

**Senate Standing Committee**  
**for the**  
**Scrutiny of Bills**

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## Terms of Reference

### Extract from **Standing Order 24**

- (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 or the provisions of bills not yet before 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 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 on its terms of reference, may consider any proposed law or other document or information available to it, including an exposure draft of proposed legislation, notwithstanding that such proposed law, document or information has not been presented to the Senate.
- (c) The committee, for the purpose of reporting on term of reference (a)(iv), shall take into account the extent to which a proposed law relies on delegated legislation and whether a draft of that legislation is available to the Senate at the time the bill is considered.



## TABLE OF CONTENTS

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### Commentary on bills

Aboriginal and Torres Strait Islander Peoples Recognition (Sunset Extension) Bill 2015	1
• Appropriation Bill (No. 3) 2014-2015	2
• Appropriation Bill (No. 4) 2014-2015	7
Appropriation Bill (Parliamentary Departments) Bill (No. 2) 2014-2015	9
Australian Centre for Social Cohesion Bill 2015	10
• Biosecurity Bill 2014	11
• Biosecurity (Consequential Amendment and Transitional Provisions) Bill 2014	27
• Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2015	28
• Criminal Code Amendment (Animal Protection) Bill 2015	29
Public Governance and Resources Legislation Amendment Bill (No. 1) 2015	33
• Quarantine Charges (Imposition—Customs) Amendment Bill 2014	34
• Quarantine Charges (Imposition—Excise) Amendment Bill 2014	35
• Quarantine Charges (Imposition—General) Amendment Bill 2014	36

- **The Committee has commented on these bills**

This Digest is circulated to all Honourable Senators. Any Senator who wishes to draw matters to the attention of the committee under its terms of reference is invited to do so.

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<b>Commentary on amendments to bills</b>	
• Acts and Instruments (Framework Reform) Bill 2014	37
• Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014	37
• Environment Legislation Amendment Bill 2013	38
Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014	38
• Tax Laws Amendment (Research and Development) Bill 2013	38
<b>Scrutiny of standing appropriations</b>	<b>39</b>

**Senate Standing Legislation Committee Inquiries**

The committee will forward any comments it has made on a bill to any relevant legislation committee for information.

- **The Committee has commented on these bills**

This Digest is circulated to all Honourable Senators.  
Any Senator who wishes to draw matters to the attention of the committee under its terms of reference is invited to do so.

## **Aboriginal and Torres Strait Islander Peoples Recognition (Sunset Extension) Bill 2015**

Introduced into the House of Representatives on 25 February 2015

Portfolio: Prime Minister

### **Background**

This bill amends the *Aboriginal and Torres Strait Islander Peoples Recognition Act 2013* (the Act) to extend the sunset date of the Act by three years to 28 March 2018.

*The committee has no comment on this bill.*

## **Appropriation Bill (No. 3) 2014-2015**

Introduced into the House of Representatives on 12 February 2015  
Portfolio: Finance

### **Background**

This bill provides for additional appropriations from the Consolidated Revenue Fund for the ordinary annual services of the government in addition to the appropriations provided for by the *Appropriation Act (No. 1) 2014-2015*.

### **Insufficient parliamentary scrutiny of legislative power Various provisions**

The inappropriate classification of items in appropriation bills as ordinary annual services when they in fact relate to new programs or projects undermines the Senate's constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the government. The issue is relevant to the committee's role in reporting on whether the exercise of legislative power is subject to sufficient parliamentary scrutiny (see Senate standing order 24(1)(a)(v)).

By way of background, under section 53 of the Constitution the Senate cannot amend proposed laws appropriating revenue or moneys for the ordinary annual services of the government. Further, section 54 of the Constitution provides that any proposed law which appropriates revenue or moneys for the ordinary annual services of the government shall be limited to dealing only with such appropriation. Noting these provisions, the Senate Standing Committee on Appropriations and Staffing has kept the issue of items possibly inappropriately classified as ordinary annual services of the government under active consideration over many years (50<sup>th</sup> Report, p. 3).

The distinction between appropriations for the ordinary annual services of the government and other appropriations is reflected in the division of proposed appropriations into pairs of bills—odd-numbered bills which should only contain appropriations for the ordinary annual services of the government and even-numbered bills which should contain all other appropriations (and be amendable by the Senate). However, the Appropriations and Staffing

Committee has noted that the division of items in appropriation bills since the adoption of accrual budgeting has been based on a mistaken assumption that any expenditure falling within an existing departmental outcome should be classified as ordinary annual services expenditure (45<sup>th</sup> Report, p. 2). The Senate has not accepted this assumption.

As a result of continuing concerns relating to the misallocation of some items, on 22 June 2010 (in accordance with a recommendation made in the 50<sup>th</sup> Report of the Appropriations and Staffing Committee), the Senate resolved:

- 1) To reaffirm its constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the Government; [and]
- 2) That appropriations for expenditure on:
  - a) the construction of public works and buildings;
  - b) the acquisition of sites and buildings;
  - c) items of plant and equipment which are clearly definable as capital expenditure (but not including the acquisition of computers or the fitting out of buildings);
  - d) grants to the states under section 96 of the Constitution;
  - e) new policies not previously authorised by special legislation;
  - f) items regarded as equity injections and loans; and
  - g) existing asset replacement (which is to be regarded as depreciation),

are not appropriations for the ordinary annual services of the Government and that proposed laws for the appropriation of revenue or moneys for expenditure on the said matters shall be presented to the Senate in a separate appropriation bill subject to amendment by the Senate.

There were also two other parts to the resolution: the Senate clarified its view of the correct characterisation of payments to international organisations and, finally, the order provided that all appropriation items for continuing activities, for which appropriations have been made in the past, be regarded as part of ordinary annual services. (*Journals of the Senate*, 22 June 2010, pp 3642–3643).

The committee concurs with the view expressed by the Appropriations and Staffing Committee that if ‘ordinary annual services of the government’ is to include items that fall within existing departmental outcomes then:

...completely new programs and projects may be started up using money appropriated for the ordinary annual services of the government, and the Senate [may be] unable to distinguish between normal ongoing activities of government and new programs and projects or to identify the expenditure on each of those areas. (45<sup>th</sup> Report, p. 2).

