

Chapter 1

Introduction

The referral

1.1 On 27 March 2014, the Senate referred, on the recommendation of the Selection of Bills Committee, the provisions of the Regulatory Powers (Standard Provisions) Bill 2014 to the Senate Legal and Constitutional Affairs Legislation Committee for inquiry and report by 8 May 2014.¹

1.2 The Bill was introduced in the House of Representatives on 20 March 2014, by the Hon Mr Michael Keenan MP, Minister for Justice.² The Bill provides a framework of powers for general application across regulatory schemes for monitoring compliance with, investigating breaches of, and enforcing, Commonwealth laws. Enforcement provisions include civil penalties, infringement notices, enforceable undertakings and injunctions.

Rationale for the Bill

1.3 This Bill has been re-introduced following the lapsing of the *Regulatory Powers (Standard Provisions) Bill 2012* (the 2012 Bill) at the end of the 43rd Parliament.

1.4 The purpose of the Bill is to provide a framework of standard regulatory powers that may be exercised by Commonwealth agencies. The Bill would not apply to any particular legislation unless its provisions are specifically triggered through amendment or the introduction of new legislation.

1.5 The Minister for Justice explained the Bill was 'an important reform to achieve improved regulatory outcomes and enhance access to justice.'³

1.6 Specifically, the Bill:

will significantly simplify and streamline Commonwealth regulatory powers across the statute book[s] over time, and improve the accessibility efficiency and effectiveness of the federal justice system.⁴

1.7 A key benefit of the Bill would be avoiding the need to spell out specific regulatory powers in each separate piece of new or amended legislation. According to the minister:

¹ *Journals of the Senate Journals of the Senate* No. 26—27 March 2014, p. 741.

² *Votes and Proceedings* No 30—20 March 2014, p. 399.

³ The Hon Michael Keenan MP, Minister for Justice, Second Reading Speech, *House of Representatives Hansard*, 20 March 2014, p. 2577.

⁴ The Hon Michael Keenan MP, Minister for Justice, Second Reading Speech, *House of Representatives Hansard*, 20 March 2014, p. 2577.

Provisions relating to the enforcement of a regulatory regime can easily increase the length of legislation by 30 pages, and by up to 80 pages for some regimes.⁵

1.8 The government has proposed to roll out the implementation of the Bill in stages. Firstly, new laws that require the use by a Commonwealth agency of the powers under the Bill would be drafted to trigger the relevant provisions in the Bill. Further, over time, existing regulatory schemes would be reviewed and, if appropriate, amended to instead trigger the relevant provisions of the Bill.⁶

1.9 As a result, 'the amount of duplication between these laws will be significantly reduced'.⁷ Nevertheless, the government noted that:

In some cases the powers contained in this Bill will not be appropriate or sufficient for the requirements of particular regulatory agencies. For example, law enforcement agencies that deal with national security will still require their own specialised powers. Similarly, some regulatory agencies may have specific requirements not met in this Bill and consequently may decide to not trigger the Bill's provisions.⁸

Provisions

1.10 The Bill has eight parts, with six substantive parts and two parts dealing with preliminary matters and general provisions. For any provisions in the Bill to apply, another Act must refer to those provisions.

1.11 Importantly, the Bill would expressly provide for the protection of legal professional privilege and the right against self-incrimination.⁹

1.12 Part 2 sets out monitoring powers — powers to monitor whether provisions of an Act or legislative instrument have been, or are being, complied with by an individual or organisation subject to a regulatory obligation. Powers include the powers to enter premises by consent or under a warrant. Part 2 also outlines occupiers' rights and responsibilities.

1.13 Part 3 sets out investigation powers — powers to gather material relating to the contravention of offence provisions and civil penalty provisions under Commonwealth law.

1.14 Part 4 would create a regime for the use and enforcement of civil penalty provisions. Under this part, civil penalty orders may be sought from a court for breach of a civil penalty provision. The part also sets out general application rules such as the

⁵ The Hon Michael Keenan MP, Minister for Justice, Second Reading Speech, *House of Representatives Hansard*, 20 March 2014, p. 2577.

⁶ EM p. 2.

⁷ The Hon Michael Keenan MP, Minister for Justice, Second Reading Speech, *House of Representatives Hansard*, 20 March 2014, p. 2578.

⁸ EM p. 2.

⁹ See, for example, s17 and s47.

absence of a need to prove intention to prove a breach of a civil penalty provision. The part also provides for a defence of mistake of fact.

1.15 Part 5 would create a regime for the use of infringement notices. Under this part, an infringement officer may issue an infringement notice if they reasonably believe that a provision subject to an infringement notice under this Part has been contravened. Provisions subject to an infringement notice may be strict liability offences and/or civil penalty provisions. A person issued with an infringement notice under this part would have the choice to pay the amount of the notice, or alternatively face court proceedings in relation to the contravention.

1.16 Part 6 would create a regime for the use of enforceable undertakings. Under this part, an authorised person may accept an undertaking in relation to compliance with a provision which is enforceable under this part. The undertaking may be enforced in a court, with the court having the power to issue a range of orders including an order directing compliance, an order requiring any financial benefit from non-compliance to be surrendered, and an order for damages.

Conduct of the inquiry

1.17 In accordance with the usual practice, the committee advertised the inquiry on its website. The committee also wrote to relevant organisations inviting submissions by 16 April 2014. The committee received 3 submissions. A full list of submissions is provided at Appendix 1.

1.18 Given the small number of submissions, and the committee's consideration of a previous iteration of the Bill 12 months ago, the committee decided not conduct a public hearing on the Bill.

Acknowledgement

1.19 The committee thanks the organisations and individuals who made submissions.

