A WEEKLY COMMENTARY

ON TARGET

- NEWS HIGHLIGHTS
- BACKGROUND INFORMATION
- COMMONWEALTH AFFAIRS

The price of Freedom is eternal vigilance –

Print Post Publication Number 381667 00258

Vol.36, No.22 June 9th, 2000

THOUGHT FOR THE WEEK: *As G.K. Chesterton put it: "These madmen with their political Utopias have lost everything except their reason: inside their system of reason all is consistency: but their whole system is out of consistency with reality".*

Let us, therefore, be careful never to lose sight of the real issue. Is it possible for collective humanity, loaded with imperfections, to find a quick and easy salvation in that new kind of society that has captured the imagination and enlisted the zeal of so many educated people in the Western world?

Gustave Thibon writes, (The) "Social Gospel": It is not a promise, an embryo of Christianity: it is a cancer – there is an outward resemblance between the two things, as every biologist knows – which develops in the Christian organism when it is impoverished and corrupt... The Christian idea is menaced today by its contrary and by its parody simultaneously: by those who deny it and by those who prostitute it. The jaws of the pincers are equally repulsive." ***"Truth Out of Africa"*** by Ivor Benson, 1992

NOT THE END – BUT THE BEGINNING by Jeremy Lee:

As we go to print we are only days away from the introduction of the ignominious, destructive, discriminatory and repressive G.S.T. Its introduction flies in the face of the will of the people. It breaks previous promises by the Prime Minister. Tens of thousands of Australians have actively expressed their opposition, only to be treated with contempt. A high percentage of small businesses will be forced into closure – indeed, a considerable number have already closed their doors. Those struggling to survive will be subjected to vastly-increased administrative work in what is already an over-regulated economy. The beneficiaries will be the large corporations, almost exclusively foreign-owned.

In short, it is a deliberate act of evil, perpetrated on the people by a supposedly-representative government. The depth of the coming reaction has yet to be ascertained.

The recent figures quoted in ***On Target*** on the advertising costs for the G.S.T. were seriously underestimated. ***The Australian*** (30/5/2000) reported that "*.... Tax officers revealed in a Senate estimates hearings that the bill for advertising, promotion and education for all the tax changes on July 1 had now topped $410 million ....*"

That's a lowly $22 for each man, woman and child in Australia – $88 for each family of four; spent on a form of propaganda that is quite inexcusable.

Included in the money spent was $270,000 for a song by the aged rock-star (and former alcoholic) Joe Cocker called "Unchain My Heart", which provided a maudlin background to various pictures of men, women and lawn bowls shedding their shackles. The only image invoked in this writer was Karl Marx's famous Manifesto slogan, "You have nothing to lose but your chains!"

Prime Minister Howard's reaction when question was explained thus by ***The Australian***:

" .... John Howard said the advertising and a proposed mail-out to taxpayers was no different to the campaign run by the Hawke Labor Government promoting changes to superannuation. 'There were booklets showing money literally growing on trees. It was one of the most outrageous advertisements ever funded by Australian taxpayers,' the Prime Minister said ...."

Many a true word! Howard, in essence, agreed that his programme was "no different" to the most outrageous advertising campaign ever funded by Australian taxpayers! It's the only statement Howard has made on the GST with which we can agree.

BUSINESSES ALREADY CLOSING: Typical of what is happening in many areas of Australia was the recent front page of ***The Chronicle*** (Toowoomba, 2/6/2000): Under the heading "G.S.T. 'THE LAST STRAW – CORNER STORE DATING BACK TO 1925 CLOSES' the article gave details of a Toowoomba corner-store 'icon' closing its doors, adding: *" ....by the month's end the carnage of corner stores, all within a 5km radius, will number five in three months ...."*

This, presumably – along with the loss of farmers, manufacturing industries and jobs – is what the Federal Government is pleased to call "growth-and-recovery".