The Appropriations and Staffing Committee considers that the solution to any inappropriate classification of items is to ensure that new policies for which no money has been appropriated in previous years are separately identified in their first year in the appropriation bill that is not for the ordinary annual services of the government (45<sup>th</sup> Report, p. 2).

Despite these comments and the Senate resolution of 22 June 2010, it appears that a reliance on existing broad ‘departmental outcomes’ to categorise appropriations, rather than on individual assessment as to whether an appropriation relates to a new program or project, continues and appears to be reflected in the allocation of some items in the most recent appropriation bills.

For example, it seems that the initial expenditure in relation to the following items in the Health portfolio may have been inappropriately classified as ordinary annual services (and therefore included in Appropriation Bill (No. 3) 2014-2015, which is not amendable by the Senate):

- Gold Coast Suns AFL Club — upgrade of Metricon Stadium facilities (Mid-Year Economic and Fiscal Outlook 2014-15, p. 167)
- South Sydney Rabbitohs Community and High Performance Centre of Excellence — contribution (Mid-Year Economic and Fiscal Outlook 2014-15, p. 172)

The committee wrote to the Minister for Finance in relation to this general matter following tabling of its *Alert Digest No. 7 of 2014* (which included consideration of Appropriation Bill (No. 1) 2014-2015). The Minister’s response was considered and published in the committee’s *Tenth Report of 2014* (at pp 402–406). In that report the committee noted that the government does not intend to reconsider its approach to the classification of items that constitute ordinary annual services of the government.

**The committee reiterates its agreement with the comments made on this matter by the Senate Standing Committee on Appropriations and Staffing, and in particular that the division of items in appropriation bills since the adoption of accrual budgeting has been based on a mistaken assumption that any expenditure falling within an existing outcome should be classified as ordinary annual services expenditure. The history of this matter set out in Appendix 1 to the Appropriation and Staffing Committee's 2005-06 Annual Report shows that the Senate has not accepted this mistaken assumption.**

**The committee further notes that the current approach to the classification of ordinary annual services expenditure in appropriation bills is not consistent with the Senate resolution of 22 June 2010.**

**The committee draws the 2010 Senate resolution to the attention of Senators and notes that the inappropriate classification of items in appropriation bills undermines the Senate's constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the government. Such inappropriate classification of items impacts on the Senate's ability to effectively scrutinise proposed appropriations as the Senate may be unable to distinguish between normal ongoing activities of government and new programs or projects.**

**The committee draws this matter to the attention of Senators as it appears that the initial expenditure in relation to some items in the additional estimates bills may have been inappropriately classified as ordinary annual services (and therefore included in Appropriation Bill (No. 3) 2014-2015 which is not amendable by the Senate).**

**The committee also seeks the Minister's advice in relation to whether any further consideration has been given to addressing this issue and whether the government considers that the two measures in the Health portfolio identified above may have been inappropriately classified as ordinary annual services of the government.**

*The committee draws Senators' attention to this matter, as the current approach to the classification of ordinary annual services expenditure in appropriation bills may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee's terms of reference.*

## Appropriation Bill (No. 4) 2014-2015

Introduced into the House of Representatives on 12 February 2015

Portfolio: Finance

### Background

This bill provides for additional appropriations from the Consolidated Revenue Fund for certain expenditure in addition to the appropriations provided for by the *Appropriation Act (No. 2) 2014-2015*.

### Delegation of legislative power

#### Clause 14

Clause 14 of the bill deals with the Parliament's power under section 96 of the Constitution to provide financial assistance to the States. Section 96 states that '...the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit.'

Clause 14 of this bill delegates this power to the relevant Minister, and in particular, provides the Minister with the power to determine:

- conditions under which payments to the States, ACT, NT and local government may be made: clause 14(2)(a); and
- the amounts and timing of those payments: clause 14(2)(b).

Subclause 14(4) provides that determinations made under subclause 14(2) are not legislative instruments. The explanatory memorandum (at p. 12) states that this is:

...because these determinations are not altering the appropriations approved by Parliament. Determinations under subclause 14(2) will simply determine how appropriations for State, ACT, NT and local government items will be paid. The determinations are issued when required. However, payments can be made without either determination.

While the explanatory memorandum states that these determinations do not alter the appropriations approved by the Parliament, it is not clear to the committee exactly what is contained in such determinations. In addition, it is not clear whether the determinations are published and made publicly available. As a result, it is not possible for the committee to accurately assess

the nature and character of these Executive determinations. The committee notes that provisions similar to clause 14 have been a regular feature of previous appropriation bills. **However, noting the above comments and the terms of section 96 of the Constitution which provides that ‘...the Parliament may grant financial assistance to any State on such terms and conditions as the Parliament thinks fit’ [emphasis added], the committee seeks the Minister’s advice in relation to:**

- **the content of such determinations;**
- **whether the determinations are published and made publicly available;**
- **how any terms or conditions applying to payments made under these determinations are formulated;**
- **how ‘payments can be made without either determination’ (as indicated at p. 12 of the explanatory memorandum); and**
- **how grants made pursuant to these determinations fit into the wider scheme of making s 96 grants to the States, including, for example, grants of financial assistance to a State made under subparagraph 32B(1)(a)(ii) of the *Financial Framework (Supplementary Powers) Act 1997* (noting that regulations made under the Supplementary Powers Act are disallowable, while subclause 14(4) of this bill provides that determinations made under subclause 14(2) are not legislative instruments and are therefore not disallowable).**

*Pending the Minister’s reply, the committee draws Senators’ attention to the provision, as it may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee’s terms of reference.*

## **Appropriation Bill (Parliamentary Departments) Bill (No. 2) 2014-2015**

Introduced into the House of Representatives on 12 February 2015

Portfolio: Finance

### **Background**

This bill appropriates additional funding to the Department of Parliamentary Services in addition to the appropriations provided for by the *Appropriation (Parliamentary Departments) Act (No. 1) 2014-2015*.

*The committee has no comment on this bill.*

## **Australian Centre for Social Cohesion Bill 2015**

Introduced into the Senate on 9 February 2015

By: Senator Milne

### **Background**

This bill establishes the Australian Centre for Social Cohesion, a national centralised body to develop and implement key preventative programs to stop young Australians from becoming radicalised.

