



# Parliamentary Joint Committee on Human Rights

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Examination of legislation in accordance with the  
*Human Rights (Parliamentary Scrutiny) Act 2011*

Bills introduced 18–29 June 2012

First Report of 2012

August 2012

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ISBN 978-1-74229-678-4

This document was prepared by the Parliamentary Joint Committee on Human Rights and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

## Membership of the committee

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## Functions of the Committee

The Committee has the following functions:

- a) to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- b) to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- c) to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.

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## Report on bills introduced 18 June–29 June 2012

1.1 This report provides the Parliamentary Joint Committee on Human Rights' view on the compatibility with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011* for bills introduced into the Parliament during the period 18 June 2012 to 29 June 2012.

### **The following bills engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*:**

- Commonwealth Government Securities Legislation Amendment (Retail Trading) Bill 2012 .....3
- Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012 .....6
- Fisheries Legislation Amendment Bill (No. 1) 2012 .....8
- Health Insurance Amendment (Extended Medicare Safety Net) Bill 2012 .....10
- Maritime Legislation Amendment Bill 2012 .....12
- Tax Laws Amendment (2012 Measures No. 4) Bill 2012 .....14
- Transport Safety Investigation Amendment Bill 2012 .....16
- Veteran's Affairs Legislation Amendment Bill 2012 .....18

### **The following bills do not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*:**

- Corporations Legislation Amendment (Financial Reporting Panel) Bill 2012 .....20
- Customs Amendment (Anti-dumping Improvements) Bill (No. 3) 2012.....21
- Customs Tariff Amendment (2012 Measures No. 1) Bill 2012.....21
- Statute Stocktake (Appropriations) Bill (No. 1) 2012.....21
- Tax Laws Amendment (Investment Manager Regime) Bill 2012 .....22

**The statements of compatibility for the following bills claim that the bills do not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. In each case, the committee has sought clarification of this claim from the proponent of the bill:**

- Broadcasting Services Amendment (Public Interest Test) Bill 2012.....23
- Customs Amendment (Smuggled Tobacco) Bill 2012 .....23
- Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012 .....25
- Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012.....25

**Mr Harry Jenkins MP  
Chair**

## **The following bills engage human rights**

### **Commonwealth Government Securities Legislation Amendment (Retail Trading) Bill 2012**

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

*Portfolio: Treasury*

#### **Committee view**

1.2 The committee considers that this bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.3 The committee notes that the bill engages the right to the presumption of innocence contained in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR).

#### **Purpose of the bill**

1.4 This bill amends the *Commonwealth Inscribed Stock Act 1911* to:

- facilitate trading of beneficial interests in Commonwealth Government Securities (CGS) on financial markets in Australia that are accessible to retail investors; and
- make minor amendments to facilitate the Australian Office of Financial Management's daily administrative work and remove some redundant provisions.

1.5 The bill also amends the *Corporations Act 2001* to require financial advisers to provide a prescribed information statement to retail clients when they give them personal advice about investing in CGS.

#### **Compatibility with human rights**

*Right to the presumption of innocence (Article 14(2) ICCPR)*

1.6 The statement of compatibility with human rights states that this bill may raise human rights issues because it contains a number of offences where the burden of proof is reversed and that this may give rise to concerns with respect to the right to the presumption of innocence.

1.7 The committee notes that new subsection 120AI(1) requires a regulated person providing personal advice to a retail client and who recommends an investment in a particular class of Commonwealth Government Securities depository interest to give the client the information statements relevant to the product that is being recommended. The explanatory memorandum states that this requirement has been

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closely modelled on existing section 1012A of the *Corporations Act 2001* which requires a product disclosure statement to be provided when personal advice is given recommending a particular product.