MISTAKE-RIDDLED-LEGISLATION: So consuming has been the rush by the Government to get the G.S.T. up and running at all costs that it has apparently left sound law-making out of consideration. Under the heading "RUSH LEAVES NEW TAX LAWS RIDDLED WITH MISTAKES", ***The Australian Financial Review*** (2/6/2000) reported:

"The sheer volume of tax change has overwhelmed legislative drafters and tax practitioners alike, resulting in an unprecedented number of errors in the law, and contributing to a real fear that the new simple system will be anything but. 'It would be fair to say that there will be as many defects in the new law as there are in the old law – because of the rush in the way it is being done,' barrister Mr. Tony Slater Q.C. told The Australian Financial Review this week. 'The G.S.T., for example hasn't even come into force yet and already the second edition of the act is out of date.'

"Mr. Slater said practitioners were suffering from 'amendment fatigue', while the problems for drafters were evidenced by the 'remarkable range of errors that have crept into the legislative process'.

"Instances include the enactment of amending acts in the wrong order – resulting in failed amendments, the enactment of references to non-existent provisions and the enactment of different provisions with the same section numbers.

"'And these are the obvious mistakes. Corrections to amending acts are being hidden away in the back of other amending acts.' Meanwhile, there are problems with changes that have been announced but have not progressed beyond press statements ..... "

There followed a number of similar comments from lawyers and barristers, deeply concerned with the shoddy and massive legislation for the G.S.T. The head of the Victorian Law Institute's tax committee, Mr. Tony Reardon, was quoted as saying: *"They are so hell-bent on getting legislation out that it is likely to be defective and no-one thinks they will devote adequate resources to fixing it," Mr. Reardon said. "There is a serious danger that in the headlong rush to achieve tax reform some fundamental legal rights of citizens will be left behind ...."*

We have no doubt Mr. Reardon is right. Furthermore, the bulk of the legislative provisions will never be seen by members in parliament. They are simply churned out by technicians in bureaucracies, under the "enabling legislation" built into the Acts which went before parliament The end result is likely to be very different from what the politicians who debated the original Bills believe or imagine.

THE G.S.T. IS PROBABLY ILLEGAL: Hanging over the heads of Prime Minister Howard and his henchman Peter Costello is the probability that the whole G.S.T. package contravenes the Constitution.

They probably hope that the issue is too costly to be tested in Australia's High Court, and that, once in place, legal action will be confined to anomalies rather than the validity of the whole thing.

The Constitution has two clauses which are clear and concise: Firstly, among the 39 "Heads of Power" granted to the Commonwealth at Federation, Section 51, Clause 2 gives the Commonwealth power over: *"Taxation; but so as not to discriminate between States, or parts of States"*.

Lest there should be any confusion, the same principle is repeated in Section 99, which reads: *"The Commonwealth shall not, by any law or regulation of trade, commerce, or revenue, give preference to one State or any part thereof over another State or any part thereof."*

With the above in mind the following article from a small monthly journal ***The Bugle*** (5/2000), published in the Brisbane suburb of Redcliffe, is printed with acknowledgement. The author is Chris Morris; the heading, "G.S.T. ILLEGAL!"

"Due to an astounding oversight by both the Public Service Treasury Department and the Federal Parliament, it now appears that the G.S.T. is illegal and has been from the start.

Further, it appears that the Treasury and the Government have been aware of it for some time, since they were forced to tamper with the petrol excise in an effort to remove the discriminatory effects of the G.S.T. on fuel.

The basis for this view is the Constitution itself, which states at Section 51, Sub-section 2, that *"The Parliament shall, subject to this Constitution, have power to make laws for the peace, order and good government of the Commonwealth with respect to ..... taxation, but so as not to discriminate between States, or parts of States."*

In ANY interpretation of this clause, it is irrefutable that a person must not be unfairly disadvantaged by Federal taxation, just because they live in a different part of the State to someone else.

Now take the simple instance of a can of beans.

A can of beans in Brisbane costs, say, $1 retail, but in Longreach, it might cost $1.20 retail.

The actual amount of G.S.T. (10% of the retail price) on the same item is more in the bush than the city.

The same could apply to absolutely any item at all. So someone living in a remote area pays more *actual tax* for the same goods than someone in the city.