*The committee has no comment on this bill.*

## **Biosecurity Bill 2014**

Introduced into the House of Representatives on 27 November 2014

Portfolio: Agriculture

### **Background**

This bill provides the regulatory framework to manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health.

This bill is substantially similar to the bill that was introduced into the House of Representatives on 28 November 2012. This Alert Digest includes the committee's previous comments to the extent that they are applicable to this bill.

### **Delegation of legislative power—disallowance**

#### **Various**

The bill contains a large number of provisions which provide that certain instruments to be made under the bill are exempt from disallowance pursuant to section 42 of the *Legislative Instruments Act 2003* (the LIA Act). The explanatory memorandum gives a general justification for the approach which points to the technical and scientific decisions that underpin the making of the relevant instruments. It is argued that disallowance would inappropriately interfere with the capacity of expert decision-makers to manage biosecurity risks. In some cases the explanatory memorandum reiterates this argument in the context of particular provisions.

The provisions which exempt instruments from disallowance pursuant to section 42 of the LI Act are:

- subclause 42(3)
- subclause 44(3)
- subclause 45(3)
- subclause 49(2)
- subclause 50(2)
- subclause 110(3)
- subclause 112(3)
- subclause 113(7)

- clause 234
- subclause 256(3)
- subclause 365(4)
- subclause 384(4)
- subclause 395(4)
- subclause 443(2)
- subclause 444(2)
- subclause 445(2)
- subclause 475(2)
- subclause 476(2)
- subclause 477(2)
- subclause 543(1)
- subclause 618(7)

**The committee notes the justification that disallowance would interfere with the capacity of expert decision-makers to manage biosecurity risks, draws the provisions to the attention of the Senate and leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.**

*The committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee's terms of reference.*

## **Delayed Commencement**

### **Clause 2**

It is intended that the majority of the clauses will commence 12 months after Royal Assent. The explanatory memorandum contains a detailed and satisfactory explanation for this approach. The rationale centres around the importance of allowing sufficient time for the education of affected persons and for adequate training of biosecurity officials. The delayed commencement will also allow time for consultation with state and territory governments regarding shared obligations under the Act.

*The committee therefore makes no further comment about this issue.*

## **Trespass on personal rights and liberties—fairness Clauses 11 and 530**

In relation to an import permit or approved arrangement, clause 11 defines the term ‘associate’ very broadly to include a person who was or is engaged in the business of the first person and also to include specified familial relationships, including a cousin, aunt, uncle, nephew or niece. In determining whether a person is a fit and proper person under clause 530 (for the purpose of exercising a number powers, such as decisions relating to permits and proposed arrangements) the Director of Biosecurity or Director of Human Biosecurity must have regard to relevant matters in relation the first person (i.e. the person directly affected) but also in relation to their ‘associates’.

The justification for considering the actions or circumstances of associates in applying the fit and proper person tests given is that:

An import permit or an approved arrangement is a privilege rather than a right and means that the person is allowed to do certain things the general public are not allowed to do. It is important that such persons are considered fit and proper to be able to conduct these activities and that there is no reason to believe that the person will not operate within the scope of their approval or adhere in any conditions or requirements that are placed on it. (explanatory memorandum, p. 318)

It may be accepted that the purpose of withholding such a privilege to a person where they may act on the behalf of an associate who is not a fit and proper person is a legitimate one. However, there is a question of fairness that may arise given the breadth of the definition of ‘associate’. There may be circumstances where a person is denied a privilege, to which they would otherwise have access, on the basis of an ‘associate’ with whom they have no meaningful and/or relevant association.

**The committee therefore seeks the Minister’s advice as to how this problem of unfairness will be dealt with in practice and whether consideration has been given to legislative requirements to minimise this risk.**

*Pending the Minister’s reply, the committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference.*

## Delegation of legislative power—disallowance Subclause 51(4)

Subclause 51(4) provides that a determination by the Health Minister that specifies one or more biosecurity measures to be taken by specified persons (the categories of measures which may be specified are listed in subclause 51(2)) is exempt from section 42 of the *Legislative Instruments Act 2003* (the LI Act), relating to disallowance. Biosecurity measures may not be required unless the Minister ‘is satisfied that the biosecurity measure is appropriate and adapted to prevent, or reduce the risk of, the disease entering, or emerging, establishing itself or spreading in, Australian territory or a part of Australian territory’. However, the measures that may be required are broadly framed and may limit important personal rights and liberties. Measures may ban or restrict a ‘behaviour or practice’, require a ‘behaviour or practice’, require a specified person to provide a report or keep specified records, or to conduct specified tests on specified goods.

In relation to this exemption from the normal disallowance provision of the LI Act, it is noted that determinations are intended to ‘provide temporary management of a human biosecurity risk within a state or territory, until the state or territory is able to create provisions within their own legislation to manage the risk in the long term’ (see the explanatory memorandum at page 103). Determinations have a maximum duration of 12 months (subclause 51(6)). It is also the case that before a determination is made the Health Minister must consult with the relevant Minister of each State and Territory and the Director of Biosecurity.

The committee notes that ‘biosecurity measures’ may limit important personal rights and liberties, but **in light of the detailed explanation provided the committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.**

*The committee draws Senators’ attention to this provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference; and it may also be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee’s terms of reference.*

**Trespass on personal rights and liberties**  
**Clauses 32 and 34, subclause 447(1)**

These clauses outline a list of factors of which relevant biosecurity officials must be satisfied before exercising powers specified in the bill. These factors, broadly speaking, require decision-makers to be satisfied that measures taken will be effective and proportionate responses to particular risks. However, there is no additional requirement that there be reasonable grounds to justify the decision-maker's satisfaction of the relevant matters. It may be noted that exercise of the specified powers under the bill are apt to significantly restrict individual rights and liberties.

The same issue also arises in relation to the matters the Minister must be satisfied of in subclause 447(1).