1.8 New subsections 1020AI(3) and (4) make it an offence for a regulated person not to provide the required information statements. New subsection 1020AI(4) states that this is an offence of strict liability. Strict liability offences are provided for in section 6.1 of the *Criminal Code Act 1995*. The effect of an offence being one of strict liability is to remove the need for the prosecution to prove fault in the defendant, with respect to the contravention of the requirement, which it would otherwise be incumbent on the prosecution to do.

1.9 New subsections 1020AI(2) and 1020AI(6) provide for various defences and exceptions to the offence in relation to which the defendant bears an evidential burden. Under the *Criminal Code Act 1995* a law may impose an evidential burden on a defendant. This means that the defendant bears the burden of pointing to evidence that suggests a reasonable possibility that a matter exists or does not exist. If the defendant discharges an evidential burden, the prosecution must disprove those matters beyond reasonable doubt.

1.10 Article 14(2) of the ICCPR protects the right of a person charged with a criminal offence ‘to be presumed innocent until proved guilty according to law’. The UN Human Rights Committee has provided little guidance on how Article 14 (2) ICCPR should be interpreted in the context of reverse burden and no-fault offences. However, case law from comparable jurisdictions with analogous protections (such as the United Kingdom, New Zealand and Canada, as well as the jurisprudence of the European Court of Human Rights) indicates that such offences will not necessarily violate the presumption of innocence, so long as they pursue a legitimate aim and are reasonable, necessary and proportionate to that aim.

1.11 The statement of compatibility states that the reversal of the burden of proof is appropriate in these circumstances because these matters are particularly within the knowledge of the defendant and would be very difficult for the prosecution to prove otherwise.

1.12 The statement of compatibility and explanatory memorandum also indicate that the reasons for reversing the burden of proof and for providing for a strict liability offence in this case have been assessed in the light of guidelines provided by the Criminal Justice Division of the Attorney-General's Department and have been found to be consistent with those guidelines.

1.13 The committee considers that reverse burden and no-fault offences which are drafted in accordance with these principles are likely to be consistent with the presumption of innocence, in particular as they require consideration of whether:

- the offence is regulatory (in other words, it is justifiable to expect individuals who participate in a regulated activity to be deemed to have accepted certain conditions and to show why they are not at fault for infringements);
- the burden relates to facts which are within the defendant's own knowledge or to which they have ready access; and
- the penalty falls at the lower end of the scale.

## **Electoral and Referendum Amendment (Improving Electoral Procedure) Bill 2012**

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

*Portfolio: Special Minister of State*

### **Committee view**

1.14 The committee seeks clarification from the Special Minister of State regarding the basis for the nominator thresholds and deposit amounts set by this bill before forming a view as to whether the bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Purpose of the bill**

1.15 This bill amends the *Commonwealth Electoral Act 1918* (the Electoral Act) and the *Referendum (Machinery Provisions) Act 1984* (the Referendum Act) to:

- remove the prescription relating to how postal votes are processed currently set out in the Electoral Act and the Referendum Act. The amendments will also seek to allow for technological developments over time;
- increase the sum to be deposited by or on behalf of a person nominated as a Senator from \$1000 to \$2000;
- increase the sum to be deposited by or on behalf of a person nominated as a Member of the House of Representatives from \$500 to \$1000;
- increase the number of nominators required by a candidate for the Senate or the House of Representatives who has not been nominated by a registered political party from 50 to 100 electors;
- require unendorsed candidates for the Senate who have made a request to be grouped to each be nominated by 100 unique electors; and
- make a number of minor and technical amendments.

### **Compatibility with human rights**

*Right to take part in public affairs and elections (Article 25 ICCPR)*

1.16 The statement of compatibility states that the bill engages Article 25 of the ICCPR and that the bill contributes to the realisation of the right by facilitating on-line postal vote applications and the use of new technologies.

1.17 The statement of compatibility also notes that while the bill does impose deposit and nominator thresholds that must be met by candidates, these measures are considered to be reasonable and balanced against the need to provide a ballot paper that is easy to use and readable.

