

## **Part 3**

---

### **Responses to the committee's comments on bills and legislative instruments**



## Biosecurity Bill 2012

*Introduced into the Senate on 28 November 2012; before Senate*

*Portfolio: Agriculture, Fisheries and Forestry*

*PJCHR comments: [Report 1/13](#), tabled on 6 February 2013*

*Response received: 19 April 2013*

### Summary of committee view

3.1 The committee thanks the Minister for her response and her undertaking to review subclause 45(4) of the bill.

3.2 The committee makes no further comment in relation to this provision of the bill at this stage.

### Background

3.3 This bill was introduced together with the Inspector-General of Biosecurity Bill 2012 and establishes a comprehensive legislative framework for managing security risks to Australia. It replaces the *Quarantine Act 1908* to:

- provide a modern regulatory framework to manage biosecurity risks, the risk of contagion of a listed human disease, the risk of listed human disease entering Australian territory, risks related to ballast water, biosecurity emergencies and human biosecurity emergencies; and
- give effect to Australia's international rights and obligations, including the World Health Organization's International Health Regulations and Agreement on the Application of Sanitary and Phytosanitary Measures, and the Convention on Biological Diversity.

3.4 At paragraphs 1.71 and 1.72 of the committee's *First Report of 2013* the committee stated that, in general, the provisions permitting the imposition of entry and exit requirements could be viewed as being adopted for the legitimate purposes of the protection of public health and the implementation of Australia's international obligations (including those under the World Health Organization's International Health Regulations), and that the substantive and procedural safeguards provided for in the bill mean that the exercise of the powers conferred would be consistent with human rights.

3.5 However, the committee:

- noted that subclause 45(4), which provides that a person may be held liable for a civil penalty contravention for failure to comply with a requirement with which it is not possible for the person to comply, gave rise to human rights concerns (in particular so far as the presumption of innocence and the right to a fair hearing are concerned); and

- sought clarification as to the justification for this subclause, both on the basis that such a civil penalty contravention involves a 'criminal charge' within the meaning of article 14 of the ICCPR and on the basis that it is not considered 'criminal' in nature.

3.6 The Minister for Health has responded to the issues outlined above. The Minister's response is attached.

3.7 The committee notes that the Minister for Agriculture, Fisheries and Forestry will be responding to the other issues that the committee raised in relation to this bill.

### **Committee's response**

3.8 The committee thanks the Minister for her response.

3.9 In her response the Minister stated that subclause 45(4) is intended to clarify that a civil penalty may apply if an individual has not received a specified vaccination and is therefore unable to provide a declaration or evidence to that effect. The Minister indicated that after further consideration, subclause 45(4) appears to be broader than first intended and that in light of the concerns raised by the committee the provision will be reviewed.

3.10 The committee thanks the Minister for this undertaking and makes no further comment in relation to this provision of the bill at this stage.



**The Hon Tanya Plibersek MP**  
**Minister for Health**

RECEIVED  
19 APR 2013

Mr Harry Jenkins MP  
Chair, Parliamentary Joint Committee on Human Rights  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Mr Jenkins

You recently wrote to Minister Ludwig seeking advice and clarification on a number of matters raised in the examination of the Biosecurity Bill 2012 (The 'Bill') in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Bill is jointly administered in the Agriculture, Fisheries and Forestry portfolio and the Health portfolio. As Minister with responsibility for human health under the Bill, I am responding to the matter that was raised in relation to human health at 1.72 of the First Report by the Parliamentary Joint Committee on Human Rights of 2013. I understand Minister Ludwig is responding to all other matters raised by the Committee.

Clause 45 of the Bill specifies that civil penalties may apply in relation to individuals or operators of overseas aircraft or vessels that fail to comply with certain entry or exit requirements. Entry and exit requirements are specified in a determination by the Health Minister. Clause 45(4) is intended to clarify, in particular, that a civil penalty may apply if an individual has not received a specified vaccination, and is therefore unable to provide a declaration or evidence to that effect.

After further consideration, this provision now appears to be broader than first intended. In light of the concerns raised by the Committee, this provision will be reviewed.

I thank the Committee for bringing this issue to my attention, and trust this information will address the concerns of the Committee.

Yours sincerely

**Tanya Plibersek**

21.3.13