**The committee therefore seeks the Minister's advice as to whether consideration has been given to amending the bill to require the decision-maker to be satisfied on reasonable grounds that the various criteria for the exercise of power are met.**

*Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

**Trespass on personal rights and liberties—strict liability**  
**Clause 58**

This provision makes it an offence of strict liability for a person who is required under Chapter 2, Part 2, Division 6 of the bill to answer a question or provide written information to fail to answer the question or provide the information. The information that may be requested must relate to determining the level of risk to human health associated with the individual (subclause 55(2)). In relation to the power under clause 56 to require questions and answers from 'any individual' the requirement to provide answers or written information must be for the purpose of preventing a listed human disease from entering, or emerging, establishing itself or spreading in Australia, preventing such a disease from spreading to another country or determining the level of risk to human health associated with the relevant individual. The explanatory memorandum addresses the justification for the

strict liability offences in the bill in a general sense however, no mention is made of clause 58 (see pp 14–15).

The committee notes that strict liability offences are appropriate in certain circumstances including ‘for reasons such as public safety and the public interest in ensuring that regulatory schemes are observed’. It is further noted where the application of strict liability to certain offences in the bill has departed from the principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* the explanatory memorandum states that these departures have been approved by the Attorney-General. In addition, the committee notes that the penalty of 60 penalty units is consistent with the maximum penalties recommended in the Guide.

However, as it is possible that persons subject to requirements to answer questions may have recently arrived in Australia and may also be suffering from an illness, there may be instances where they are not reasonably able to comply with a request to answer questions or provide information as required. **The committee therefore seeks a fuller justification of the application of strict liability in this instance.**

*Pending the Minister’s reply, the committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference.*

## **Delegation of legislative power**

### **Subclause 91(3)**

Subclause 91(2) provides that an individual who has undergone an examination pursuant to clause 90 ‘may be required...to provide...specified body samples for the purpose of determining the presence in the individual of’ specified human diseases. Subclause 91(3) provides that the ‘regulations must prescribe requirements for taking, storing, transporting, labelling and using body samples provided under subsection (2)’. The Note to this provision states that the regulations may prescribe offences and civil penalties in relation to these requirements concerning body samples. The explanatory memorandum does not indicate why these important and sensitive issues cannot be appropriately dealt with in the primary legislation. It is important that safeguards in relation to these matters should be put in place and it is not clear

why these should be dealt with in delegated legislation. **The committee therefore seeks advice from the Minister as to why these issues should not be dealt with expressly in the bill.**

*Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

## **Trespass on personal rights and liberties—liberty and freedom of movement**

### **Clauses 96 and 97**

Clause 96 provides that an individual may, for no more than 28 days, be required by a human biosecurity officer not to leave Australian territory on an outgoing passenger aircraft or vessel. This clause is said to be necessary to comply with Australia's international health obligations under the International Health Regulations. Clause 97 provides that an individual may be required by a human biosecurity officer to remain isolated at a medical facility.

Obviously these provisions limit individual liberty and freedom of movement. It is equally clear that the purpose of these provisions is to mitigate the risk of spreading communicable diseases by preventing a person suspected of having a listed human disease from travelling on an overseas passenger aircraft or vessel or by restricting such a person's movement within Australia. Although the exercise of these powers does not require consent, the underlying objective being pursued is clearly of importance. It noted in the explanatory memorandum (at page 119) that it is intended that such measures be measures of last resort (see also statement of compatibility at page 28) and they are only expected to be used approximately two to three times per year.

In considering whether the approach is proportionate and justified, the following matters are noted. First, travel movement measures only apply to overseas passenger aircraft and vessels (though there are unlikely to be, in most instances, practical alternatives to such means of leaving Australia). The power can only be exercised by a chief human biosecurity officer or human biosecurity officer (see the explanatory memorandum at page 28), who are officers with medical expertise.

Subclause 101(2) provides that in enforcing a traveller movement measure an ‘officer of Customs must not use more force, or subject the person to greater indignity, than is necessary and reasonable to prevent the individual from boarding the aircraft or vessel’. (In respect of this provision, the statement of compatibility, at page 23, appears to conclude that the approach is consistent with the right to freedom from torture and cruel, inhuman or degrading treatment.)

Clause 102 provides that where a non-citizen is subject to a measure in a human biosecurity control order that requires them to remain at a place or to be isolated, or to be detained under clause 103, they must be informed of their right to request consular assistance. Finally, subdivision D of Division 2 of Part 3 of Chapter 2 of the bill provides for appeal rights to the AAT; subdivision E confirms the availability of judicial review under the *Administrative Decisions (Judicial Review) Act 1977* (judicial review would also be available under s 75(v) of the Constitution and section 39B of the *Judiciary Act 1903*).

**In these circumstances the committee draws the Senate’s attention to the impact these measures may have on important liberty interests, but leaves to the Senate as a whole consideration as to whether the approach taken reflects an appropriate balance between the competing interests and whether the limits on personal rights is proportionate to the legitimate objectives being pursued.**

*The committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference.*

### **Trespass on personal rights and liberties—privacy**

#### **Clause 98**

Subclause 98(1) requires the Director of Human Biosecurity to notify a number of specified agencies or departments that a traveller movement measure has been applied. Further, subclause 98(3) enables the Director to notify any one or more operators of outgoing passenger aircraft or vessels, State or Territory agencies responsible for the administration of health services, and any State Party’s national *IHR Focal point* (within the meaning of the International Health Regulations).

In justification of this approach, the statement of compatibility states, at page 43:

To protect an individual's privacy, the alert is restricted to the specified Commonwealth bodies, all of whom have responsibility relating to the movement of conveyances, goods and passengers into and from Australia. In addition, clause 98 restricts the information which can be shared to ensure that only the information necessary to clearly identify the individual subject to the measure, and any known travel details of that individual.

A travel movement measure alert informs the responsible Commonwealth bodies to ensure ill passengers are prevented from boarding a passenger airline or vessel. This manages the risk of contagion to other passengers in the confines of a passenger aircraft or vessel, and the risk of spread of a Listed Human Disease to another country. To protect an individual's privacy and reputation, clause 98 specifies that traveller movement measure alerts must be destroyed within 6 months of no longer being in force.

**In light of this explanation the committee leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.**

*The committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

### **Trespass on personal rights and liberties—detention Clause 103**

Clause 103 provides that a law enforcement officer may detain an individual if they fail to comply with a requirement to remain at a place (clause 68), or if they fail to comply with an isolation measure that has been affirmed after review by the Director of Human Biosecurity. The statement of compatibility notes that law enforcement officers will 'have sufficient training and skills to ensure the power is exercised in line with Commonwealth guidelines'.

