SENATE STANDING COMMITTEE

FOR

THE SCRUTINY OF BILLS

TENTH REPORT

OF

1990

5 DECEMBER 1990

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ISSN 0729-6258

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MEMBERS OF THE COMMITTEE

Senator B. Cooney (Chairman)
Senator A. Vanstone (*Deputy Chairman*)
Senator V. Bourne
Senator R. Crowley
Senator I. Macdonald
Senator N. Sherry

TERMS OF REFERENCE

Extract

(1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall 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 or obligations unduly dependent upon insufficiently defined administrative powers;

(iii) make such rights, liberties or obligations unduly dependent upon non-reviewable decisions;

(iv) inappropriately delegate legislative powers; or

(v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

(b) 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

TENTH REPORT OF 1990

The Committee has the honour to present its Tenth Report of 1990 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 Standing Order 24:

Education Services (Export Regulation) Bill 1990

Social Security Legislation Amendment Bill 1990

Veterans' Affairs Legislation Amendment Bill 1990

EDUCATION SERVICES (EXPORT REGULATION) BILL 1990

This Bill was introduced into the House of Representatives on 8 November 1990 by the Minister for Employment, Education and Training.

The Bill proposes to regulate the marketing and provision of education services to overseas markets. To this end, a Commonwealth Register of Institutions and Courses for Overseas Students will be established under this legislation. Visas for study purposes will only be issued to students if they are accepted into registered courses at registered institutions.

The Committee considered the Bill in relation to Alert Digest No. 9 of 1990, at which stage the Committee did not comment on the Bill. However, in the light of matters which have subsequently been drawn to its attention, the Committee makes the following general comment.

General comment

The Bill proposes to regulate the provision of education services to overseas students. Clause 3 of the Bill defines 'approved provider' as

> an institution or other body or person to which or to whom the designated authority of the State has granted, under the law of the State, an approval to provide that course to overseas students in that State ...

Clause 3 defines 'registered provider' as

> an institution or other body or person that is registered in respect of the course in respect of that State.

The clause also defines 'provider' as

> an institution or other body or person in Australia that provides courses.

'Course' is defined as 'a course of education or training'.

Clause 4 provides that only a registered provider can provide courses to overseas students.

Clause 5 deals with the registration of approved providers.

Clause 6 requires a provider, among other things, to maintain a trust account.

Clause 7 requires a provider to take out insurance.

Clause 8 requires a provider to provide quarterly returns and such other information as may be required.

Clauses 9-15 deal with various matters related to the suspension and cancellation of registration of registered providers.

The suggested problem which has been drawn to the Committee's attention is that the onerous obligations to be imposed by clauses 6-8 apply to providers, ie any person or body providing a course of education or training. This might be considered an undue imposition on some providers, in the sense that they may have neither the intention nor the requisite authority to provide courses to overseas students, yet they are required to fulfil these onerous obligations. In that respect, this may be considered an undue trespass on the personal rights and liberties of such providers.

It might be argued, or course, that a Court interpreting the provisions would assume, in the light of the provisions

preceding clauses 6-8, that those clauses only apply to registered providers. However, this approach seems improbable. The interpretation clause clearly defines each of three types of provider. In addition, the definition of 'provider' would appear to have no application in the Bill other than in relation to clauses 6-8. This being the case, the reference to 'providers' in those clauses would, logically, attract (and, arguably, justify the insertion of) the definition set out in clause 3.

The Committee makes no further comment on the Bill.

SOCIAL SECURITY LEGISLATION AMENDMENT BILL 1990

This Bill was introduced into the House of Representatives on 18 October 1990 by the Minister Representing the Minister for Social Security.

The Bill proposes to amend the following Acts:

- Social Security Act 1947;
- Social Security and Veterans' Entitlements (Maintenance Income Test) Amendment Act 1988;
- First Home Owners Act 1983;
- Health Insurance Act 1973;
- National Health Act 1953;
- Income Tax Assessment Act 1936; and
- Taxation Administration Act 1953

to effect measures announced in the February 1990 Economic Statement and the 1990-91 Budget.

The Committee dealt with the Bill in Alert Digest No. 9 of 1990, in which it commented on various clauses of the Bill. The Minister for Social Security responded to those comments in a letter dated 27 November 1990. A copy of that letter is attached to this report. Relevant parts of the response are also discussed below.

