

Legal Submission: Concerns about the Australian Centre for Disease Control Bill 2025 and Consequential Amendments

Risks to Sovereignty, Property, Data, Privacy, and Agricultural / Environmental Rights

Due Date: 26th September 2025

Author: Dr Anne S Smith

Executive Summary

This submission responds to the Senate Community Affairs Legislation Committee's inquiry into the *Australian Centre for Disease Control Bill 2025* and its companion *Consequential Amendments and Transitional Provisions Bill 2025*. These Bills propose a permanent statutory CDC body with wide-ranging powers to override State legislation, access private data, direct public health responses, and implement binding international obligations most notably through alignment with the World Health Organization (WHO) under the "One Health" and International Health Regulations frameworks.

This submission places the Committee and the Parliament on formal legal notice that:

1. **The Bills exceed the Commonwealth's constitutional authority:**
They transfer sovereign powers to unelected international and domestic officials, override existing laws "despite any other law," and centralise coercive decision-making without sufficient checks and balances.
2. **The proposed legal framework lacks democratic legitimacy:**
No referendum has been held to authorise a fundamental transformation of Australia's public emergency governance. The Australian people have not consented to these sweeping powers, which would bind them to WHO-determined action in domestic matters.
3. **Core constitutional doctrines are contravened:**
The legislation violates principles of responsible government, the rule of law, the separation of powers, federalism, and the requirement for just terms compensation under section 51(xxxi) of the Constitution.
4. **The WHO is not a fit entity to influence Australian law:**
The WHO is unelected, unaccountable to the Australian people, and demonstrated serious failings during the COVID-19 pandemic. It is not subject to Australian administrative or judicial control. Enacting its guidance into domestic law by proxy via the CDC is inconsistent with democratic sovereignty.
5. **The legislation is legally and politically unsustainable:**
Should the Bills proceed in their current form, they are likely to face High Court challenge and will erode public trust. The proper constitutional procedure for such a transformation is a national referendum under section 128.

Accordingly, this submission calls for the **immediate withdrawal** of the Bills or their substantial amendment to ensure:

- Compliance with the Constitution;
- Protection of individual and State rights;
- Preservation of Australia's sovereignty;
- And the restoration of democratic oversight and public trust.

The Parliament is now formally on notice: It does not have lawful authority to enact these Bills as drafted.

1. Introduction and Background

This submission is made pursuant to the Senate Community Affairs Legislation Committee's inquiry into the *Australian Centre for Disease Control Bill 2025* and the *Consequential Amendments and Transitional Provisions Bill 2025*. These Bills, taken together, propose a permanent restructuring of public health governance in Australia through the creation of a statutory Australian Centre for Disease Control (CDC) with far-reaching powers over national crisis management, information collection, land use, and cross-border obligations under the World Health Organization's (WHO) International Health Regulations (IHR).

This submission places the Committee, and through it the Parliament of Australia, on formal legal notice that the proposed legislation:

- **exceeds constitutional limits** on legislative and executive power;
- **undermines democratic sovereignty** by embedding international obligations without public mandate or referendum;
- and **creates an unelected domestic authority** capable of issuing binding directives on a scope of matters far beyond health, including agriculture, property, environmental controls and data sovereignty.

It is the clear position of this submission that **the Australian Parliament does not have the authority to enact these Bills in their current form.**

The Constitution does not empower the Commonwealth to **surrender or dilute national sovereignty** by embedding international obligations into law — particularly those originating from **unelected international institutions** such as the WHO — without the explicit, informed, and affirmative consent of the Australian people. Where legislation operates to restructure the architecture of governance, empower unelected officials to act in concert with foreign timelines, or override foundational statutory protections in privacy, land rights, or property, it constitutes a constitutional transformation requiring **approval by referendum under section 128 of the Constitution.**

Moreover, the WHO — the central external partner in this proposed statutory regime — has demonstrated serious failings in transparency, consistency and effectiveness during the COVID-19 pandemic. Its leadership is unelected, unaccountable to Australian voters, and not subject to Australian administrative, judicial or constitutional oversight. It is **legally**

indefensible that its standards and timeframes would be hardwired into binding Australian law without scrutiny, challenge or opt-out by the Australian Parliament or people.

The Australian people have not consented to this surrender of sovereignty. The Government holds no mandate to legislate away our constitutional independence in a crisis context. The right to govern in times of national emergency — including pandemics — is a **sovereign function of a democratic state**, and must remain under the control of accountable, elected representatives.

This submission therefore makes clear from the outset:

These Bills should be **withdrawn in their entirety** or **substantially amended** to conform with Australia’s constitutional requirements, federal structure, and democratic values. Should the Parliament proceed with these proposals without reform, it does so in direct contradiction of its legal authority and risks invalidation by judicial review.

2. Explanation of the Two Bills

The Government has justified the creation of a national Centre for Disease Control on the basis of lessons learned during the COVID-19 pandemic. According to the Explanatory Memorandum and the second reading speeches, the intention is to provide a permanent, centralised body that can deliver “national leadership” in public health, strengthen pandemic preparedness, improve surveillance and data sharing across jurisdictions, and ensure that Australia meets its international obligations under the World Health Organization (Parliament of Australia, 2025a; Parliament of Australia, 2025b). The Government argues that fragmentation between states and territories during the pandemic exposed vulnerabilities, and that a statutory CDC would create uniformity, authority, and stronger links with global health governance structures.