A person detained for failing to comply with an isolation measure may only be detained for the purpose of taking the individual to the medical facility referred to in clause 97 (subclause 103(2)). Before detention is authorised a human biosecurity officer or chief human biosecurity officer must be satisfied of the matters in paragraphs 34(2)(a) to (f) (i.e. the general principles designed

to ensure that decision-making is effective and proportionate) and that the detention is necessary because, without detention, the individual may pose a significant risk of contagion (paragraph 103(1)(b)).

It is also important to note that the bill includes a requirement that a person detained must be advised of their right to contact anyone, including a legal representative, and be provided with reasonable facilities to exercise that right (subclauses 104(3) and (4)). The use of force is limited to force which is no more than is necessary and reasonable (subclause 104(1)), and detention must be in a place which affords, in the detaining officer's opinion, adequate individual personal privacy (subclause (104(2)). Further, a person detained for failing to comply with an isolation measure must only be detained for the purpose of moving the ill individual to a specified medical facility so that they may be assessed and treated.

**In these circumstances the committee draws the Senate's attention to the impact these measures may have on important liberty interests, but leaves to the Senate as a whole consideration as to whether the approach taken reflects an appropriate balance between the interest in individual liberty and the protection of the public from contagious diseases.**

*The committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

### **Trespass on personal rights and liberties—reversal of burden of proof**

#### **Subclauses 120(4) and 193(3)**

Subclause 120(4) provides that the regulations may prescribe exceptions to the requirement to give a notice under clause 120 (notice of goods to be unloaded in Australian territory). The details to be included in the notice are also to be prescribed in the regulations, and failure to comply is a fault based offence (penalty: 2 years imprisonment or 120 penalty units). The Note to subclause 120(4) states that a defendant bears an evidential burden in relation to any exceptions prescribed for the purposes of this subsection. It is difficult to assess the appropriateness of placing an evidential burden without more information about the nature of the exceptions.

A similar issue arises in relation to subclause 193(3).

**The committee therefore seeks further information about whether the exceptions to be prescribed will be consistent with defendants bearing an evidential burden according to the principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.**

*Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

### **Trespass on personal rights and liberties—penalties Clause 270**

This clause creates an offence for discharging ballast water by a person in charge of a vessel in Australian seas. The maximum penalty is 2000 penalty units for the fault-based offence and 500 penalty units for a strict liability version of the offence (see comments in relation to strict liability below).

The penalties are, as acknowledged in the explanatory memorandum, higher than those recommended by the *Guide for Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. It is explained that the high penalty 'is appropriate as it reflects the severity of the potential consequences of an offence.' It is further noted that:

...the offence and level of penalty are consistent with the offences in section 21 of the Protection of the Sea (Prevention of Pollution from Ships) Act which relate to discharging substances into the sea. These provisions are consistent with the Australian Government's international obligations to protect the marine environment.

A court would still be able to consider the significance of the offence, the intent of the person and determine whether a lesser penalty than the maximum should be applied. (explanatory memorandum, pp 200–201)

**In light of the explanation of the approach taken, the committee leaves the question of whether the proposed approach is appropriate to the Senate as a whole.**

*The committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

**Trespass on personal rights and liberties—strict liability  
Clause 270**

The creation of a strict liability offence in relation to the impugned conduct is justified by reference to a strong public interest in the prevention of pollution from ballast water and because 'the person in charge or the operator of a vessel can be reasonably expected to know about the restrictions imposed on the discharge of ballast water because of their professional expertise' (explanatory memorandum, p. 201). It is also noted that the bill contains number of exceptions (see Division 3 of Part 3 of Chapter 5).

**In light of the explanation of the approach taken (see also statement of compatibility at pages 38–39), the committee leaves the question of whether the proposed approach is appropriate to the Senate as a whole.**

*The committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

**Rights and liberties made unduly dependent on insufficiently defined administrative power  
Clauses 443 and 475**

Clause 443 enables the Governor-General to declare a 'biosecurity emergency' if the Agriculture Minister is satisfied (1) that a disease or pest poses a severe and immediate threat or is causing harm to animal or plant health, the environment, or economic activities related to animals, plants or the environment, and (2) that the declaration is necessary to prevent or control the establishment or spread of the disease or pest in Australian territory.

It is noted that this is a very significant power as once exercised it authorises the exercise of a number of 'potentially invasive' powers during the period of the emergency declaration (which may be no longer than is necessary, but in any case not longer than three months). Such powers include the power to enter premises without a warrant or consent (see explanatory memorandum at p. 45). It is also the case that the operation of some other powers granted

under the bill may have a modified operation when an emergency has been declared (e.g. merits review is not available in some circumstances where it otherwise would be—see clause 469).

Emergency declarations are not disallowable instruments for the purposes of the *Legislative Instruments Act 2003* (subclause 443(2)) though they are legislative instruments. Subclause 443(3) requires a biosecurity emergency declaration to specify the disease or pest to which the declaration relates and the nature of the emergency and the conditions that gave rise to it. Requiring this information will facilitate a level of parliamentary scrutiny despite the fact that declarations are not subject to disallowance.

A similar issue arises in relation to clause 475 which empowers the Governor-General to declare that a human biosecurity emergency exists.

**In light of the detailed explanations provided, the committee leaves the question of whether the proposed approach is appropriate to the Senate as a whole.**

*The committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the committee's terms of reference.*

### **Inappropriate delegation of legislative power**

#### **Subclauses 445(4) and 446(4), and subclauses 477(5) and 478(4)**

Under clauses 445 and 446 the Agriculture Minister may determine requirements, directions and actions if satisfied that the measure is appropriate and adapted (i.e. proportionate) to the prevention or control of the establishment or spread of the specified disease or pest. These measures are wide-ranging and subclauses 445(4) and 446(4) provide that they are to have effect 'despite any provision of any other Australian law'. The explanatory memorandum explains that this means that a person who acts in accordance with these measures will not be liable for any contravention of any other law. However, these clauses do not 'override any other Australian law', which means that unless a person complying with a measure conflicts with another law, that law will continue to be in force (at pp 276 and 277).

Although these subclauses enable non-disallowable executive determinations to modify legal obligations under other legislation, the committee accepts that whether this is justified depends on balancing the importance of parliamentary scrutiny of changes in legal rights and obligations against the Commonwealth's ability to manage nationally significant biosecurity risks by implementing 'the fast and urgent action necessary to manage a threat or harm to Australia's local industries, economy and the environment' (see the explanatory memorandum at page 276).