Retrospectivity
Clauses 4(4), (8), (9) and (12), 5(b), (d), (m), (r) and (s), 7(a), 8, 10, 12, 14(k), 21, 22, 47, 50, 56, 62-69, 70(1)(d) and (e), 72(a) and (b) and 87-91

In Alert Digest No. 9, the Committee noted that the Bill contains numerous clauses which are (or which will be, if and when they become law) retrospective in effect. The

Committee identified the relevant clauses and the particular dates. The Committee also noted that, in addition to these examples of (then) actual retrospectivity, several amendments are expressed to commence on 1 December 1990. These provisions, namely clauses 45, 46 and 51, subclause 69(c) and paragraph 10(1)(a), now also involve retrospective operation.

The Minister's Second Reading speech indicates that the Bill 'would amend [the] social security legislation to implement some of the measures announced in the Treasurer's February Statement and in the 1990 Budget'. The Committee observed that this, presumably, explains those amendments which are expressed to commence on 22 August 1990 (ie the day after the Budget). The Committee noted that it had previously indicated that, in relation to retrospectivity, budgetary measures are something of a special case, citing comments by the then Chairman of the Committee, Senator Tate, in a paper entitled The Operation of the Senate Standing Committee for the Scrutiny of Bills, 1981-1985.

However, the Committee noted that in the present case, while the Budget explanation appears to cover many of the proposed amendments, the Minister's Second Reading speech and the Explanatory Memorandum to the Bill offer little guidance as to the need for retrospectivity in the remaining cases. Given the Committee's objection in principle to retrospective legislation, the Committee indicated that it and, indeed, the Senate would be greatly assisted if some explanation could be provided for the need for retrospectivity in each case.

The Committee drew Senators' attention to the clauses referred to as possibly unduly trespassing on personal rights and liberties, in breach of principle 1(a)(i) of the Committee's terms of reference.

The Minister has provided a detailed response to this comment, indicating the reason for the retrospectivity in relation to various clauses identified by the Committee. As the response appears in full at the end of this report, the Committee does not propose to reproduce the detail of the response here. However, generally speaking, the retrospective operation of the proposed amendments is linked to the commencement of provisions in other legislation, for reasons which the Minister has, in each case, set out in his response.

The Committee thanks the Minister for his response and makes no further comment on the Bill.

VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL 1990

This Bill was introduced into the House of Representatives on 8 November 1990 by the Minister for Veterans' Affairs.

The Bill proposes amendments to the following Acts:

- Veterans' Entitlements Act 1986;
- Defence Service Homes Act 1918;
- Seamen's War Pensions and Allowances Act 1940;
- Social Security and Veterans' Affairs Legislation Amendment Act (No. 4) 1989; and
- Public Service Act 1922.

The amendments proposed implement Government election promises, give effect to Budget decisions and make a range of other amendments to improve the provision of benefits to veterans.

The Committee dealt with the Bill in Alert Digest No. 10 of 1990, in which it made comments on various clauses. The Minister for Veterans' Affairs responded to those comments in a letter dated 4 December 1990. A copy of the letter is attached to this report. Relevant parts of the letter are also discussed below.

Retrospectivity
Various clauses

In Alert Digest No. 10, the Committee noted that the Bill contains a substantial number of proposed amendments with a retrospective operation. These amendments are to operate either from a nominated date or from the commencement of a

specified Act or provision. In each case, the relevant commencement date appears in italics in the text of the Bill. However, no guidance is offered in either the Explanatory Memorandum to the Bill or the Minister's Second Reading speech as to the relevance of the various dates nominated or the need for retrospectivity in each case.

The Minister for Veterans' Affairs has offered the following by way of additional information:

> While a significant number of clauses in the Bill have retrospective operation, the majority of these concern the adjustment of benefits and increases in the rates of benefits and allowances available to Veterans' and their dependants. In most cases this will involve backdating of increases and payment of arrears. For example, the changes to the provisions for the grant of war widows' pension, will allow for the automatic granting of pension to widows of veterans receiving extreme disablement adjustment at the time of their death to be backdated to 22 December 1988. That date was the date on which extreme disablement adjustment commenced.