The **Australian Centre for Disease Control Bill 2025** (the *CDC Bill*) establishes a statutory authority, the Australian Centre for Disease Control (CDC), and creates the role of Director-General. The Bill sets out broad powers for the Director-General to manage “serious” or “unforeseen” public health threats, including authority to compel the provision of data, make binding declarations, and share information with international organisations. It also embeds Australia’s International Health Regulations (IHR) focal point within the CDC, thereby locking Australia’s obligations under the World Health Organization (WHO) into the statutory structure (Parliament of Australia, 2025a).

The **Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025** (the *Consequential Bill*) is the companion legislation. It amends a wide range of existing Acts to ensure consistency with the CDC Bill. Key changes include: replacing references to the Department of Health with the CDC, inserting provisions that allow the CDC to collect, disclose and override data protections “despite any other law,” and creating secrecy provisions that limit the availability of information to the public. It also provides for the transfer of staff, responsibilities, and resources from existing government bodies into the new CDC (Parliament of Australia, 2025b).

Together, these Bills create a permanent central command structure for public health, with powers extending beyond traditional health to include domains captured under the WHO’s

“One Health” framework, such as land use, food systems, livestock, and wildlife (World Health Organization, 2022).

3. What the Bills Intend / Key Provisions of Concern

Framing

Read together, the Australian Centre for Disease Control Bill 2025 (the *CDC Bill*) and the Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025 (the *Consequential Bill*) centralise emergency health powers in a new statutory authority headed by an unelected Director-General, hard-wire Australia’s obligations and timelines under the International Health Regulations (IHR) within that authority, and create an information-seizure and disclosure regime that can operate **despite other Commonwealth laws**, with secrecy carve-outs and limited parliamentary control (Parliament of Australia, 2025a; Parliament of Australia, 2025b; AustLII, 2025a; AustLII, 2025b). The Government’s stated rationale is “national leadership,” uniformity, preparedness, and stronger alignment with the WHO and the “One Health” framework (Department of Health, 2025; Parliament of Australia, 2025c; CDC (Aus), 2025). The legal effect is an expansive, open-textured grant of power that risks overreach into land use, livestock, wildlife management, food systems and environmental regulation under the rubric of “public health” (World Health Organization, 2022; World Health Organization, 2024).

3.1 Excessive delegation to an unelected Director-General

Intent / effect: The CDC Bill vests primary operational and directive powers in a Director-General, including surveillance coordination, information demands, intergovernmental directions, and emergency measures affecting persons and businesses (AustLII, 2025a).

Legal concerns:

- **Excessive delegation** of core regulatory policy to an unelected official without adequate statutory limits, contrary to rule-of-law expectations that coercive powers be clearly bounded and supervised by Parliament (Legislation Act 2003 (Cth); Parliament of Australia, 2025c).
- **Insufficient merits and judicial review scaffolding** where directions have broad civil consequences (AustLII, 2025a).
- **Commonwealth–State federal balance:** centralised commands risk displacing State public-health powers without transparent intergovernmental instruments subject to parliamentary scrutiny (Parliament of Australia, 2025a; 2025c).

3.2 “Despite any other law”: data collection and disclosure overrides

Intent / effect: The package enables the CDC to require, collect and disclose “relevant information” during declared severe or unforeseen threats, operating **despite other Commonwealth laws**, and to disclose to international recipients (AustLII, 2025b).

Legal concerns:

- **Inconsistency with Privacy Act 1988 (Cth)** protections, including limitations on sensitive information handling and cross-border disclosures; broad override language

undermines Parliament's prior privacy settlements (Privacy Act 1988 (Cth); AustLII, 2025b).

- **FOI Act 1982 (Cth)** objects are frustrated if disclosure decisions and underlying arrangements can be shielded while compelled flows outward are expanded (FOI Act 1982 (Cth); AustLII, 2025b).
- **Commercial confidentiality and privilege** risks where businesses are compelled to provide data without clear privilege savings or judicial warrant thresholds (AustLII, 2025b).

3.3 IHR focal-point relocation and WHO lock-in

Intent / effect: The CDC becomes Australia's IHR focal-point, embedding WHO notifications, timelines and definitions in the CDC's statutory workflow (Parliament of Australia, 2025a; AustLII, 2025a).

Legal concerns:

- **Parliamentary oversight of international commitments:** operationalising international processes that drive domestic action without an affirmative parliamentary control point invites **back-door treaty implementation** (Parliament of Australia, 2025c; Legislation Act 2003 (Cth)).
- **Accountability gap:** crisis triggers driven externally reduce ministerial responsibility and parliamentary gatekeeping in precisely the moments of maximal rights impact (World Health Organization, 2024; Parliament of Australia, 2025c).

3.4 One Health expansion into climate, land use, livestock and wildlife

Intent / effect: The Bills frame "public health" broadly and signal implementation of "One Health," a WHO framework that explicitly spans human health, animal health, ecosystems, climate, food systems and land use (World Health Organization, 2022; CDC (Aus), 2025).