As long as the tax is a percentage of retail price *it must discriminate between parts of States and is therefore unconstitutional and illegal*!

The only way out of the dilemma would be to introduce price control on everything retailed in Australia – (not a chance) – or to hold a referendum to change the Constitution – (also no chance) – or to *admit the error and repeal the G.S.T. legislation*.

So what will happen?

When the question was put to Liberal Federal Member for Petrie, Ms. Gambaro, her office said this question had "never been put to them before".

Staff were very friendly and helpful, and within two days replied to the effect that the point was understood, but various compensation packages in regional areas nullified the disadvantage. *(The offer was made to research a written submission, which will be accepted, and publicised in this medium .....Ed.)*

This is an important point. As one concerned citizen, Sterling Bower of Scarborough (Qld.) said: "A government which has to have compensation packages is admitting that it has caused disadvantages in the first place."

Now, even the Government's compensation system seems to be at issue, according to ***The Australian's*** Bernard Lane, in an article on 15/5/2000, titled "CHEAP BUSH FUEL COULD BREAK LAW".

In an interview with Mr. George Williams, Senior Lecturer at the Australian National University, it was proposed that these compensatory packages could breach Section 99 of the Constitution, which forbids discriminating between regions in commerce, trade or revenue. This would be reversing the scenario, where some people in the bush would receive money from Revenue – as compensation admittedly – but still, not received by their counterparts in the City.

The Tax Office's Paul Tregillis, an assistant commissioner, says these fuel compensation programs have been set up as direct money grants to service stations and road transport interests, rather than rebates of G.S.T. or excise, *because the Constitution prohibited a regionally discriminatory tax.*

Mr. Williams, however, believes the High Court might still regard these grants as rebates of a discriminatory tax. Obviously, the principle is that even if some of the tax is handed back, if the original tax is discriminatory, it is illegal.

Consider this: all that fuss is only about fuel! What about everything else?

What do others have to say about the G.S.T. illegality?

Wayne Swan, Labor Federal Member for Lilley, was not in either, but the response from his office was "You have a valid point. We'll have to get back to you on that." *No reply has yet been received.*

Senator Hogg, Labor Senator for Queensland, was out too. His office: "That's a problem alright, can't respond to that."

A.T.O. Agent, G.S.T. Hotline: "That's a curly one. You'll have to put it in writing." *(It seems those in officialdom were taken by surprise.)*

Tony Murphy, IndBiz, representing small business associations: "The G.S.T. is an impost on the time and capital expenditure of small business. This latest anomaly only proves it is an ill-thought-out tax forced on the people of Australia against their will."

John McRobert, Tax Reform Ltd., representing alternative tax systems: "The logic of your point sounds good. In the interests of Australia, the G.S.T. must be put on hold until we come up with a better system, especially for small business. Delay would afford the opportunity for proper debate, which we have not yet had."

Jock Wallace, representing the Debit Tax Council of Australia Inc. "The G.S.T. certainly does contravene Section 51 (2) of the Constitution, and I believe it is illegal. The G.S.T. is a compliance nightmare invented by bureaucrats to benefit only Big Business, which can be the only reason the benefits of the Debit Tax were deliberately suppressed from public knowledge."

The Constitution specifically forbids any law imposing a tax which discriminates between parts of States, and the G.S.T. does just that! Whether or not compensation packages are later tacked on is irrelevant.

Even whether the compensation packages are legal or not is irrelevant.

The G.S.T. itself is illegal! *(end of article)*

The article above has caused widespread interest, with copies of ***The Bugle*** disappearing within hours of distribution. Rumour hath it that the article has caused anger and dismay in the highest circles in Canberra. Astonishingly, the National Party, which has always claimed to be a voice for the bush, has so far made no protest against a tax which mitigates heavily against its own constituency.

"ON TARGET" is printed and published by The Australian League of Rights, 145 Russell St., Melbourne.
Postal Address: GPO Box 1052J, Melbourne, 3001. Telephone: (03) 9650 9749, Fax: (03) 9650 9368.
Subscription $40.00 p.a.