause 33 provides that:

A document is an exempt document if its disclosure under this Act would be contrary to the public interest by reason that it would be reasonably likely to have a substantial adverse effect on the national economy.

The Explanatory Memorandum does not amplify the meaning of the clause; it simply refers in paragraph 125 to the recommendation of the 1976 Interdepartmental Committee Report. The 1976 IDC Report¹ does not put forward any arguments of substance in favour of such an exemption, merely stating that it is 'desirable'. The 1974 IDC Report² did not contain a national economy exemption. The 1976 IDC Report noted that in the 1974 IDC Report the provision enabling deferment of access to a document where premature disclosure was not in the public interest would have enabled a document to be withheld where premature release would have been contrary to Australia's economic interests. The 1976 Report then states the Interdepartmental Committee's view that it is preferable, where possible, to specify the public interest which is necessary to be protected by an exemption category.³

26.2 The Committee fully accepts the need to protect Australia's vital economic interests. However, in our view this can be achieved without the use of a clause as wide and as vague as clause 33. We agree with the view expressed in the Australian Council of Trade Unions' (ACTU) submission to us that the clause is 'too broadly framed'.⁴ We foresee difficulties in determining in particular situations whether the release of a document or documents would be 'reasonably likely' to have a 'substantial adverse effect' on the national economy. Although similar tests apply in other exemption clauses (e.g. clause 31), we take the view that the width and vagueness of the interest sought to be protected by clause 33 (i.e. the 'national economy') could lead to a presumption on the part of officials in favour of withholding information. Such an undesirable development would be quite contrary to the spirit and intention of the legislation. A further difficulty lies in the fact that effects on the national economy need not be solely the result of economic action; political action which bears no direct relationship to economic affairs can have an effect on the economy.

26.3 The Committee received evidence from the Secretary to the Treasury.⁵ It is our impression, based on that evidence, that the Treasury would not seek to rely very much on clause 33 but is satisfied that other exemption clauses will be adequate to protect vital economic information. We share that view and feel that it is preferable to rely on those clauses rather than an exemption of the width and vagueness of clause 33. It is our firm belief that exemptions should be kept

¹ Australia, Parliament, *Policy Proposals for Freedom of Information Legislation: Report of Interdepartmental Committee* (1976 IDC), Parl. Paper no. 400/1976, Canberra, 1977, para. 12.20.

² Australia, Attorney-General's Department, *Policy Proposals for Freedom of Information Legislation: Report of Interdepartmental Committee*, Canberra, AGPS, 1974.

³ 1976, IDC, cited footnote 1, paras. 12.18 and 12.19.

⁴ Submission no. 152, p. 8.

⁵ *Transcript of Evidence*, pp. 1684-1726.

to a minimum. Accordingly we do not see the need for continuing the existence of an exemption clause whose purpose can be adequately served by other exemption clauses which, in our view of the legislation, should continue in the Bill.

26.4 The clauses which can be used to protect vital economic information which the national interest would require to remain undisclosed are clauses 19, 23, 24, 26 and 29. Clause 19 which is discussed in Chapter 10, permits the deferment of access to a document by the minister or an agency until the happening of a particular event (including the taking of some action required by law or some administrative action), or until the expiration of a specified time where it is reasonable to do so in the public interest or having regard to normal and proper administrative practices. (Obvious examples to which this would apply are changes in sales tax or custom duties or changes in the exchange rate.)

26.5 Clause 23 exempts, among others, documents whose disclosure would be contrary to the public interest because their disclosure would be prejudicial to Commonwealth-State relations or would divulge information communicated in confidence to the Commonwealth Government by a State government. It is discussed in detail in Chapter 17, and it is sufficient to note here that it would be adequate to protect details of sensitive economic matters involving the Commonwealth and States.

26.6 Clause 24 provides exemption for Cabinet documents (see detailed discussion in Chapter 18), and it is clear that sensitive economic documents which have been the subject of Cabinet deliberations or which a minister proposes to submit to Cabinet would come within its terms.

26.7 Clause 26, the internal working documents exemption which we discuss in detail in Chapter 19, clearly provides any necessary protection to those documents containing economic information the disclosure of which would be contrary to the public interest and which contain opinion, advice or recommendation or details of consultations or deliberations and which are part of the deliberative process. Documents such as option papers put by officials to a minister on matters like movements in bank lending rates or sales or excise tax would probably come within the scope of this clause.