Legal concerns (land, livestock, wildlife focus):

- **Regulatory reach over farms and herds:** surveillance, movement controls, stock culling or land-use directives could be justified as "health" actions, bypassing ordinary agriculture/environment statutes and compensation regimes (World Health Organization, 2022; AustLII, 2025a).
- **Vagueness and legal certainty:** undefined boundaries between "public health" and environmental/climate governance invite ultra vires action and deny fair notice to landholders (AustLII, 2025a).
- **Property rights and compensation:** where measures amount to acquisition or de facto takings, the absence of explicit compensation standards is problematic (AustLII, 2025a; Parliament of Australia, 2025b).
- **Wildlife and conservation management:** overlapping powers risk conflict with environment legislation and biodiversity protections, with the CDC asserting primacy under emergency banners (World Health Organization, 2022; AustLII, 2025a).

3.5 Secrecy, exempt material and restricted publication

Intent / effect: The package establishes protected information classes, publication duties subject to wide "exempt material" carve-outs, and secrecy offences (AustLII, 2025b).

Legal concerns:

- **Open government principles** are undermined where controversial directions, foreign arrangements and data-sharing declarations can be withheld (FOI Act 1982 (Cth)).
- **Chilling of scrutiny:** secrecy offences without a robust public-interest disclosure defence risk suppressing whistleblowing about misuse (AustLII, 2025b).

3.6 Compulsion powers and civil penalties

Intent / effect: Individuals and entities may be compelled to provide information and face penalties for non-compliance (AustLII, 2025a; 2025b).

Legal concerns:

- **Proportionality and necessity:** penalties attached to vaguely framed information demands are at odds with administrative-law principles of least-intrusive means (AustLII, 2025a).
- **Procedural fairness:** limited notice/appeal pathways for recipients of demands; absence of clear privilege and self-incrimination protections (AustLII, 2025b).

3.7 Emergency declaration triggers and sunset/oversight gaps

Intent / effect: The Director-General's powers are enlivened by broad "serious" or "unforeseen" threat concepts (AustLII, 2025a).

Legal concerns:

- **Broad, subjective triggers** permit activation for non-pandemic phenomena (e.g., climate, fauna disease) without strict objective thresholds (World Health Organization, 2022; AustLII, 2025a).
- **Weak sunseting:** absence of short, automatic lapses requiring **affirmative parliamentary renewal** entrenches rolling emergency governance (Parliament of Australia, 2025c).

3.8 Federalism and democratic accountability

Intent / effect: The CDC is positioned as a national command node over multi-jurisdictional responses (Parliament of Australia, 2025a).

Legal concerns:

- **Diminution of State autonomy** in health policing and land-management during emergencies, contrary to the federal design that provides policy diversity and circuit-breakers (Parliament of Australia, 2025c).
- **Ministerial responsibility diluted** where an agency aligned to WHO timelines executes decisions with limited parliamentary direction.

3.9 Rule of law and legal certainty

Intent / effect: The package seeks flexibility across sectors.

Legal concerns:

- **Indeterminacy of key terms** ("relevant information", "serious/unforeseen threat", "One Health" scope) and **override clauses** are incompatible with the principle that

coercive powers be **precise, foreseeable and reviewable** (Legislation Act 2003 (Cth); AustLII, 2025a).

3.10 Human-rights, privacy and proportionality scrutiny

Intent / effect: The Government asserts compatibility with rights through ordinary scrutiny processes (Parliament of Australia, 2025c).

Legal concerns:

- **Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)** requires a rigorous statement of compatibility; the scale of data intrusion, secrecy and compulsion here warrants **enhanced scrutiny** and stronger statutory safeguards (Human Rights (Parliamentary Scrutiny) Act 2011 (Cth); Privacy Act 1988 (Cth)).
- **Implied freedoms and common-law rights** (movement, association, due process) are engaged by nationwide emergency directions issued by an unelected official (AustLII, 2025a; 2025b).

4. WHO's Credibility, Australia's Relative Success and the Case for Sovereignty

The Australian Government's CDC Bills propose embedding the World Health Organization (WHO) at the heart of our national health governance through the International Health Regulations focal-point. Before such powers are ceded, it is essential to assess WHO's record during COVID-19 and compare it with Australia's own response. The evidence shows that **WHO failed in key areas of leadership, timing, and evidence-based advice**, while Australia — despite internal differences — achieved outcomes that were among the strongest globally. This demonstrates that sovereignty, federalism, and localised decision-making are strengths to be protected, not weaknesses to be surrendered.

4.1 WHO Leadership and Accountability

The current Director-General of WHO, Tedros Adhanom Ghebreyesus, holds a PhD in community health but is not a qualified medical doctor. His career has been primarily political and administrative, rather than clinical. While academic and managerial expertise are relevant, the absence of direct medical practice highlights a broader problem: WHO's leadership is not drawn from or accountable to the populations whose rights are curtailed under its guidance. Decisions that affect democratic nations like Australia are made by international officials **whom Australians cannot elect, scrutinise, or remove** (Wikipedia, 2025).

4.2 WHO's Delay on Airborne Transmission

WHO failed to acknowledge airborne transmission of SARS-CoV-2 in a timely manner, despite mounting scientific evidence. Independent reviews found that this delay hindered effective early interventions, particularly around ventilation and mask strategy, and eroded public trust (Berkeley Public Health, 2020). From a legal perspective, this illustrates the

danger of hard-wiring WHO definitions into Australian law: if the central authority is wrong, the consequences cascade across all member states.