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1.18 The bill increases the deposit that must be paid to the AEC upon nomination of all candidates and also increases the number of electors who must nominate a candidate for election who is not endorsed by a registered political party. The committee notes that the statement of compatibility states that the amendments seek to address two main concerns arising from the increasingly large number of Senate groups contesting elections relating:

- the impact on formality due to the increased complexity of the ballot paper; and
- practical issues associated with printing the ballot paper, particularly readability.

1.19 The current requirement for 50 nominators for unendorsed candidates has been in place since 1998 and the deposit amounts were last changed in 2006. The statement of compatibility states that since the current requirements for nominator thresholds were changed in 1998 and 2006 respectively, both the Australian populations and average weekly earnings have increased. The statement of compatibility states it is timely to increase the figures at this stage 'to balance a workable and timely electoral environment against the rights of individuals to take part in elections'.

1.20 The UN Human Rights Committee has stated in its General Comment 25 that conditions relating to deposits should be reasonable and not discriminatory, and that if a candidate is required to have a minimum number of supporters for nomination this requirement should be reasonable and not act as a barrier to candidacy.

1.21 The committee considers that further clarification is required of the considerations taken into account in arriving at the conclusion that the nominated thresholds and deposit amounts are reasonable and do not act as a barrier to candidacy.

## **Fisheries Legislation Amendment Bill 2012**

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

*Portfolio: Agriculture, Fisheries and Forestry*

### **Committee view**

1.22 The committee seeks further information from the Minister for Agriculture, Fisheries and Forestry regarding relevant policies and legal requirements for the management of storage, handling and disposal of E-monitoring data before forming a view as to whether the bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Purpose of the bill**

1.23 This bill amends the *Fisheries Management Act 1991* (FM Act) and the *Fisheries Administration Act 1991* to:

- introduce electronic monitoring (e-monitoring) to Australian boats that are authorised to fish under concessions and scientific permits granted by the Commonwealth; and
- make several minor amendments to the FM Act to clarify and make provisions consistent.

### **Compatibility with human rights**

*Right to privacy (Article 17 ICCPR)*

*Right to work (Article 6 ICESCR)*

1.24 The statement of compatibility notes that the bill places limitations on the prohibition on interference with privacy (Article 17 of the ICCPR) and the right to work (Article 6 of the ICESCR).

1.25 Under the *Fisheries Administration Act 1991*, AFMA is authorised to collect or disclose information, including personal information, in accordance with the *Fisheries Administration Act 1991*, the *Fisheries Management Act 1991* or the *Torres Strait Fisheries Act 1984* or regulations under one of these Acts.

1.26 E-monitoring will enhance AFMA's ability to meet its legislative requirement to ensure that the exploitation of fisheries resources is ecologically sustainable, to implement efficient and cost-effective fisheries management and to collect information about possible breaches of the law and the management of and research into fisheries and the marine environment.

1.27 E-monitoring will involve the electronic recording of fishing and related activities for data collection and compliance purposes, through the use of specialised

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equipment installed on boats. Such equipment can include cameras, global positioning systems or sensors and vessel monitoring systems capable of generating a range of visual and non-visual data. E-monitoring data will include video footage of fishing and fishing related activities on the deck of boats, in processing areas on boats or in the water and data showing the location and identity of boats.

1.28 Electronic surveillance under the bill may incidentally include personal information. This information could be stored, used and disclosed by AFMA. The statement of compatibility states that access by individuals to this information may be regulated.

1.29 The explanatory memorandum to the bill states that the storage, handling and disposal of e-monitoring data will be managed in accordance with AFMA policies that, in turn, are governed by relevant legal requirements. The explanatory memorandum also states on page four that '[V]arious safeguards can apply to the disclosure of personal information that forms part of e-monitoring data; for example, AFMA may prevent or limit secondary disclosure of information that it has disclosed and, where personal information is not relevant to the purpose of the disclosure, the personal information component could be obscured'.