The same issue arises in relation to subclauses 477(5) and 478(4).

**In light of the detailed explanations for these provisions the committee leaves the appropriateness of these powers to the consideration of the Senate as a whole.**

*The committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the committee's terms of reference.*

## **Trespass on personal rights and liberties—entry without consent or warrant**

### **Clause 470**

This clause allows biosecurity officers and biosecurity enforcement officers to enter any premises for the purposes of exercising a number of specified powers enabling the assessment and management of biosecurity risks during a biosecurity emergency period. The justification for these extraordinary powers is that there is a 'nationally significant threat or harm being posed by the declaration disease or pest to Australia's plant health, animal health, the environment or related economic activities' (explanatory memorandum at p. 290). The explanatory memorandum illustrates these risks by citing the costs estimated to be incurred were there to be an outbreak of foot-and-mouth disease in Australia (p. 290).

It is noted that entry to premises under this clause would only be authorised if the officers suspected on reasonable grounds that the declaration disease or pest may be present in or on the premises or goods on the premises. It is also a requirement that a biosecurity enforcement officer accompany a biosecurity officer for the purposes of assisting in entering the premises and exercising the

associated powers. There is a discussion of the general approach and justification in the explanatory memorandum at pages 16–17. **The committee leaves the general issue of whether entry without consent or warrant is justifiable in the context of a biosecurity emergency having been declared, to the consideration of the Senate as a whole.**

Nevertheless, the bill could contain further accountability mechanisms to minimise the likelihood of any abuse of these powers. Although the explanatory memorandum suggests that ‘administrative arrangements will be put in place to ensure that senior executive authorisation is given before the power is exercised and there are appropriate reporting requirements’, it is of concern that these requirements are not included in the bill. **As there is no explanation for relegating these important issues to ‘administrative arrangements’, the committee requests that the Minister includes appropriate requirements relating to authorisation and reporting in the bill, and seeks the Minister’s advice in this regard.**

*Pending the Minister’s reply, the committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference.*

### **Insufficiently defined administrative power Subclause 541(3)**

This subclause provides that the Director of Biosecurity may do anything incidental or conducive to the performance of his or her functions or exercise of his or her powers. The explanatory memorandum indicates that this power is ‘intended to give flexibility to the Director to ensure that the functions and powers of the Director can be exercised to their full effect’ (p. 323). However, given the broad ranging nature of the Director’s functions and powers it is unclear what additional functions and powers this provision may confer or why it is necessary. To better assess what further powers might be conferred by this subclause and whether it is sufficiently defined in light of the manner in which the Director’s actions and decisions are liable to affect personal rights and liberties, **the committee seeks the Minister’s further advice in relation to the intended operation of the provision. The committee may be assisted if it is possible to give examples of situations in which reliance on this subclause as a source of legal authority for the decisions and actions of the Director may be necessary.**

*Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the committee's terms of reference.*

## **Trespass on personal rights and liberties—privilege against self-incrimination**

### **Clause 635**

The privilege against self-incrimination is abrogated in relation to a number of provisions in the bill (listed in subclause 635(1)) that would require a person to answer a question, provide information or produce a document. However, subclause 635(2) provides that information gathered is subject to a use and derivative use immunity, which means that it cannot be used either directly or indirectly as evidence against the person in court proceedings (criminal or civil). (This is subject to a standard exception in relation to prosecution for offences for the provision of false and misleading information or documents.) The explanatory memorandum sets out a comprehensive justification for the abrogation of the privilege (at pp 365–366). The importance of timely access to documents and information to manage biosecurity risks and the high risks to human health, the environment and the economy are emphasised. **In light of the use and derivative use immunities and this detailed explanation, the committee leaves the question of whether the proposed approach is appropriate to the Senate as a whole.**

*The committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

## **Biosecurity (Consequential Amendment and Transitional Provisions) Bill 2014**

Introduced into the House of Representatives on 27 November 2014

Portfolio: Agriculture

### **Background**

This bill makes transitional and consequential provisions to support the commencement of the Biosecurity Bill as it replaces the *Quarantine Act 1908* as the Commonwealth's primary biosecurity legislation.

### **Delegation of legislative power—Henry VIII clause Part 10, item 84**

Henry VIII clauses enable delegated or subordinate legislation to override the operation of legislation which has been passed by the Parliament. The concern is that such clauses may subvert the appropriate relationship between the Parliament and the Executive branch of government. It is the practice of the committee to comment on so-called Henry VIII clauses when the rationale for their use is not clear. In this instance, a detailed explanation is provided for the approach (see explanatory memorandum, pp 66–67) and the committee therefore makes no further comment.

*In the circumstances, the committee makes no further comment on this matter.*

## **Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2015**

Introduced into the Senate on 12 February 2015

By: Senators Milne and Xenophon

### **Background**

This bill amends the *Competition and Consumer Act 2010* to:

- create specific requirements for country of origin labelling for food;
- extend country of origin labelling to all packaged and unpackaged food for retail sale;
- restrict the range of labelling to three kinds of labelling claims; and
- create penalties and defences.

The bill also amends the *Imported Food Control Act 1992* to make consequential amendments.

### **Delayed commencement**

#### **Clause 2**

This clause provides that the Act will come into effect the day after the end of the period of 12 months after Royal Assent. The delayed commencement is 'provided to allow sufficient time of affected businesses and organisations to transition to the new labelling requirements. In light of this explanation, the committee makes no additional comment on the delay in commencement.

*In the circumstances, the committee makes no further comment on this matter.*

## **Criminal Code Amendment (Animal Protection) Bill 2015**

Introduced into the Senate on 11 February 2015

By: Senator Back

### **Background**

This bill amends the *Criminal Code Act 1995* to:

- insert new offences in relation to failure to report a visual recording of malicious cruelty to domestic animals, and interference with the conduct of lawful animal enterprises; and
- make consequential amendments.