4.3 WHO's Confused Mask Guidance

Between January 2020 and October 2023, WHO issued more than 20 separate updates to its mask guidance. This constant revision reflected uncertainty and, at times, delay in adjusting to evolving science (PLOS Global Public Health, 2024). Independent reviews, such as the Cochrane Review, found that evidence for mask mandates in community settings was of low certainty, with little or no difference in some trials (FactCheck.org, 2023). Yet WHO guidance formed the basis of mandates that imposed significant restrictions on populations worldwide. This inconsistency undermines WHO's credibility as a reliable law-shaping authority for Australia.

4.4 Global Pushback Against WHO

The United States has formally criticised WHO's mishandling of the pandemic, threatening withdrawal and suspending funding in response to its failures (Forbes, 2025). WHO also faced budget crises and cutbacks, raising concerns about its operational stability (CBS News, 2020). When leading nations question WHO's fitness, Australia must equally ask whether embedding WHO into domestic law is defensible.

4.5 Australia's National Outcomes

Australia fared comparatively well during COVID-19. The *COVID-19 Response Inquiry Summary Report* concluded that the nation "fared well relative to other countries" by avoiding mass hospital collapse and recording lower mortality (Prime Minister & Cabinet, 2023). An expert panel published in *The Lancet* similarly found that Australia's early border closures, quarantine systems, and coordination prevented catastrophic scenarios seen elsewhere (Lancet Expert Panel, 2022). While Victoria imposed prolonged lockdowns with severe impacts, states such as Queensland tailored lighter restrictions to local conditions, demonstrating the protective strength of federal diversity. Australia's geographic isolation, demographic profile, and strong public health systems enabled it to succeed where global guidance faltered.

4.6 The Legal Implications

These case studies confirm that **Australia does not need WHO to dictate its health policy**. The CDC Bills would embed WHO timelines and definitions into Australian law at the expense of federal flexibility and parliamentary sovereignty. Entrusting national powers to an international body with a record of delay, inconsistency, and political vulnerability would erode accountability and expose Australians to inappropriate measures. Australia's relative success shows that **local knowledge, democratic accountability, and state diversity are safeguards worth protecting, not powers to be surrendered**.

5. Legal Risks & Issues (Standalone Legal Analysis Section)

This section outlines the core legal risks posed by the Australian Centre for Disease Control Bill 2025 and its companion Consequential Amendments Bill. These risks span constitutional, administrative, statutory, and human rights domains. The legislation engages critical legal principles including separation of powers, legality and certainty, privacy and property rights, federalism, and the rule of law.

5.1 Delegation and Separation of Powers

The CDC Bill delegates coercive powers — including surveillance, data compulsion, and emergency declarations — to an unelected Director-General. This raises concerns under constitutional and administrative law principles that require clear limits on delegations of legislative and executive power (Legislation Act 2003 (Cth)). Excessive delegation may breach the rule of law by enabling major decisions affecting rights and liberties to be made without parliamentary scrutiny or judicial review (Parliament of Australia, 2025c). As established in *Plaintiff M68/2015 v Minister for Immigration and Border Protection*, statutory delegations must not exceed the implied constitutional limits on executive authority.

5.2 Vagueness, Rule of Law, and Legal Certainty

The use of undefined and ambiguous terms such as “relevant information,” “serious or unforeseen threat,” and the broad invocation of the WHO’s “One Health” scope renders the legal framework uncertain. Under the principle of legality, coercive or rights-affecting powers must be precise and foreseeable (Legislation Act 2003 (Cth)). In *Kirk v Industrial Court (NSW)*, the High Court affirmed the need for legal rules to be sufficiently certain to be enforceable. Undefined powers invite arbitrary enforcement and diminish procedural fairness (AustLII, 2025a).

5.3 “Despite Any Other Law” Override Clauses

The Bills include provisions authorising data collection and disclosure “despite any other law,” including the *Privacy Act 1988 (Cth)*, *Biosecurity Act 2015 (Cth)*, and *FOI Act 1982 (Cth)* (AustLII, 2025b). This language may override Parliament’s existing statutory balances on sensitive data, property rights, and environmental protection, undermining settled privacy protections under Australian Privacy Principles. Courts have expressed caution in construing such clauses to override foundational rights without express intention (*Coco v The Queen*). The breadth of these overrides invites legal challenges on the grounds of statutory inconsistency.

5.4 Treaty Embedding and International Law

Embedding the International Health Regulations (IHR) into the CDC structure operationalises Australia’s WHO obligations without direct parliamentary ratification of new obligations (Parliament of Australia, 2025a). While the external affairs power under s 51(xxix) of the Constitution allows the implementation of treaties, doing so via administrative mechanisms, rather than parliamentary oversight, may contravene constitutional expectations established in *Minister for Immigration and Ethnic Affairs v Teoh*. This creates a risk of de facto treaty

implementation without democratic endorsement or transparency (Parliament of Australia, 2025c).

5.5 Property, Land Rights & Agricultural Sovereignty

The CDC Bill’s broad incorporation of the “One Health” framework (World Health Organization, 2022) introduces profound legal risks to property rights, agricultural sovereignty, and land-use regulation in Australia. One Health is explicitly defined by WHO to include **animal health, climate and environmental conditions, food systems, land use and ecosystem management**. When embedded within coercive statutory powers, this framework may enable unelected CDC officials — operating in lockstep with WHO definitions and timelines — to issue binding directives affecting farms, livestock, wildlife, and rural landholdings without adequate legal safeguards.