1.30 Article 17 of the ICCPR protects the individual's right to privacy and prohibits unlawful and arbitrary interferences with privacy.

1.31 The committee considers that further information is required regarding relevant AFMA policies and legal requirements for the management of storage, handling and disposal of E-monitoring data.

## **Health Insurance Amendment (Extended Medicare Safety Net) Bill 2012**

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

*Portfolio: Health and Ageing*

### **Committee view**

1.32 The committee considers that this bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.33 The committee notes that the bill engages the right to health contained in Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the right to social security contained in Article 9 of the ICESCR.

### **Purpose of the bill**

1.34 This bill amends the *Health Insurance Act 1973* to allow the application of Extended Medicare Safety Net (EMSN) benefit caps to apply where more than one Medicare service is performed on the same patient on the same occasion and is deemed to be 'one professional service'.

### **Compatibility with human rights**

*Right to social security (Article 9 ICESCR)*

*Right to the enjoyment of the highest attainable standard of physical and mental health (Article 12 ICESCR)*

1.35 Items 1 and 2 of this bill are intended to ensure that doctors who perform more than one service on the same patient on the same occasion are unable to avoid the EMSN caps that currently apply to individual operation services. The resulting saving in Government expenditure can be directed to programs to increase the health of all Australians.

1.36 The statement of compatibility notes that while this bill may increase the out-of-pocket costs for some patients in certain circumstances, all patients will still be eligible for the existing Medicare rebate and any associated benefits from the Original Medicare safety net for families and individuals. Patients will also still be eligible for EMSN benefits, however, if the fee charged for the service by the doctor is high enough that the EMSN benefits calculated are higher than the EMSN benefit cap, the patient will receive the lower amount equal to the EMSN benefit cap amount.

1.37 The statement of compatibility states that to the extent that the bill may limit the right to health or social security, it addresses a legitimate objective and is reasonable, necessary and proportionate in the circumstances.

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.

1.38 Article 9 of ICESCR provides:

‘The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.’

1.39 The UN Committee on Economic Social and Cultural Rights has described the right to social security as the right to a minimum essential level of benefits that will enable persons to acquire ‘at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic forms of education’

1.40 Article 12(1) of ICESCR provides:

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

1.41 The UN Committee has stated that the notion of 'the highest attainable standard of health' takes into account both the conditions of the individual and the country's available resources. The Committee recognises that good health cannot be ensured by a country, nor can countries provide protection against every possible cause of human ill health. Consequently, the right must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the individual to realise his or her highest attainable standard of health. The Committee has stated that the right to health embraces a wide range of socio-economic factors that promote conditions in which people can lead a healthy life, and extends to the underlying determinants of health, such as food and nutrition, housing, access to safe and potable water and adequate sanitation, safe and healthy working conditions, and a healthy environment.

1.42 Article 4 of ICESCR provides:

‘the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.’

## **Maritime Legislation Amendment Bill 2012**

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

*Portfolio: Infrastructure and Transport*

### **Committee view**

1.43 The committee considers that this bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.44 The committee notes that the bill engages the right to the presumption of innocence contained in Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR).

### **Purpose of the bill**

1.45 This bill amends the *Protection of the Sea (Prevention of Pollution from Ships) Act 1983* to implement amendments to the Annexes to the International Convention for the Prevention of Pollution from Ships which were adopted by the Marine Environment Protection Committee of the International Maritime Organisation on 15 July 2011. The bill imposes restrictions on the discharge of sewage from passenger ships in special areas; revises requirements relating to the disposal by ships of garbage at sea and makes the Energy Efficiency Design and the Ship Energy Efficiency Management Plan mandatory for certain ships.

1.46 The bill also:

- clarifies the application of Federal jurisdiction in the parts of the territorial sea that lie between Australian baselines and 3 nautical miles out to sea from those baselines; and
- repeals the *Stevedoring Levy (Imposition) Act 1998* and the *Stevedoring Levy (Collection) Act 1998*.

