

CHAPTER 1

Introduction

Referral of the inquiry

1.1 On 21 June 2012, the Senate jointly referred the provisions of the Maritime Powers Bill 2012 and the provisions of the Maritime Powers (Consequential Amendments) Bill 2012 to the Senate Legal and Constitutional Affairs Legislation Committee (committee), for inquiry and report by 20 August 2012. The Senate subsequently agreed to extend the reporting date for this inquiry to 12 September 2012.¹

1.2 The two bills were introduced into the House of Representatives by the Attorney-General, the Hon Nicola Roxon MP (Attorney-General), on 30 May 2012, and passed through the House on 20 August 2012.² The bills were introduced into the Senate on 20 August 2012.³

Purpose of the bills

1.3 The purpose of the bills is to establish a framework for the exercise of maritime enforcement powers in Australian territories.

1.4 The Maritime Powers Bill 2012 (Maritime Powers Bill) seeks to consolidate and harmonise the Commonwealth's existing maritime enforcement regime, as well as to provide a single framework for use by Australia's on-water enforcement agencies. According to its Explanatory Memorandum (EM), the bill sets out:

- a system for authorising maritime officers to exercise powers in relation to vessels, installations, aircraft, protected land areas or isolated persons on certain grounds;
- the purposes for exercising maritime powers, their scope and geographical limits;
- the range of enforcement powers available to maritime officers once an authorisation is in place, such as: boarding; obtaining information; searching, detaining, seizing and retaining things; and moving and detaining persons (together, the maritime powers);
- the processes for dealing with things seized, retained or detained and persons held; and

1 *Journals of the Senate*, 20 August 2012, p. 2801.

2 *House of Representatives Votes and Proceedings*, 20 August 2012, p. 1708.

3 *Journals of the Senate*, 20 August 2012, p. 2806.

- offences for failure to comply with relevant requirements.⁴

1.5 The Maritime Powers (Consequential Amendments) Bill 2012 (Consequential Amendments Bill) seeks to amend five Acts to remove maritime enforcement powers which would be replaced by the proposed Maritime Powers Bill. The Acts which would be amended by the Consequential Amendments Bill are:

- the *Customs Act 1901*;
- the *Environment Protection and Biodiversity Conservation Act 1999*;
- the *Fisheries Management Act 1991*;
- the *Migration Act 1958*; and
- the *Torres Strait Fisheries Act 1984*.

Background

1.6 Australia's maritime environment is subject to law enforcement in the areas of customs and border protection, migration and fisheries management. For the purposes of law enforcement, Australia's maritime environment includes: the coastal sea of Australia; the territorial sea of Australia;⁵ certain offshore installations within Australia's maritime zones and any safety zone around such installations; Australia's external territories;⁶ and the airspace above the external territories, territorial seas, specified installations and safety zones.⁷

1.7 In its submission to the inquiry, the Australian Crime Commission outlined why maritime law enforcement powers in these areas are necessary:

Organised crime groups primarily exploit vulnerabilities in the maritime sector for the purposes of organised theft, the avoidance of duty on licit goods, and as the primary gateway into Australia for illicit drug importation. These activities can have [a] significant impact on Australia's economy and on the health, welfare, and safety of Australian citizens...

In order to combat the threats posed by serious and organised crime, Australia's maritime law enforcement and defence officers require the

4 EM, Maritime Powers Bill 2012, p. 3.

5 Australia's coastal waters are defined as the area extending three nautical miles from the coastline of the Australian mainland and external territories, while Australia's territorial sea is defined as the area extending 12 nautical miles from the coastline of the Australian mainland and external territories. For more information see Geoscience Australia, 'Australia's Maritime Zones', http://www.ga.gov.au/image_cache/GA3746.pdf (accessed 25 June 2012).

6 Australia's external territories comprise of the: Australian Antarctic Territory; Coral Sea Islands Territory; Territory of Norfolk Island; Territory of Ashmore and Cartier Islands; Territory of Heard Island and McDonald Islands; Territory of Cocos (Keeling) Islands; and Territory of Christmas Island.

7 EM, Maritime Powers Bill, p. 14.

requisite enforcement powers to investigate, interdict, and prosecute against organised crime in the maritime environment.⁸

1.8 In the Second Reading Speech to the Maritime Powers Bill, the Attorney-General noted that Commonwealth agencies currently operate in the maritime environment exercising powers and responsibilities contained in at least 35 separate Commonwealth Acts. The Attorney-General stated that this system is 'inefficient' and can lead to operational difficulties for the primary on-water enforcement agencies.⁹

1.9 The Attorney-General also emphasised that 'the powers contained in the bill are based on powers currently available to operational agencies', and that under the bill the role and functions of these agencies will not change.¹⁰

1.10 The reform to Australia's maritime enforcement laws was initially announced on 15 September 2009 by the then Attorney-General, the Hon Robert McClelland MP.¹¹ The decision to amend Australia's maritime enforcement laws was made following a review of Australia's homeland and border security in 2008 (the Smith review).¹²

Conduct of the inquiry

1.11 The committee advertised the inquiry in *The Australian* newspaper on 4 July 2012, and details of the inquiry, the bills and other associated documents were placed on the committee's website at www.aph.gov.au/senate/legalcon. The committee also wrote to a number of organisations and individuals, inviting submissions by 13 July 2012.

1.12 The committee received seven submissions for the inquiry. Submissions are listed at Appendix 1.

1.13 The committee held a public hearing for this inquiry on 10 September 2012 at Parliament House in Canberra. A list of witnesses who appeared at the hearing is at Appendix 2, and copies of the *Hansard* transcript are available through the committee's website.

8 *Submission 4*, p. 2.

9 *House of Representatives Hansard*, 30 May 2012, p. 8.

10 *House of Representatives Hansard*, 30 May 2012, p. 8.

11 The Hon Robert McClelland MP, Attorney-General, and the Hon Brendan O'Connor MP, Minister for Home Affairs, 'Reform of Maritime Enforcement Legislation', Joint Media Release, 15 September 2009.

12 Border Protection Command, *Homeland Security Review (Smith Review)*, <http://www.bpc.gov.au/site/homeland-security.asp> (accessed 9 August 2012).

Acknowledgement

1.14 The committee thanks those organisations who made submissions and gave evidence at the public hearing.