Constitutional Limits – Section 51(xxxi)

Any Commonwealth law that results in the **acquisition of property** must do so on “**just terms**” under **section 51(xxxi) of the Constitution**. The High Court has consistently affirmed this as a **constitutional guarantee** (see *JT International SA v Commonwealth* (2012) 250 CLR 1). If the CDC, acting under emergency public health powers, mandates the destruction of livestock, restricts land use for emissions purposes (e.g. methane reduction), or imposes surveillance on farms and food supply chains, this may constitute either:

- a **direct acquisition** of property; or
- an **effective de facto acquisition** by severely interfering with usage or economic value.

Any such acquisition without compensation would be constitutionally vulnerable.

Ultra Vires Risk – Exceeding Purpose

Legislation that purports to deal with public health but in effect enables control over **agriculture, land use, biodiversity or climate policy** without express authorisation risks being declared **ultra vires**. Commonwealth legislative powers must be grounded in a valid head of power (e.g. s 51(ix) quarantine, s 51(xxix) external affairs). If these are used as **pretexts** to extend federal authority over domains that traditionally fall to the States (e.g. agriculture, land management), the law may exceed constitutional bounds.

As held in *Pape v Commissioner of Taxation* (2009) 238 CLR 1, Commonwealth powers must not be used “in substance” to achieve purposes not authorised by the Constitution, even if procedurally disguised as something else.

Agricultural Sovereignty and WHO Governance

Embedding WHO definitions into domestic legislation — as the CDC Bill does by incorporating the International Health Regulations (Parliament of Australia, 2025a) — means **external entities can drive internal actions**. For example, WHO or other transnational actors may classify livestock emissions as “public health threats” under One Health climate criteria, leading to:

- enforced livestock culling (e.g., in relation to zoonotic disease or methane);
- bans on meat production or trade;
- forced land reclassification;
- controls over food distribution and crop types.

These are **matters of national policy, not international entitlement**. Allowing such decisions to be taken by **an unelected Director-General**, guided by foreign institutional frameworks, is inconsistent with **Australian sovereignty, democratic process, and constitutional federalism**.

Absence of Safeguards or Compensation Standards

The CDC Bill fails to include **clear compensation mechanisms** for landowners or primary producers affected by its emergency or surveillance powers. In this, it contrasts sharply with the *Biosecurity Act 2015 (Cth)*, which includes detailed provisions for notice, appeal, and compensation. The CDC framework provides no such guarantees — leaving farmers, graziers and regional communities exposed to uncompensated losses arising from policy made in Geneva.

Potential Conflict with State Laws

Land use, biodiversity, environmental regulation, and livestock management fall predominantly under **State jurisdiction**. The CDC framework risks federal intrusion into these areas under the guise of health regulation, without:

- any intergovernmental agreement;
- any override protection for State environmental statutes (e.g., EPBC Act interactions);
- or any parliamentary check against **federal dominance by stealth**.

As *Re Wakim; Ex parte McNally* (1999) 198 CLR 511 reminds us, the Commonwealth cannot unilaterally take over State powers outside the scope of agreed constitutional arrangements.

5.6 Privacy and Data Protection

The CDC's powers to collect and disclose personal and commercial information, including to international entities, raises significant issues under the *Privacy Act 1988 (Cth)*. Cross-border disclosures without individual consent or appropriate safeguards violate Australian Privacy Principles, particularly APP 8 (Privacy Act 1988 (Cth)). The Bills do not appear to establish adequate safeguards, judicial warrants, or notice requirements for compelled disclosures, increasing the risk of challenge based on common law principles of confidentiality and statutory privacy rights (AustLII, 2025b).

5.7 Freedom of Information and Transparency

The Bills contain broad secrecy provisions that exempt certain information from publication and criminalise unauthorised disclosure (AustLII, 2025b). This undermines the objectives of the *FOI Act 1982 (Cth)* and may stifle whistleblowing and public interest reporting. As the High Court recognised in *Lange v Australian Broadcasting Corporation*, open access to

government information is essential to informed public debate and the implied freedom of political communication.

5.8 Federalism and State Sovereignty

The CDC is positioned to issue directives that could override or displace State-level decisions in health, land, or environmental management during emergencies (Parliament of Australia, 2025a). This centralisation risks undermining the federal division of powers and constitutional autonomy of States (see *R v Duncan; Ex parte Australian Iron & Steel Pty Ltd*). Without a formal intergovernmental agreement or COAG framework, the Bills impose a top-down structure contrary to the principles of cooperative federalism.

5.9 Human Rights and Proportionality

The Bills assert compatibility with human rights under the *Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)*, but this assertion lacks substantiation. Emergency powers affecting movement, association, and bodily autonomy engage common law rights and freedoms and require a robust justification. The scale of potential data intrusion and compulsion demands a high threshold of proportionality and necessity, yet the legislation lacks adequate sunset clauses, review mechanisms, or appeal rights (Parliament of Australia, 2025c; AustLII, 2025b).

5.10 Democratic Consent and Sovereignty – The People's Right to Decide

At the heart of this submission lies a foundational constitutional principle: **Australia is a parliamentary democracy underpinned by popular sovereignty**. Powers that significantly impact national autonomy, individual rights, or the balance of federal governance require **democratic authorisation** — not administrative fiat.