### **Compatibility with human rights**

*Right to the presumption of innocence (Article 14(2) ICCPR)*

1.47 The statement of compatibility indicates that the bill may raise human rights issues because it contains a strict liability offence, which may raise concerns with respect to the presumption of innocence.

1.48 Section 26FEW of the bill requires Australian ships to carry a Ship Energy Efficiency Management Plan (SEEMP). The master and the owner of the ship each commit an offence of strict liability if the ship does not have on board a SEEMP.

1.49 Strict liability offences are provided for in section 6.1 of the *Criminal Code Act 1995*. The effect of an offence being one of strict liability is to remove the need

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for the prosecution to prove fault in the defendant, with respect to the contravention of the requirement, which it would otherwise be incumbent on the prosecution to do.

1.50 Article 14(2) of the ICCPR protects the right of a person charged with a criminal offence ‘to be presumed innocent until proved guilty according to law’. The UN Human Rights Committee has provided little guidance on how Article 14 (2) ICCPR should be interpreted in the context of strict liability offences. However, case law from comparable jurisdictions with analogous protections (such as the United Kingdom, New Zealand and Canada, as well as the jurisprudence of the European Court of Human Rights) indicates that such offences will not necessarily violate the presumption of innocence, so long as they pursue a legitimate aim and are reasonable, necessary and proportionate to that aim.

1.51 The statement of compatibility states that that shipowners and masters have a responsibility to be aware of the requirement for the ship to carry a SEEMP and to ensure that the ship in fact carries the SEEMP, and therefore if the SEEMP is not carried by the ship they should be liable without any need to prove intention or recklessness on their part. Further, sometimes it may be difficult to prove that they had the requisite mental element (i.e. intention or recklessness), hence a requirement to prove a mental element would make the offence harder to enforce.

1.52 The statement of compatibility indicates that the provision for the strict liability offence is consistent with guidance issued by the Senate Standing Committee for the Scrutiny of bills and by the Criminal Justice Division of the Attorney-General’s Department, about the circumstances in which strict liability offences are appropriate.

1.53 The committee considers that strict liability offences which are drafted in accordance with these principles are likely to be consistent with the presumption of innocence, in particular as they require consideration of whether:

- the offence is regulatory (in other words, it is justifiable to expect individuals who participate in a regulated activity to be deemed to have accepted certain conditions, particularly where those activities carry public health and safety or environmental risks, and to show why they are not at fault for infringements); and
- the penalty falls at the lower end of the scale and does not include imprisonment.

## **Tax Laws Amendment (2012 Measures No. 4) Bill 2012**

*Introduced into the House of Representatives on 28 June 2012*

*Portfolio: Treasury*

### **Committee view**

1.54 The committee seeks further information from the Treasurer regarding the basis for the differentiated treatment of taxpayers in the transitional rules under the bill before forming a view as to whether the bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Purpose of the bill**

1.55 This bill amends various taxation laws.

1.56 Schedule 1 amends the *Fringe Benefits Tax Assessment Act 1986* (FBTAA) and the *Income Tax Assessment Act 1997* (ITAA 1997) implement changes to the treatment of living-away-from-home (LAFH) allowances and benefits by:

- treating LAFH allowances as part of an employee's assessable income rather than as fringe benefits; and
- allowing certain income tax deductions.

1.57 Schedule 2 amends the *A New Tax System (Goods and Services Tax) Act 1999* (GST Act) to ensure that in circumstances where a representative of an incapacitated entity is a creditor of that entity, the correct provision of the GST Act is applied.

1.58 Schedule 3 to the bill amends Schedule 3 to the *Tax Laws Amendment (2012 Measures No. 2) Act 2012* to ensure that no interest is payable if an overpayment of income tax arises, or if additional tax becomes payable, due to the deduction under the pre-rules in Part 1 or under the interim rules in Part 2 of Schedule 3 to that Act.