The Committee has invariably accepted instances of retrospectivity which are beneficial to individuals or which, at least, are not prejudicial to a person or body other than the Commonwealth.

The Minister's response also notes that

> [i]n relation to the changes to the allotment provisions and the dates for operational service in Schedule 2 to the Veterans' Entitlements Act (the VEA), the retrospective operation is intended to restore certain eligibility provisions to what they were under the Repatriation legislation before the introduction of the VEA. The need for this arises from the Federal Court decisions in the cases of Doessel and Davis, which overturned a longstanding interpretation of the words 'allotted for duty' in the VEA and earlier Repatriation legislation. The result of this was to vest in persons, who had never before been

> regarded by the Department of Defence as having performed 'operational service', benefits which were never intended.

In effect, the amendments referred to are intended to override what would otherwise be the flow-on from some recent Federal Court decisions. This is a practice which the Committee has commented on several times recently and one which has caused the Committee some concern. In the present case, however, as the Minister points out,

> [s]avings provisions covering the changed allotment procedures, have been inserted in clause 93 of the Bill to preserve the benefits of those persons where these have already been granted as well as those whose claims are still to be decided. Claims or applications lodged on or before 8 November 1990 will be determined without regard to the amendments contained in the Bill. In respect of claims or applications lodged after that date, however, the amendments will ensure that the decisions are based on the application of the legislation in the way it was intended to operate. The result is not so much of people being disadvantaged as a result of these changes, as ensuring that entitlement to benefits is available only to those for whom the legislation is intended to reward for the performance of service which is truly 'operational' in the sense that it involved dangers over and above those associated with normal peacetime Defence service.

The Committee notes, therefore, that existing claims will not be affected by the proposed amendment.

In relation to the remaining provisions, the Minister has responded:

> Other retrospective operative dates in relation to 'operational service' are not directly linked with [the changes referred to above] but relate to the dates on which those areas commenced or ceased to be 'operational' for the purposes of the VEA. For example, clause 37(c) which relates to revised allotment procedures for service in Namibia is operative from 18 February 1989, that being the

> date on which Namibia commenced to be an 'operational area' for the purposes of the VEA. Similarly, clause 37(d) which relates to allotment for operational service in the Gulf, commences on 2 August 1990, that being the date from which the Gulf area is regarded as being 'operational'.
>
> In those cases in which amendments are consequential to those made to the Social Security legislation, the Department is bound to retain consistency with the Department of Social Security and to adopt similar operative dates. This applies to the provisions in clause 53 relating to the deeming of income on loans.

The Committee thanks the Minister for his response and for his assistance with these matters. One of the reasons for the Committee's initial concern was that no explanation was offered for the retrospectivity in the Bill. The Minister has now provided that and, importantly, has gone on to say:

> The need to provide more information and an explanation of the reason for retrospective operation in the explanatory memorandum has also been noted.

The Committee commends this approach to the Minister.

Ministerial guidelines
Subclause 9(q)

In Alert Digest No. 10, the Committee noted that clause 9 of the Bill proposes to amend section 18 of the Defence Service Homes Act 1918. Subclause 9(q) would require the Secretary of the Department of Veterans' Affairs, in deciding whether or not a person is suffering 'serious financial hardship' for the purposes of certain provisions of the Act, to have regard to any guidelines issued by the Minister pursuant to proposed new subsection 18(5c).

The Committee noted that clause 11 of the Bill proposes a similar amendment in relation to decisions under section 20 of the Defence Service Homes Act. Clauses 12 and 14 propose similar amendments in relation to sections 21 and 23 of the Act, respectively.

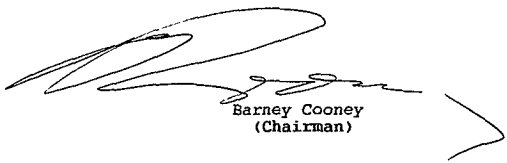
The Committee observed that, in each case, guidelines approved by the Minister must be laid before each House of the Parliament within 15 sitting days of that House after the guidelines have been approved. However, the Committee noted that there is no provision for the guidelines to be disallowed by either House.