### **Undue trespass on personal rights and liberties—reversal of burden of proof**

#### **Schedule 1, item 1, proposed subsection 383.5(3)**

This proposed subsection provides that the defendant will bear an evidential burden in relation to making out the matter in paragraph 383.5(1)(c), namely, that malicious cruelty was not reported to a relevant authority within 1 day after the activity occurred and that the visual record of that activity was not given to such an authority within 5 days. The explanatory memorandum argues that this approach is appropriate as it ‘reflects the fact that it would be significantly more difficulty and costly for the prosecution to in effect prove a negative—i.e. that the activity was not reported—as information about whether the matter was reported would in most cases be peculiarly within the knowledge of the defendant’ (at p. 3).

On the other hand, it may be noted that the matter the defendant is being required to prove is central to the question of liability for the offence. Further, it is arguably the case that the relevant authorities should be required to implement systems which facilitate proof through systems for recording, processing and storing records. Given the existence of such systems it may be considered inappropriate to require defendants to discharge an evidential burden of proof. It is also suggested that the appropriateness of placing an evidential burden on defendants may be thought problematic as the entities to whom disclosure of cruelty reports and delivery of records must be made is not defined with precision, but by reference to whether the authority has

‘responsibility for enforcing laws relating to animal welfare’. In light of these matters and the brevity of the justification offered for the approach the committee seeks the Senator's more detailed explanation of the reversal of onus be sought. **The committee therefore seeks the Senator’s explanation as to why the entities to whom disclosure of cruelty and the delivery of records must be made cannot be defined with more precision as uncertainty in the operation of offences may also be considered to trespass on personal rights and liberties.**

*Pending the Senator’s reply, the committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference.*

**Undue trespass on personal rights and liberties—absolute liability  
Schedule 1, item 1, proposed subsections 383.5(5), 385.5(4) and  
385.10(4)**

Absolute liability applies in relation to the ‘jurisdictional’ element of the offence set out in subsection 383.5(4). In light of the explanation at p 4 of the explanatory memorandum, which is consistent with the *Guide to Framing Commonwealth offences, Civil Penalties and Enforcement Powers*, the committee makes no further comment.

This issue also arises in relation to subsection 385.5(4) and subsection 385.10(4)

*In the circumstances, the committee makes no further comment on these subsections.*

**Undue trespass on personal rights and liberties—new offences and penalties  
Schedule 1, item 1, proposed subsection 385.5(1), 385.10(1), section  
385.20**

These provisions detail penalties for the offences of destroying or damaging property connected with an animal enterprise, causing fear of death or serious bodily injury to a person connected with the carrying on of an animal enterprise. Section 385.20 sets out aggravated offences in relation to conduct

that results in the differing levels of economic damage or that results in physical injury or death.

The penalties involve significant custodial penalties ranging from 1 year imprisonment to life imprisonment.

The committee's normal expectation is that new offences will be justified by reference to (a) the need for the offences where existing offences would also cover the conduct (e.g. crimes against property and persons) and (b) that penalties imposed for new offences be justified by comparison with those imposed for similar offences in Commonwealth legislation. **As the explanatory memorandum does not address these matters, the committee seeks the Senator's comprehensive justification for the proposed approach.**

*Pending the Senator's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

### **Undue trespass on personal rights and liberties—reversal of burden of proof**

#### **Schedule 1, item 1, proposed subsection 385.15**

This provision provides for three defences to conduct which would otherwise be caught by offences in Division 385. The defences are that the conduct is (a) peaceful picketing, or some other legally sanctioned peaceful demonstration; (b) done in good faith in connection with an industrial dispute or an industrial matter, or (c) publishing in good faith a report or commentary about a matter of public interest. In relation to each of these defences, a defendant bears an evidential burden of proof.

The statement of compatibility (at p. 8) states:

This is appropriate as it reflects the fact that it would be significantly more difficult and costly for the prosecution to in effect prove matters such as the fact that the activity was not reported, as information about whether the matter was reported would in most cases be peculiarly within the knowledge of the defendant.

Unfortunately this justification for the approach lacks specificity and seems directed only to the offence in Division 383, not those in Division 385. Given

that aggravated versions of the offences attract very significant penalties and that the matters in the offence are central to the question of liability, **the committee seeks the Senator's detailed justification for this approach.**

*Pending the Senator's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.*

## **Public Governance and Resources Legislation Amendment Bill (No. 1) 2015**

Introduced into the House of Representatives on 12 February 2015

Portfolio: Finance

### **Background**

This bill amends 33 Acts across the Commonwealth in relation to matters of governance or resource management including:

- the *Public Governance, Performance and Accountability Act 2013* (PGPA Act) to:
  - remove ambiguities in relation to governance arrangements;
  - support the administration of goods and services tax obligations by non-corporate Commonwealth entities;
  - clarify provisions in relation to reporting periods and the description of corporate plans; and
  - streamline the administration of the transfer of functions between non-corporate Commonwealth entities.
- the *Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014* to further clarify arrangements in relation to the implementation of the resource management framework under the PGPA Act.
- the *Clean Energy Regulator Act 2011* and *Climate Change Authority Act 2011* to:
  - provide that the Clean Energy Regulator and the Climate Change Authority are not bodies corporate and do not have a separate legal identity from the Commonwealth; and
  - list the relevant roles, membership, functions and powers of each entity for the purposes of the PGPA Act.
- consequential amendments to 22 Acts and nine Acts in relation to various Commonwealth entities to clarify obligations, roles and responsibilities, and financial arrangements.

*The committee has no comment on this bill.*

## **Quarantine Charges (Imposition—Customs) Amendment Bill 2014**

Introduced into the House of Representatives on 27 November 2014

Portfolio: Agriculture

### **Background**

This bill amends the *Quarantine Charges (Imposition—Customs) Act 2014* to enable cost-recovery of activities connected with the administration of the Biosecurity Bill, such as scientific analysis, intelligence and surveillance where a charge is considered a duty of customs as defined by section 55 of the Constitution.

### **Delegation of legislative power**

#### **Item 4**

This item substitutes section 7 of the Act with a new section 7 which permits the Commonwealth to impose charges in relation to prescribed matters connected with the administration of the Biosecurity Act. Although the charges imposed are imposed as taxes, the explanatory memorandum notes that the charges ‘will not raise additional revenue above the costs of providing the indirect biosecurity services by the department’ (at p. 9). In general, the committee is concerned that the rate of a tax is set by the Parliament, not the makers of subordinate legislation.