### **Compatibility with human rights**

1.59 Schedule 1 to the bill amends the FBTAA and the ITAA 1997 to reform the taxation treatment of living-away-from-home allowances and benefits.

1.60 The statement of compatibility acknowledges that the transitional rules in the bill provides for differentiated treatment of taxpayers, based on their residency status for income tax purposes — that is, between temporary and foreign residents, on the one hand, and permanent residents on the other.

1.61 The statement of compatibility notes that there is a body of law and practice recognising that taxation laws of a State can differentiate between the tax treatment of residents of that State and the tax treatment of non-residents. For example, treaties to prevent double taxation use residence status as a way to allocate taxing rights between

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States. At the same time, discrimination between residents of the same State on the basis of their nationality is prohibited.

1.62 The statement of compatibility also states that some submissions to the consultation process on the exposure draft argued that the transitional rules are not compatible with international human rights conventions in so far as these prohibit discrimination on the basis of specified grounds, including race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

1.63 This argument appears to be based on provisions such as Article 26 of the International Covenant on Civil and Political Rights (ICCPR), which provides that:

‘All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.’

1.64 The UN Human Rights Committee has not issued any specific guidance on the meaning of ‘other status’, preferring instead to treat it on a case by case basis. It has nevertheless indicated that that clearly definable groups linked by their common status may fall within the category of ‘other status’.

1.65 Given that the category of ‘other status’ is not closed, the committee considers that further information is required as to the basis for differentiating between taxpayers for the purposes of the transitional rules in the bill.

## **Transport Safety Investigation Amendment Bill 2012**

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

*Portfolio: Infrastructure and Transport*

### **Committee view**

1.66 The committee considers that this bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.67 However, the committee notes that the statement of compatibility states that the disclosure of restricted information and On-Board Recording (OBR) information under the Bill may engage the right to privacy to the extent that the disclosure involves personal information. The committee notes that this disclosure will be the subject of prescribed regulations rather than the subject of the Bill itself and that these regulations will be subject to the requirement to provide a statement of compatibility with human rights.

### **Purpose of the bill**

1.68 This bill amends the *Transport Safety Investigation Act 2003* (TSI Act) to:

- provide state and territory government Ministers with a responsibility for rail a right to request the Australian Transport Safety Bureau (ATSB) to conduct an investigation in their jurisdiction;
- clarify the ATSB's capacity to conduct investigations within, or to or from, a Commonwealth Territory; and
- provide that OBR and restricted information may be disclosed in accordance with the regulations.

### **Compatibility with human rights**

*Right to privacy (Article 17 of ICCPR)*

1.69 The proposed amendments to Part 6 of the TSI Act, contained within Items 4 and 5 of Schedule 1 to the Bill, provide a defence to any prohibition on copying or disclosing restricted information and OBR information if the copying or disclosing was done by a person performing functions or exercising powers under, or in connection with, the TSI Act or Regulations.

1.70 The explanatory memorandum states that the prohibitions on copying and disclosing OBR and restricted information exist in the TSI Act to encourage persons to cooperate with the ATSB in safety investigation knowing that the information they provide will not be used against them. Similarly, in confidential reporting, the prohibitions on disclosure are to encourage persons who fear reprisal to make a report. However, the explanatory memorandum goes on to state that there also needs to be

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some exceptions in order for investigations and confidential reporting to be effectively able to communicate safety issues to the industry.

1.71 The statement of compatibility states that to the extent that the disclosure involves personal information, the right to privacy may be engaged. However, the statement of compatibility states that this disclosure will be the subject of any prescribed regulation rather than the subject of the Bill itself and that these regulations will be subject to the requirement to provide a statement of compatibility with human rights.

1.72 The statement of compatibility also states that to the extent that any regulations do engage the right to privacy they are expected to advance the right. It is however not clear how the right to privacy would be advanced by regulations that permit the disclosure of personal information.