In his response to the Committee, the Minister has said:

> I have noted also the Committee's comments on clause 9(q) which inserts provisions allowing for the tabling before the Parliament of guidelines for use by the Secretary in assessing the degree of financial hardship. In proceeding in this way it was decided that the guidelines should not be formally binding to allow flexibility to examine each case on its merits. This is consistent with general administrative discretion principles.
>
> The option of inserting definitions of 'financial hardship' into the Act was considered but for a number of reasons it was decided not do this. This followed discussions with the Office of Parliamentary Counsel and experts in the Defence Service Home Loans Branch of the Department. Factors taken into account in reaching this decision included concern that legislative changes to cover every situation would have been complex and difficult to devise, draft and administer; the small number of cases involved; the likelihood that a simple test would have acted against the interest of some persons and the fact that the tabling provisions are seen to offer a more flexible approach to sensitive situations.

The Committee thanks the Minister for his response and notes his views on the role of the guidelines. The Committee also notes that this matter was recently taken up in proceedings before the Senate Standing Committee on Community Affairs,

which had this Bill referred to it on the recommendation of the Selection of Bills Committee. In the course of its dealing with the Bill, the Community Affairs Committee agreed to an amendment which, if adopted by the Government, would make guidelines issued under clause 9 of the Bill disallowable instruments for the purposes of section 46A of the Acts Interpretation Act 1901. The Committee notes with approval that the Minister representing the Minister for Veterans' Affairs before the Community Affairs Committee, Senator Tate, indicated that he thought the Government would accept the amendment.



Barney Cooney
(Chairman)

COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY SECRETARY TO
THE MINISTER FOR SOCIAL SECURITY
PARLIAMENT HOUSE
CANBERRA, A.C.T. 2600

27 NOV 1990

Senator B C Cooney
Chairman
Standing Committee for the
Scrutiny of Bills
Australian Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Cooney Barney

On 8 November 1990, your Committee's Secretary drew attention to the comments on the Social Security Legislation Amendment Bill 1990 (the Bill) made by the Committee in its Ninth Report of 1990.

Your Committee expressed concern about the retrospectivity of some clauses in the Bill.

Clauses 4(4), 5(b), 5(d), 5(r), 7(a), 8, 10, 50, 56, 68, 69(a), 69(b), 70(1)(e) and 72(b)

As indicated by the Committee, these clauses provide for the implementation of budgetary measures. Accordingly, these measures have been made retrospective to the date after their announcement in the Budget Speech on 21 August 1990.

Clauses 4(8), 37 and 55

These clauses would allow Chinese nationals who were in Australia at the time of the Tiananmen Square massacre (20 June 1989) and who have a Class 4 Temporary Entry Permit to have access to special benefit, family allowance and family allowance supplement. This would be achieved by relaxing the residence requirements relevant to those payments.

The retrospective commencement date of this measure coincides with the date the Department of Immigration and Ethnic Affairs introduced the Class 4 Temporary Entry Permit, that is, 1 August 1990.

Clauses 4(9), 22 and 47

Clause 22 omits subsection 33(4A) of the Social Security Act 1947 (the Act). Clause 47 amends section 118 of the Act by inserting references to subsection 118(2AA) in subsections 118(2A) and (3). The combined effect of these amendments would be to exclude persons receiving guardian's allowance from the requirement to take reasonable maintenance action.

The amendment is beneficial and technical in nature. It corrects an oversight in section 9 of the Social Security and Veterans' Affairs Legislation Amendment Act 1990 which commenced on 20 September 1990 and had the unintended effect of imposing on persons receiving guardian's allowance the requirement to take reasonable maintenance action.

A retrospective commencement date of 20 September 1990 is therefore necessary to ensure persons receiving guardian's allowance are not required to take reasonable maintenance action. Similarly, clause 4(9) is required to ensure that clause 47 operates in relation to payments which fell due on or after that date.

Clauses 4(12) and 70(1)(d)

These clauses provide for the backdating of payments of family allowance (FA) and family allowance supplement (FAS) where child disability allowance (CDA) is payable.

Paragraph 49(d) of the Social Security Legislation Amendment Act 1988 (No 133 of 1988) inserted subsection 159(4D) into the Act. This provision enabled payments of CDA to be backdated for up to 12 months where the person claiming payment was qualified to receive CDA for the period. This amendment came into operation on 29 December 1988.

