

# Customs Amendment (Smuggled Tobacco) Bill 2012

*Introduced into the House of Representatives on 27 June 2012*

*Portfolio: Attorney-General*

## Committee view

1.2 The committee notes that the statement of compatibility claims that this bill does not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. The committee seeks clarification from the Attorney-General whether it would be more accurate for the statement of compatibility to state that the bill does in fact engage criminal process rights as contained in Article 14 of the International Covenant on Civil and Political Rights (ICCPR), while acknowledging that the bill is compatible with these rights.

## Purpose of the bill

1.3 This bill amends the *Customs Act 1901* (the Act) to create new criminal offences for smuggling tobacco products and for conveying or possessing smuggled tobacco products. These new offences combine the penalties of the existing smuggling and fraud offences by providing a pecuniary penalty of up to five times the duty evaded in addition to up to 10 years imprisonment.

## Compatibility with human rights

### *Criminal process rights (Article 14 ICCPR)*

1.4 The committee notes that the statement of compatibility claims that although the bill introduces new criminal offences for the smuggling of tobacco, the bill does not engage human rights because it does not change any of the existing human rights guarantees, for example the minimum guarantees in criminal proceedings in the International Covenant on Civil and Political Rights (ICCPR).

1.5 Section 233 of the Act currently provides for an offence for the smuggling of any goods, including tobacco products. Offences under section 233 can only be prosecuted by way of a Customs prosecution and are punishable by a financial penalty of up to five times the duty evaded. Item 2 of the bill inserts a new section which creates new offences in relation to the smuggling of tobacco. The new offences will be criminal offences punishable by up to 10 years imprisonment or a fine, or both.

1.6 Item 1 of the bill will amend section 210 of the Act to include reference to the new offence provision inserted by Item 2. Section 210 allows an officer of Customs or police to arrest a person without warrant where the officer believes on reasonable ground that the person has committed or is committing an offence against new section 233BABAC in relation to the smuggling of tobacco products. Section 210 sets out circumstances in which this power may be exercised.

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

1.7 In introducing the bill the Attorney-General stated that the current penalties for illegal tobacco are not necessarily an effective deterrent as many penalties currently imposed for tobacco smuggling are not paid.

1.8 The explanatory memorandum to the bill notes that on some occasions the investigation of the smuggling offence results in the identification of sufficient evidence to warrant the pursuit of fraud offences under the *Criminal Code Act 1995*. In these cases offences carry penalties of up to 10 years imprisonment.

1.9 The committee notes that the imprisonment is intended to provide a strong deterrent to criminals and to demonstrate the seriousness of smuggling acts.