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## Customs Amendment (Miscellaneous Measures) Bill 2012

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

*Portfolio: Home Affairs*

### Committee view

1.1 The committee seeks clarification from the Minister as to whether the new strict liability offence of importing restricted goods is compatible with the presumption to innocence under article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) before forming a view on the compatibility of the bill with human rights.

### Overview

1.2 The bill amends the *Customs Act 1901* to introduce a new strict liability offence for bringing into Australia a new category of goods known as 'restricted goods'. Regulations will prescribe what will be prohibited. The bill also makes a number of technical amendments to this Act and other customs related legislation.

### Compatibility with human rights

1.3 This bill is accompanied by a brief statement of compatibility which identifies one human right that may be engaged by the bill – the right of minimum guarantees in criminal proceedings, as provided for in article 14 of the International Covenant on Civil and Political Rights (ICCPR).

1.4 The bill creates a new strict liability offence, by the proposed insertion of a new section 233BABAE in the *Customs Act 1901*, which makes it an offence to bring restricted goods into Australia.

1.5 The statement of compatibility states that 'The Bill will create a new offence with a civil penalty', considers whether such a 'civil penalty regime' engages the protections of article 14 of the ICCPR insofar as they apply to the 'determination of a criminal charge', and concludes that it does so but that these procedural guarantees are provided for under the legislative scheme.

1.6 The proposed new offence is designated as a criminal offence of strict liability by the new section itself. Even though the penalty for the offence involves only the payment of a sum of money (a maximum of 1,000 penalty units), the absence of imprisonment as an option for punishment does not turn the offence into a 'civil penalty'. Thus, the criminal procedural guarantees of article 14 of the ICCPR apply directly as the offence is a criminal offence under domestic law.

1.7 Accordingly, the right to be presumed innocent is engaged, as the new offence is a strict liability offence. The statement of compatibility does not refer to

this or provide any justification as to why the imposition of strict liability is justified in this context.

**1.8 The committee intends to write to the Minister to request clarification as to whether the imposition of strict liability under the new offence of importing restricted goods is consistent with the presumption of innocence in article 14(2) of the ICCPR.**