26.8 Clause 29 (see Chapter 22 for detailed discussion) provides exemption for, among other things, documents the disclosure of which would be contrary to the public interest because disclosure would have a substantial adverse effect on the financial interests of the Commonwealth. It is arguable that this clause also contains scope for protection of matters which would adversely affect the national economy. Here we are referring to matters such as a sale or acquisition of land or property.

26.9 In concluding that there is no need for a specific exemption to protect the national economy, we note the concern expressed in several submissions at the width and potential for abuse of this clause.⁶ In its submission, the ACTU, an important national organisation in the context of economic debate in this country, made the following statement as part of its argument against the inclusion of clause 33 in the Bill:

The Treasury's penchant for secrecy is well known. Treasury's attitude to disclosure of information—combined with the fact that, with the possible exception of the Reserve

⁶ e.g. Federation of Australian Commercial Television Stations (FACTS), Submission no. 143; Australian Council of Trade Unions (ACTU), Submission no. 152.

Bank, there is no public body responsible for research into macroeconomic problems that has any degree of independence with regard to publication means that policy development is unduly inhibited. The development of ideas which would arise from a greater knowledge of the factors influencing Australia's political economy is constrained by the present inaccessibility of much official information.⁷

26.10 Looking to the experience of other Western democracies with freedom of information legislation, we observe that while all acknowledge that vital economic information must at times be protected from public disclosure, some countries feel it necessary to specify a national economy exemption and others do not. Countries which specify such an exemption are The Netherlands, Denmark and Sweden. In The Netherlands legislation⁸, article 4 provides that information need not be divulged if its importance does not outweigh specified interests, one of which is the 'economic and financial interests of the State'. The Danish legislation⁹ has a similarly broad exemption providing that documents can be withheld out of consideration to 'the public's economic interests' or 'the accomplishment of public control, regulation or planning activities'. The Swedish Act exempts documents whose release would cause damage to 'the national economy or the proper progress of industry'.¹⁰

26.11 The United States, on the other hand, has not felt it necessary to specify a national economy exemption. There are significant differences between the ways in which economic policy is framed in Australia and the United States; for example, in the United States the President (who is not subject to the legislation) has the primary responsibility for pruning the Budget. Nevertheless important United States economic agencies such as Treasury and the Internal Revenue Service are subject to the legislation. Yet there is nothing to indicate that the United States economy has suffered substantial adverse effect because of the absence of a national economy exemption. With this in mind, and our desire to keep exemption clauses to a minimum, we are confident that clause 33 can be deleted from the Bill without endangering Australia's vital economic interests.

26.12 Although we do not endorse it as a replacement for clause 33, it is interesting to note that the Minority Report Bill has a provision equivalent to clause 33 which seeks to protect the 'legitimate economic interests of Australia'. It is much less broad than clause 33 and provides examples of the sorts of documents which should properly be protected from disclosure. We draw attention to it as a possible alternative to clause 33 if a national economy exemption of some sort is required. The relevant parts of the clause are in the following terms:

36. An agency may refuse to disclose a document as follows:

- (a) a document the premature disclosure of which could be reasonably expected to have a substantial adverse effect on the legitimate economic interests of Australia, for instance, by revealing consideration of a contemplated movement in Bank interest or tariff rates, in sales or excise tax, the imposition of credit controls, a sale or acquisition of land or property, urban re-zoning, or a like proposal, or by impeding supervision of foreign investment or the stock exchange, or control of imports and exports;
- (b) a document containing sensitive information relating to the currency or to the coinage or legal tender;

⁷ Submission no. 152, p. 6.

⁸ The Netherlands, Openness of Administration Act, 1978.

⁹ Denmark, Act on Public Access to Documents in Administrative Files (Act no. 280 of 10 June 1970), section 2, para. 2 (3).

¹⁰ Sweden, Law on Curtailment of the Right to Demand Official Documents (the Secrecy Act).

- (c) a document containing information generated by an agency relating to the regulation or supervision of financial institutions, in so far as disclosure might result in unwarranted harm to the economy; . . .¹¹

26.13 Recommendation: Clause 33 of the Bill, exempting documents the disclosure of which would be contrary to the public interest by reason that they would be reasonably likely to have a substantial adverse effect on the national economy, should be deleted.

¹¹ Australia, Parliament, Royal Commission on Australian Government Administration (Dr H. C. Coombs, Chairman), *Appendix, Volume Two*, Parl. Paper 187/1976, Canberra 1977, p. 45.