CDA, FA and FAS are inter-related family payments. Qualification for CDA is dependent on receipt of FA. Similarly, FAS can only be paid to a person who is receiving FA. It is anomalous to backdate payments of CDA for up to 12 months and pay FA prospectively (except in limited circumstances). Similar considerations apply in relation to payment of FAS.

The amendments made by clauses 4(12) and 70(1)(d) are beneficial measures which would correct this anomaly with effect from 29 December 1988.

Clause 5(m)

This clause amends the definition of "assurance of support debt" in subsection 3(1) of the Act by omitting the reference to "22" and substituting "165".

This is a technical amendment arising as a result of the repeal and re-enactment of the Migration Regulations in December 1989. Although the substance of sub-regulation 22(1) did not change, it was renumbered 165(1) on 19 December 1989.

An amendment is therefore required to the definition of "assurance of support debt" with effect from 19 December 1989 to bring it into line with the Migration Regulations and to enable the definition to remain operational.

Clauses 5(s) and 87-91 inclusive

Clause 5(s) inserts a definition of "income support payment" into subsection 3(1) of the Act. The definition ties in with amendments made to the Health Insurance Act 1973 and the National Health Act 1953 (the Health Acts).

Clauses 87-91 amend provisions in the Health Acts. The amendments are beneficial in nature and allow certain health concessions to be retained by specified groups of social security recipients upon return to work or in the event of increased income.

These amendments correct oversights in Parts 2 and 3 of the Social Security and Veterans' Affairs Legislation Amendment Act 1989. The relevant provisions in those Parts commenced on 1 June 1990. It is therefore appropriate that these amendments also commence on that date.

Clause 12

Clause 12 amends section 12A of the Act to change the application of the current earnings credit provisions to a fortnightly period and to allow married pensioner couples to use the combined credit limit of $2,000. These measures are beneficial.

The selection of 1 October 1990 as the commencement date for this measure accords with administrative requirements.

Clause 14(k)

Clause 14(k) of the Bill amends subsection 12C(4) of the Social Security Act 1947 (the Act) by omitting the reference to "section 12C" and substituting "subsection 3(1)".

Section 21(r) of the Social Security and Veterans' Affairs Legislation Amendment Act (No 4) 1989 (No 164 of 1989) moved the definition of "accruing return investment" from section 12C to subsection 3(1) of the Act. This amendment came into effect on 19 December 1989.

The amendment effected by clause 14(k) corrects an oversight in the 1989 amendment. To make sense of the 1989 amendment and section 12C of the Act, it is necessary to make clause 14(k) retrospective to 19 December 1989.

Clause 21

This clause amends the definition of "remote area" in subsection 20(1) of the Act by extending that definition to include persons living in special zone B as defined in the Income Tax Assessment Act 1936.

The amendment re-aligns the social security perception of remoteness for the purposes of determining eligibility for remote area allowance with the taxation perception of remoteness for tax rebate purposes. This beneficial amendment is expressed as commencing on 1 January 1990 which is the date of the relevant changes to the Income Tax Assessment Act 1936.

Clauses 62-67 inclusive

These clauses amend various sections in Part XVIA of the Act which provides for the payment of the pharmaceutical supplement.

Part XVIA was inserted into the Act by the Social Welfare Legislation (Pharmaceutical Benefits) Amendment Act 1990 with effect from 1 November 1990.

For Part XVIA to be effective, the amendments made by clauses 62-67 are necessary from the date of commencement of Part XVIA.

Yours sincerely

Graham Richardson

GRAHAM RICHARDSON

Minister for Veterans' Affairs

Ben Humphreys, MP
Member for Griffith

- 4 DEC 1990

Senator B Cooney
Chairman
Standing Committee for the Scrutiny of Bills
Australian Senate
Parliament House
CANBERRA ACT 2600

Dear Senator Cooney

On 15 November 1990 the Secretary to your Committee wrote to me drawing attention to the comments of the Committee contained in the Scrutiny of Bills Alert Digest No 10 of 14 November 1990 in relation to the Veterans' Affairs Legislation Amendment Bill 1990.

2. The issues which have been raised relate to the number of clauses in the Bill with retrospective operation and the non-disallowance of guidelines for determining hardship for the purposes of the Defence Service Homes Act 1918. The Committee has not made any specific comment on either of these matters other than to note, in the case of retrospectivity, the number of clauses involved and, in the case of the hardship guidelines, the fact that while they are not formally binding, they are not subject to disallowance. I understand that the Committee's concern with retrospectivity is not so much that it applies in so many instances, but with the lack of information in the explanatory memorandum about the reason why a particular date is relevant. It is on this understanding, therefore, that I offer the following comments in relation to these items, which I trust the Committee will find helpful.