No Mandate for International Power Transfer

The CDC Bill proposes the most significant expansion of domestic health governance in a generation. It embeds **binding timelines, definitions, and reporting obligations from the WHO**, without parliamentary treaty scrutiny, and vests wide-ranging emergency powers in a **single unelected official**. This occurs:

- **without any referendum**, despite its sovereignty implications;
- **without public consultation** or clear public awareness; and
- **without the informed consent of the electorate**, as required under the democratic principle of representative government.

As Chief Justice Mason held in *Australian Capital Television v Commonwealth* (1992) 177 CLR 106, Australia's Constitution implies a right of the people to participate in decisions affecting public governance and communication. The **absence of any public mandate** to transfer pandemic decision-making authority to an international body raises serious constitutional and ethical concerns.

High Court on Sovereignty and Accountability

The High Court has consistently emphasised the importance of **ministerial responsibility** and **parliamentary oversight** in the exercise of executive power (see *Williams v Commonwealth (No 1)* (2012) 248 CLR 156). Where international processes are embedded into domestic law **without elected oversight**, the Australian people are effectively governed in certain areas by external actors they cannot elect, question, or remove.

Such arrangements are **antithetical to core democratic values** and amount to a **de facto surrender of sovereignty** — one that, under any fair conception of democratic process, requires explicit public endorsement.

Referendum as the Appropriate Mechanism

Given the scale of transformation proposed — the fusion of international timelines into domestic law, override of existing privacy and property protections, and permanent empowerment of a centralised unelected authority — this is not administrative fine-tuning. It is **constitutional in nature**, and arguably belongs in the realm of **Section 128 referendum territory**, not ordinary legislation.

The **Australian people have not authorised** this transfer of sovereign power. As such, it should not proceed under cover of administrative consolidation or pandemic preparedness. The principle that **sovereignty resides with the people** demands nothing less than full disclosure and informed democratic assent.

6. Fit with Terms of Reference (Committee Mandate) / Procedural Fairness

This section confirms that every legal concern raised in this submission falls squarely within the Terms of Reference of the Senate Community Affairs Legislation Committee, and that procedural fairness requires the Committee to give full, reasoned consideration to each issue. Failure to do so may expose the process and resulting legislation to legal challenge.

6.1 Relevant Committee Mandate and Terms of Reference

On 4 September 2025, the Senate referred the following Bills to the Senate Community Affairs Legislation Committee:

- **Australian Centre for Disease Control Bill 2025**
- **Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025**

The Committee is required to inquire into and report on these Bills by **24 October 2025**.

In accordance with standard Senate committee procedure, the Committee is mandated to:

- examine Bills referred by the Senate for inquiry;
- scrutinise the consistency of proposed laws with existing legal frameworks, constitutional requirements, and rights protections;
- consider whether proposed legislative measures are in the public interest;

- assess the operation of relevant legislation within portfolio responsibilities, including health, human services, and aged care;
- ensure transparency and procedural fairness in its public consultation and reporting.

6.2 Alignment of Submission with Committee Mandate

The legal issues addressed in this submission fall directly within the scope of the Committee’s mandate:

Committee Mandate and Submission Alignment

Committee Mandate Function	How This Submission Addresses It
Examine referred Bills	Provides legal and constitutional analysis of both the Australian Centre for Disease Control Bill 2025 and the Consequential Amendments and Transitional Provisions Bill 2025.
Scrutinise consistency with constitutional and statutory frameworks	Analyses legislative powers under the Constitution (sections 51(xxxi), 51(xxix), 61, and 128), and conflicts with statutory instruments including the Privacy Act 1988 and Freedom of Information Act 1982.
Consider protection of rights and liberties	Examines property rights, privacy protections, the principle of legality, freedom of political communication, and the separation of powers.
Evaluate implications for health governance and intergovernmental cooperation	Reviews the structural impacts of embedding WHO authority via “One Health” coordination, and the erosion of federal–State balance.
Ensure procedural fairness in consultation and oversight	Identifies the lack of public awareness, consent, or mandate; argues for referendum or special parliamentary scrutiny to satisfy democratic legitimacy.
Assess public interest and long-term impact	Demonstrates the consequences of sovereignty transfer, legal overreach, and policy centralisation without accountability or domestic override mechanisms.

6.3 Procedural Fairness and Legal Obligation to Consult

The scope and impact of the CDC Bills require the Committee to adopt a heightened standard of procedural fairness, including:

- Transparent public consultation with clear and accessible language explaining the implications of the Bills;
- Genuine consideration of affected parties (landowners, producers, health workers, data holders, State governments);
- Assurance that those impacted by the exercise of proposed powers are informed, consulted, and able to challenge coercive decisions;
- Acknowledgement that the public has not been given prior knowledge or democratic opportunity to assent to a structural change of this magnitude.

6.4 Notice: Legal Consequences of Failure to Address Scope and Fairness

The Committee and the Parliament are formally placed on notice that failure to engage with the legal arguments raised herein, particularly those concerning sovereignty, delegation of power to unelected international entities, and constitutional thresholds for democratic consent would render any resulting legislation vulnerable to:

- **High Court challenge** for exceeding legislative power or infringing constitutional principles;
- **Invalidity of regulations** or directives issued under the Act on grounds of ultra vires action or statutory inconsistency;
- **Political illegitimacy**, including public rejection and electoral backlash, for bypassing the principle of popular sovereignty and representative consent.

6.5 Conclusion

This submission complies in full with the Terms of Reference of the Committee and directly addresses the issues the Senate has required it to consider. The Committee must now discharge its duties in accordance with the Constitution, procedural fairness, and the democratic expectations of the Australian people. Any failure to do so will not only undermine the legal validity of the legislation but erode the institutional integrity of the legislative process itself.