1.73 The right to privacy contained in Article 17 of the ICCPR provides:

- '1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.'

1.74 The UN Human Rights Committee notes that paragraph 4 of General Comment 16 states that:

'The introduction of the concept of arbitrariness is intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances.'

## **Veterans' Affairs Legislation Amendment Bill 2012**

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

*Portfolio: Veterans' Affairs*

### **Committee view**

1.75 The committee considers that this bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.76 The committee notes that the bill advances the right to health and the right to social security contained in Article 12 and Article 9 of the International Covenant on Economic, Cultural and Social Rights (ICESCR).

### **Purpose of the bill**

1.77 This bill amends Veterans' Affairs and other portfolio legislation to:

- clarify arrangements for the payment of travel expenses for treatment under the Veterans' Entitlements Act and the Australian Participants in British Nuclear Tests (Treatment) Act;
- provide for the more timely provision of special assistance by way of a legislative instrument in place of the current arrangement requiring a regulation;
- ensure that the debt recovery provisions will be applicable to all relevant provisions of the Veterans' Entitlements Act, the regulations and any legislative instrument made under the Veterans' Entitlements Act;
- make technical amendments to provisions in the Military Rehabilitation and Compensation Act that refer to legislative instruments;
- amend the Military Rehabilitation and Compensation Act to replace obsolete references to pharmaceutical allowance and telephone allowance with references to the MRCA supplement;
- rationalise the maintenance income provisions of the Veterans' Entitlements Act by repealing the redundant definitions and operative provisions and aligning the remaining definitions with those used in the Social Security Act;
- exempt as income for the purposes of the social security income test, bereavement payments in respect of indigent veterans or members;
- exempt from income tax, reimbursements made under the Repatriation Pharmaceutical Benefits Scheme and the MRCA Pharmaceutical Benefits Scheme, including payments under the new Veterans' Pharmaceutical Reimbursement Scheme; and
- make minor technical amendments.

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## **Compatibility with human rights**

### *Right to health (Article 12 ICESCR)*

### *Right to social security (Article 9 ICESCR)*

1.78 The statement of compatibility states that amendment will advance the right to the enjoyment of the highest attainable standard of physical and mental health by clarifying the arrangements for the payment of travel expenses for persons receiving treatment under the Veterans' Entitlements Act and the Australian Participants in British Nuclear Tests (Treatment) Act.

1.79 The statement of compatibility also states that the bill will promote the right to social security by making certain bereavement payments exempt lump sums, thereby ensuring that they are not assessed as income for the purposes of the social security income test.

## **The following bills do not engage human rights**

### **Corporations Legislation Amendment (Financial Reporting Panel) Bill 2012**

*Introduced into the House of Representatives on 21 June 2012*

*Portfolio: Treasury*

1.80 This bill amends the *Australian Securities and Investments Commission Act 2001*, the *Corporations Act 2001* and the *Corporations (Fees) Act 2001* to repeal the functions and powers of the Financial Reporting Panel (FRP).

1.81 The FRP was established to resolve contested issues between the Australian Securities and Investments Commission and reporting entities over the application of the accounting standards to financial reports. It is being closed because of a low number of referrals.

### **Customs Amendment (Anti-dumping Improvements) Bill (No. 3) 2012**

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

*Portfolio: Home Affairs*

1.82 This bill amends the *Customs Act 1901* (the Act) to:

- amend provisions dealing with countervailable subsidies to more accurately reflect the World Trade Organization *Agreement on Subsidies and Countervailing Measures*;
- introduce provisions under which Customs and Border Protection will, if required, conduct inquiries to address the circumvention of trade measures by exporters or importers of goods which are subject to measures; and
- amend the sampling provisions that deal with non-cooperation in anti dumping investigations, reviews under Division 5 or continuation inquiries; and
- make a number of minor amendments to the Act.

