

Chapter 2

Key issues

2.1 The committee received three submissions on the Bill. Two of those submissions were from statutory agencies with existing regulatory powers. Both of those agencies highlighted that their existing legislation provided them with appropriate and necessary regulatory powers and that the powers in the Bill were insufficient for their organisation. For example, ASIC suggested that:

If ASIC were required to rely on the powers in the Bill there would be a material reduction in the quantity, quality and scope of information that ASIC could gather. This would result in a direct and material adverse impact on the quantity, quality and scope of surveillances, enforcement and regulatory outcomes that ASIC presently delivers.¹

2.2 In similar evidence, the Fair Work Ombudsman (FWO) submitted that:

The investigative and monitoring powers under the Bill are distinctly different from those provided for in the Fair Work Act. There are also significant differences to the civil remedy provisions and important mechanisms in the Fair Work Act that are not included in the Bill...Should a decision be made to extend these standard regulatory powers to the FWO, we consider the FWO's capacity to deliver our statutory functions would be impeded.²

2.3 Nevertheless, the Attorney-General's Department has consistently argued that the Bill would not be applied universally as the regulatory powers in the Bill may not be appropriate for certain agencies. Specifically, the department explained:

In some cases the powers contained in this Bill will not be appropriate or sufficient for the requirements of particular regulatory agencies. For example, law enforcement agencies that deal with national security will still require their own specialised powers. Similarly, some regulatory agencies may have specific requirements not met in this Bill and consequently may decide to not trigger the Bill's provisions. Alternatively, agencies may choose to only trigger certain provisions that are relevant to carrying out their regulatory functions.³

Committee view

2.4 Two Bills were passed by the previous parliament, which have provisions that are contingent on the passage of this Bill.⁴ If this Bill passes, the National Offshore

¹ *Submission 1*, p. 2.

² *Submission 2*, p. 1.

³ EM p. 2.

⁴ *Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Act 2013*, and *Offshore Petroleum and greenhouse Gas Storage Amendment (Compliance Measures No. 2) Act 2013*.

Petroleum Safety and Environmental Management Authority (NOPSEM) would be the first agency to rely, in part, on the regulatory powers which are set out in this Bill.

2.5 Beyond NOPSEM, the committee notes that there is little detail from the Attorney-General's Department on how it intends to progressively implement the Bill and specifically which agencies have agreed that their legislation should be amended to trigger the Bill.

2.6 The committee notes that for the Bill to realise its intended deregulatory effect, legislation affecting multiple Commonwealth agencies would need to be amended to rely on this Bill. It would be useful for the Attorney-General's Department to provide more information on both their progress in discussions with other Commonwealth agencies and the specific areas of deregulation it has already identified.

Recommendation 1

2.7 The committee recommends that the EM be amended to provide more detail on the government's strategy for progressively implementing the Bill including outlining any discussions, proposals or agreements with other agencies to develop or amend legislation to trigger the provisions in the Bill.

The committee's previous consideration of the Bill

2.8 The committee considered the precursor to this Bill, the 2012 Bill, in March 2013. The committee recommended, subject to a number of amendments, that the 2012 Bill be passed.

2.9 The committee recommended in its March 2013 report:

Recommendation 1

2.36 The committee recommends that the Regulatory Powers (Standard Provisions) Bill 2013 be amended to remove the power to trigger the provisions of the Bill by regulation.⁵

2.10 The Bill before the committee has been amended to remove this power. Accordingly, the provisions of the Bill must be triggered through primary legislation.⁶ The explanatory memorandum accompanying the Bill stated that:

This will mean that any future legislation that proposes to trigger provisions in this Bill will be introduced and scrutinised by Parliament.⁷

2.11 In addition, the committee recommended in its March 2013 report:

Recommendation 2

2.37 The committee recommends that the Explanatory Memorandum to the Regulatory Powers (Standard Provisions) Bill 2012 be revised and reissued

⁵ Legal and Constitutional Affairs Legislation Committee, *Regulatory Powers (Standard Provisions) Bill 2012 [Provisions]*, March 2013, p. 16.

⁶ For example see section 7 of the Bill which provides that Part 2 does not apply unless legislation specifically enlivens the powers in that Part.

⁷ EM p. 2.

to stipulate that each time a bill is introduced into the parliament that provides for the triggering of the provisions in the Regulatory Powers (Standard Provisions) Bill 2012, this must be explicitly articulated and explained in the Explanatory Memorandum to the relevant bill.

Recommendation 3

2.37 The committee recommends that in the future, each time a bill is introduced into the parliament that seeks to trigger the provisions of the Regulatory Powers (Standard Provisions) Bill 2012, the Explanatory Memorandum to that bill must clearly set out the relevant agency's current regulatory powers, a comparison with the powers in the Regulatory Powers (Standard Provisions) Bill 2012 that will be triggered, and, in the case of any expansion of that agency's powers, a detailed explanation of the reasons for the expansions of the power.⁸

2.12 The EM to the Bill clearly addressed these recommendations. Specifically, the EM stated that:

For the regulatory provisions in this Bill to be activated, new or existing legislation would need to be amended to remove existing regulatory powers and trigger the provisions of this Bill....The Explanatory Memorandum to each Bill should clearly set out the relevant agency's current regulatory powers, a comparison with the powers in the Regulatory Powers Bill that will be triggered, and in the case of any expansion of the agency's powers, a detailed explanation of the reasons for the expansion of powers.⁹

2.13 The committee acknowledges that the government has considered the committee's previous recommendations in this iteration of the Bill. Accordingly, the committee recommends that the Bill be passed.

Recommendation 2

2.14 The committee recommends that the Bill be passed, but urges the government to seriously and urgently consider the preceding recommendation.

Senator the Hon Ian Macdonald

Chair

⁸ Legal and Constitutional Affairs Legislation Committee, *Regulatory Powers (Standard Provisions) Bill 2012 [Provisions]*, March 2013, p. 16.

⁹ EM p. 2.