7. Final Recommendations – Constitutional Limits and Notice of Legal Invalidity

This Committee, and through it, the Parliament of Australia, is formally placed on notice that the **Australian Centre for Disease Control Bill 2025** and the **Consequential Amendments Bill 2025**, as presently drafted, **exceed constitutional authority** and cannot lawfully proceed without fundamental amendment or democratic authorisation through a referendum.

! Foundational Legal Objection – Transfer of Sovereign Power Without Mandate

The Bills collectively establish a **new central authority**, headed by an unelected Director-General, with powers to:

- override State and Commonwealth legislation;
- act in lockstep with the World Health Organization (WHO) under binding international timeframes;
- seize and disclose data;
- direct actions affecting property, movement, land use, commerce, and public rights across all Australian jurisdictions.

These powers are to be exercised:

- without parliamentary disallowance;
- without constitutional checks or judicial preclearance;

- and **without any consent from the Australian people.**

This amounts to a **transfer of sovereign decision-making** in national emergencies from elected Australian governments to:

- unelected international bodies such as the WHO; and
- a domestic statutory office-holder not subject to direct democratic accountability.

Such a **reconfiguration of the constitutional order** cannot be enacted by ordinary legislation. It requires **amendment of the Constitution under section 128.**

7.1 This Parliament Cannot Lawfully Surrender Sovereignty to Unelected International Entities

Recommendation: The Parliament must immediately suspend the CDC Bills unless and until their provisions can be brought into conformity with:

- the principle of **popular sovereignty**;
- the **representative democratic structure** mandated by the Constitution; and
- the separation of powers doctrine ensuring that **coercive powers rest with accountable officers**, subject to public oversight.

Legal Reasoning:

- In *Australian Capital Television v Commonwealth* (1992), the High Court affirmed that the Constitution contains an **implied freedom of political communication** based on the **structure of representative and responsible government**.
- In *Williams v Commonwealth (No 1)* (2012), the Court found that executive action cannot proceed without **clear legislative authority and democratic legitimacy**.
- Transferring emergency power to an official acting under WHO timelines **without parliamentary or public oversight** violates both principles.

Conclusion: The CDC Bill, by **binding Australia to external governance structures without democratic control**, is inconsistent with the Constitution and cannot be validly enacted without a referendum.

7.2 The WHO Is Not a Fit Authority for Sovereign Delegation

Recommendation: Parliament must not embed WHO decision-making into domestic law unless Australia retains:

- a **clear opt-out** for any WHO directive;
- full **ministerial override** powers; and
- **parliamentary scrutiny** of all binding obligations.

Legal Reasoning:

- The WHO is not subject to Australian public law, constitutional limits, or judicial review.

- Its leadership is **unelected, unaccountable to Australian voters**, and historically has **demonstrated operational failure** during COVID-19 — including delay on airborne transmission (Berkeley Public Health, 2020), contradictory guidance on masks (PLOS Global Public Health, 2024), and lack of transparency.
- Inserting WHO obligations directly into Australian law by making the CDC its focal point amounts to **legislative incorporation by stealth**, bypassing the treaty process and violating parliamentary sovereignty.

7.3 This Requires a Referendum Under Section 128

Recommendation: The Committee must advise the Parliament that **any binding surrender of sovereign decision-making capacity to an international entity** must be put to the Australian people via a **referendum under section 128 of the Constitution**.

Legal Reasoning:

- The High Court in *Teoh* (1995) and subsequent cases affirmed that **international obligations cannot override domestic law** without legislative or constitutional authority.
- Where such obligations **reshape the structure of emergency governance** and grant real coercive power to unelected international actors, this is **constitutionally transformative**.
- Under s 128, **only the Australian people have authority to alter the distribution of sovereign power** in such a manner.

7.4 Final Legal Notice

This submission formally places the Senate Committee and the Parliament on notice that:

- **Enacting these Bills in their current form will likely result in a constitutional challenge** under:
 - s 51(xxxi) (acquisition of property);
 - s 51(xxix) (external affairs overreach);
 - s 61 (executive power beyond scope);
 - and implied democratic freedoms.
- **Legislative instruments made under the CDC Act would be susceptible to judicial review** for:
 - unlawful delegation;
 - vagueness and lack of legal certainty;
 - absence of jurisdiction;
 - and incompatibility with statutory privacy, FOI and rights laws.
- **The Parliament will be acting outside its legal authority** if it purports to enact law that:
 - transfers sovereign power to unelected external actors;
 - without a referendum;
 - and without the informed consent of the Australian people.

8. Conclusion

The Australian Centre for Disease Control Bill 2025 and its companion Consequential Amendments Bill represent an unprecedented attempt to restructure the architecture of Australian governance during crises — bypassing parliamentary checks, displacing State sovereignty, embedding external institutional authority, and extinguishing legal rights long protected under Australian law.

These Bills are not simply administrative reforms. They are constitutionally transformative instruments which, if enacted, would create a centralised, unelected command authority capable of issuing binding directions over data, land, livestock, property, and civil liberties — all while operating in alignment with international institutions that the Australian people cannot elect, scrutinise, or remove.