3. While a significant number of clauses in the Bill have retrospective operation, the majority of these concern the adjustment of benefits and increases in the rates of benefits and allowances available to Veterans' and their dependants. In most cases this will involve backdating of increases and payment of arrears. For example, the changes to the provisions for the grant of war widows' pension, will allow for the automatic granting of pension to widows of veterans receiving extreme disablement adjustment at the time of their death

to be backdated to 22 December 1988. That date was the date on which extreme disablement adjustment commenced.

4. In relation to the changes to the allotment provisions and the dates for operational service in Schedule 2 to the Veterans' Entitlements Act (the VEA), the retrospective operation is intended to restore certain eligibility provisions to what they were under the Repatriation legislation before the introduction of the VEA. The need for this arises from the Federal Court decisions in the cases of Doessel and Davis, which overturned a longstanding interpretation of the words "allotted for duty" in the VEA and earlier Repatriation legislation. The result of this was to vest in persons, who had never before been regarded by the Department of Defence as having performed "operational service", benefits which were never intended.

5. Savings provisions covering the changed allotment procedures, have been inserted in Clause 93 of the Bill to preserve the benefits of those persons where these have already been granted as well as those whose claims are still to be decided. Claims or applications lodged on or before 8 November 1990 will be determined without regard to the amendments contained in the Bill. In respect of claims or applications lodged after that date, however, the amendments will ensure that the decisions are based on the application of the legislation in the way it was intended to operate. The result is not so much of people being disadvantaged as a result of these changes, as ensuring that entitlement to benefits is available only to those for whom the legislation is intended to reward for the performance of service which is truly "operational" in the sense that it involved dangers over and above those associated with normal peacetime Defence service.

6. Other retrospective operative dates in relation to "operational service" are not directly linked with these changes but relate to the dates on which those areas commenced or ceased to be "operational" for the purposes of the VEA. For example, clause 37(c) which relates to revised allotment procedures for service in Namibia is operative from 18 February 1989, that being the date on which Namibia commenced to be an "operational area" for the purposes of the VEA. Similarly, clause 37(d) which relates to allotment for operational service in the Gulf, commences on 2 August 1990, that being the date from which the Gulf area is regarded as being "operational".

7. In those cases in which amendments are consequential to those made to the Social Security legislation, the Department is bound to retain consistency with the Department of Social Security and to adopt similar operative dates. This applies to the provisions in clause 53 relating to the the deeming of income on loans.

8. With regard to the Committee's comment that the Explanatory Memorandum fails to identify clause 7(d) as having a retrospective operation date of 2 August 1990, an indication that this is the case is provided at the end of the descriptions on clause 7 at page 6, although the point is taken that the placement of a reference to the operative date for each of the sub-clauses immediately following those sub-clauses, raises the expectation that all sub-clauses should be dealt with similarly. This need for consistency in style has been noted. The need to provide more information and an explanation of the reason for retrospective operation in the explanatory memorandum has also been noted.

9. I have noted also the Committee's comments on clause 9(q) which inserts provisions allowing for the tabling before the Parliament of guidelines for use by the Secretary in assessing the degree of financial hardship. In proceeding in this way it was decided that the guidelines should not be formally binding to allow flexibility to examine each case on its merits. This is consistent with general administrative discretion principles.

10. The option of inserting definitions of "financial hardship" into the Act was considered but for a number of reasons it was decided not to do this. This followed discussions with the Office of Parliamentary Counsel and experts in the Defence Service Home Loans Branch of the Department. Factors taken into account in reaching this decision included concern that legislative changes to cover every situation would have been complex and difficult to devise, draft and administer; the small number of cases involved; the likelihood that a simple test would have acted against the interest of some persons and the fact that the tabling provisions are seen to offer a more flexible approach to sensitive situations.

10. Finally I thank you for bringing these matters to my attention. Should you require any further information in relation to any aspect of the Bill I would be happy to make this available to you.

Yours sincerely

(BEN HUMPHREYS)