The explanatory memorandum argues that it is appropriate that ‘the amount of the cost-recovery charges and who is liable to pay’ those charges be set in delegated legislation because ‘setting the charges through delegated legislation will allow the Minister for Agriculture to make appropriate and timely adjustments to the charges, avoiding future over or under recoveries’. Although it may be accepted that the need to make timely adjustments may mean that the use of delegated legislation is appropriate, **the committee seeks the Minister's advice as to whether consideration has been given to including a provision in the bill which limits the charges to cost-recovery.**

*Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee's terms of reference.*

## **Quarantine Charges (Imposition—Excise) Amendment Bill 2014**

Introduced into the House of Representatives on 27 November 2014

Portfolio: Agriculture

### **Background**

This bill amends the *Quarantine Charges (Imposition—Excise) Act 2014* to enable cost-recovery of activities connected with the administration of the Biosecurity Bill, such as scientific analysis, intelligence and surveillance where a charge is considered a duty of excise as defined by section 55 of the Constitution.

**This bill raises identical issues to the *Quarantine Charges (Imposition—Customs) Amendment Bill 2014* discussed above. The committee therefore also seeks the Minister's advice in relation to this bill.**

## **Quarantine Charges (Imposition—General) Amendment Bill 2014**

Introduced into the House of Representatives on 27 November 2014

Portfolio: Agriculture

### **Background**

This bill amends the *Quarantine Charges (Imposition—General) Act 2014* to authorise the imposition of charges in relation to matters connected with the administration of the Biosecurity Bill, particularly the recovery of costs for indirect biosecurity services, such as scientific analysis, intelligence and surveillance.

**This bill raises identical issues to the *Quarantine Charges (Imposition—Customs) Amendment Bill 2014* discussed above. The committee therefore also seeks the Minister's advice in relation to this bill.**

## COMMENTARY ON AMENDMENTS TO BILLS

### **Acts and Instruments (Framework Reform) Bill 2014**

*[Digest 15/14 – Report 1/15]*

On 12 February 2015 the Senate agreed to one Government amendment and the Parliamentary Secretary to the Minister for Education and Training (Senator Ryan) tabled replacement and supplementary explanatory memoranda. On 23 February 2015 the House of Representatives agreed to the Senate amendment and the bill was passed.

**The committee welcomes the Government amendment which inserts a requirement to review the operation of the new *Legislation Act 2003* five years after its commencement. The committee notes that this review will enable reflection on the issues raised by the committee during its consideration of the bill after the new scheme has been in operation for a significant amount of time.**

### **Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014**

*[Digest 10/14 – Reports 13/14 & 1/15]*

On 9 February 2015 the Senate agreed to two Opposition amendments and the bill was read a third time. On 23 February 2015 the House of Representatives agreed to the Senate amendments, the Minister for Justice (Mr Keenan) presented an addendum to the explanatory memorandum and the bill was passed.

**The two Opposition amendments referred to above relate to sections of the bill which impose mandatory minimum penalties. In the committee's *Alert Digest No. 10 of 2014* the committee commented on these sections and left the question of whether the proposed approach is appropriate to the Senate as a whole (pp 10–11). The committee notes that by agreeing to these amendments the Senate removed the sections which would have imposed mandatory minimum penalties from the bill.**

**The committee also thanks the Minister for tabling an addendum to the explanatory memorandum (relating to amendments to the *Anti-Money***

*Laundering and Counter-Terrorism Financing Act 2006*) as requested by the committee in its *First Report of 2015*.

### **Environment Legislation Amendment Bill 2013**

*[Digest 8/13 – Report 1/14]*

On 12 February 2014 the Senate agreed to one Australian Greens amendment and the bill was read a third time. On 23 February 2015 the House of Representatives agreed to the Senate amendment and the bill was passed.

**The Australian Greens amendment referred to above removes schedule 1 from the bill. In the committee’s *First Report of 2014* the committee commented on an item which would have retrospectively validated certain decisions where approved conservation advice was not considered (pp 7–10). The committee left the question of whether the proposed approach was appropriate to the Senate as a whole. The committee notes that by agreeing to this amendment the Senate removed the relevant item, which would have had retrospective effect from the bill.**

### **Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014**

*[Digest 14/14 – Report 15/14]*

On 4 December 2014 the Senate agreed to 24 Government amendments and one Opposition amendment. The Assistant Minister for Immigration and Border Protection (Senator Cash) tabled four supplementary explanatory memoranda. On 5 December 2014 the House of Representatives agreed to the Senate amendments and the bill was passed.

**The committee has no comment on these amendments or additional explanatory materials.**

### **Tax Laws Amendment (Research and Development) Bill 2013**

*[Digest 8/13 – no response required]*

On 10 February 2015 the Senate agreed to two Palmer United-Independent (Xenophon) amendments. On 12 February 2015 the House of Representatives agreed to the Senate amendments and the bill was passed.

**The committee notes that Part 1 of Schedule 1, as amended, will apply in relation to an R&D entity's assessments for income years commencing on or after 1 July 2014. The committee previously commented on the retrospective application of the main amendments in this bill as part of its initial consideration of the bill (see pp 48–49 of *Alert Digest No. 8 of 2013*). The committee notes that similar issues arise in relation to the amended version of the bill, however, as the amended bill has already been passed by both Houses of Parliament the committee makes no further comment in relation to this matter.**

## SCRUTINY OF STANDING APPROPRIATIONS

The committee has determined that, as part of its standard procedures for reporting on bills, it should draw senators' attention to the presence in bills of standing appropriations. It will do so under provisions 1(a)(iv) and (v) of its terms of reference, which require the committee to report on whether bills:

- (iv) inappropriately delegate legislative powers; or
- (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Further details of the committee's approach to scrutiny of standing appropriations are set out in the committee's *Fourteenth Report of 2005*. The following is a list of the bills containing standing appropriations that have been introduced since the beginning of the 44<sup>th</sup> Parliament.

### **Bills introduced with standing appropriation clauses in the 44<sup>th</sup> Parliament since the previous *Alert Digest***

**Safety, Rehabilitation and Compensation Legislation Amendment (Exit Arrangements) Bill 2015** — Schedule 1, Part 1, item 40, subsection 97QC(2)

### **Other relevant appropriation clauses in bills**

Nil