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## **Customs Tariff Amendment (2012 Measures No.1) Bill 2012**

*Introduced into the House of Representatives on 20 June 2012*

*Portfolio: Home Affairs*

- 1.83 This bill amends the *Customs Tariff Act 1995* to:
- re-insert subheading 5308.10.00 applicable to coir yarn;
  - provide for the listing of Serbia as a Developing Country for the purposes of the Australian System of Tariff Preferences; and
  - correct a number of technical errors.

## **Statute Stocktake (Appropriations) Bill (No. 1) 2012**

*Introduced into the House of Representatives on 20 June 2012*

*Portfolio: Finance and Deregulation*

### **Committee view**

1.84 While noting that this bill does not engage human rights the committee proposes to write to the Minister in an advisory capacity regarding the preparation of the statement of compatibility.

### **Purpose of the bill**

- 1.85 This bill repeals the following:
- 93 redundant Appropriations Acts from 1984 to 1999;
  - 35 redundant Supply Acts from 1984 to 1997; and
  - 3 Acts containing redundant special appropriations from the Treasury portfolio.

## **Tax Laws Amendment (Investment Manager Regime) Bill 2012**

*Introduced into the House of Representatives on 21 June 2012*

*Portfolio: Treasury*

1.86 This bill amends the Income Tax Assessment Act 1997 and the Income Tax (Transitional Provisions) Act 1997.

1.87 Schedule 1 clarifies the treatment of returns, gains, losses and deductions on certain investments of widely held foreign funds.

1.88 Schedule 2 clarifies the taxation treatment of certain returns, gains, losses and deductions for the 2010-11 and earlier income years of widely held foreign funds which have not lodged a tax return and have not had an assessment made of their income tax liability.

## **The committee has sought clarification of claims that the following bills do not engage human rights**

### **Broadcasting Services Amendment (Public Interest Test) Bill 2012**

*Introduced into the Senate on 29 June 2012*

*By: Senator Ludlam*

#### **Committee view**

1.89 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 Senator Ludlam whether the bill could be said to engage the right to freedom of expression contained in Article 19 of the International Covenant on Civil and Political Rights.

#### **Purpose of the bill**

1.90 This bill amends the *Broadcasting Services Act 1992* to introduce a public interest test for changes in control of nationally significant media operations.

### **Customs Amendment (Smuggled Tobacco) Bill 2012**

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

*Portfolio: Attorney-General*

#### **Committee view**

1.91 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**

1.92 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)*

1.93 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).

1.94 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.

1.95 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.

1.96 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.

1.97 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.

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

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## **Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012**

*Introduced into the House of Representatives on 18 June 2012*

*By: Mr Bandt*

### **Committee view**

1.99 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 Mr Bandt whether the bill could be said to engage the right to work contained in Article 2 of the International Covenant on Economic, Social and Cultural Rights.

### **Purpose of the bill**

1.100 This bill amends the *Fair Work Act 2009* and the *Migration Act 1958* to create a legislative framework for Enterprise Migration Agreements (EMA).

1.101 The bill also sets out various conditions that can be included when an EMA is made including:

- requiring employers to advertise jobs to locals before they can get an EMA; and
- requiring a local jobs board - listing jobs to be filled in the resources sector - to be maintained by the Workplace Relations Minister.

## **Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012**

*Introduced into the Senate on 29 June 2012*

*By: Senators Madigan and Xenophon*

### **Committee view**

1.102 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 Senators Madigan and Xenophon whether the bill could be said to engage the right to privacy contained in Article 17 of the International Covenant on Civil and Political Rights and the right to health contained in Article 12 of the International Covenant on Economic, Social and Cultural Rights.

## **Purpose of the bill**

This bill amends the *Renewable Energy (Electricity) Act 2000* to provide the Regulator with the authority to ensure that accredited power stations that are wind farms, either in whole or in part, do not create excessive noise.