This submission formally places the Parliament of Australia on legal notice: **you do not have a constitutional mandate to proceed**. The surrender of sovereign decision-making authority, the override of federal and statutory protections, and the embedding of WHO timelines and directives into domestic law without referendum represent a direct affront to the democratic will of the Australian people.

The Australian Constitution does not permit such changes to be made by stealth, under the cover of “preparedness” or “efficiency.” It requires public transparency, democratic assent, and adherence to the separation of powers, responsible government, and judicial review.

If these Bills proceed in their current form, the risk of constitutional invalidity is high. Litigation is likely. Public opposition will grow. Any legislative framework of this scale must be anchored in law — and in the will of the people. The only lawful path forward, given the magnitude of the changes proposed, is either **withdrawal** or submission of these matters to the **Australian people via referendum under section 128** of the Constitution.

The Parliament must now decide whether it serves the interests of democracy or the demands of an unelected international bureaucracy. If it chooses the latter, it does so in breach of its constitutional duty, and the Australian people will be entitled — indeed compelled — to challenge that decision by every lawful means available.

9. References

1. **AustLII (2025a)** *Australian Centre for Disease Control Bill 2025: Full text*. Sydney: Australasian Legal Information Institute.
2. **AustLII (2025b)** *Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025: Explanatory Memorandum*. Sydney: Australasian Legal Information Institute.
3. **Australian Capital Television v Commonwealth** (1992) 177 CLR 106.
4. **Berkeley Public Health (2020)** *Withdrawal from WHO Could Bring Tragedy: Commentary on Delays in Acknowledging Airborne Transmission*. Berkeley: University of California.
5. **CBS News (2020)** *WHO to Cut Back on Hiring and Travel After U.S. Funding Withdrawal*. New York: CBS News.
6. **CDC (Aus) (2025)** *Australian CDC legislation: Overview and links to Bills*. Canberra: Australian Centre for Disease Control.
7. **Coco v The Queen** (1994) 179 CLR 427.
8. **Department of Health (2025)** *Delivering on the Australian Centre for Disease Control: Legislation introduced*. Canberra: Australian Government Department of Health, Disability and Ageing.
9. **FactCheck.org (2023)** *SciCheck: What the Cochrane Review Says About Masks for COVID-19 and What It Doesn't*. Philadelphia: Annenberg Public Policy Center.
10. **FOI Act 1982 (Cth)** *Freedom of Information Act 1982*. Canberra: Office of Parliamentary Counsel.
11. **Forbes (2025)** *Implications of U.S. Withdrawal from the WHO: Public Health Physician Perspective*. New York: Forbes Media.
12. **Human Rights (Parliamentary Scrutiny) Act 2011 (Cth)**. Canberra: Office of Parliamentary Counsel.
13. **JT International SA v Commonwealth** (2012) 250 CLR 1.
14. **Kirk v Industrial Court (NSW)** (2010) 239 CLR 531.
15. **Lancet Expert Panel (2022)** *Key Lessons from the COVID-19 Public Health Response in Australia. The Lancet Regional Health*.
16. **Lange v Australian Broadcasting Corporation** (1997) 189 CLR 520.
17. **Legislation Act 2003 (Cth)**. Canberra: Office of Parliamentary Counsel.
18. **Minister for Immigration and Ethnic Affairs v Teoh** (1995) 183 CLR 273.
19. **Pape v Commissioner of Taxation** (2009) 238 CLR 1.
20. **Parliament of Australia (2025a)** *Australian Centre for Disease Control Bill 2025: Bill home page*. Canberra: Parliament of Australia.
21. **Parliament of Australia (2025b)** *Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025: Bill home page*. Canberra: Parliament of Australia.
22. **Parliament of Australia (2025c)** *Second Reading Speeches: Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025*. Canberra: Parliament of Australia.
23. **Parliament of Australia (2025d)** *Second Reading Speeches: Australian Centre for Disease Control Bill 2025 and Consequential Bill*. Canberra: Parliament of Australia.
24. **Parliament of Australia (2025e)** *Terms of Reference: Senate Inquiry into the Australian Centre for Disease Control Bill 2025 and Consequential Amendments Bill 2025*. Canberra: Senate Community Affairs Legislation Committee, 4 September.
25. **Plaintiff M68/2015 v Minister for Immigration and Border Protection** (2016) 257 CLR 42.

26. **PLOS Global Public Health (2024)** *Evolution of WHO COVID-19 Mask Guidelines amid Intense Demands for Rapid Advice*.
27. **Prime Minister & Cabinet (2023)** *COVID-19 Response Inquiry Summary Report: Lessons for the Next Crisis*. Canberra: Australian Government.
28. **Privacy Act 1988 (Cth)**. Canberra: Office of Parliamentary Counsel.
29. **R v Duncan; Ex parte Australian Iron & Steel Pty Ltd** (1983) 158 CLR 535.
30. **Re Wakim; Ex parte McNally** (1999) 198 CLR 511.
31. **Wikipedia (2025)** *Tedros Adhanom Ghebreyesus*. San Francisco: Wikimedia Foundation.
32. **Williams v Commonwealth (No 1)** (2012) 248 CLR 156.
33. **World Health Organization (2022)** *One Health Joint Plan of Action, 2022–2026*. Geneva: WHO and Quadripartite Partners.
34. **World Health Organization (2024)** *Pandemic Agreement (A78/10): Draft text*. Geneva: WHO.
35. **Wurridjal v Commonwealth** (2009) 237 CLR 309.