



**SENATE STANDING COMMITTEE**  
**FOR THE**  
**SCRUTINY OF BILLS**

**THIRTEENTH REPORT**  
**OF**  
**2015**

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Senator Cory Bernardi	LP, South Australia
Senator the Hon Bill Heffernan	LP, New South Wales
Senator the Hon Joseph Ludwig	ALP, Queensland
Senator Rachel Siewert	AG, Western Australia

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## Terms of Reference

### Extract from **Standing Order 24**

- (1) (a) At the commencement of each Parliament, a Standing Committee for the Scrutiny of Bills shall be appointed to report, in respect of the clauses of bills introduced into the Senate or the provisions of bills not yet before the Senate, and in respect of Acts of the Parliament, whether such bills or Acts, by express words or otherwise:
  - (i) trespass unduly on personal rights and liberties;
  - (ii) make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
  - (iii) make rights, liberties or obligations unduly dependent upon non-reviewable decisions;
  - (iv) inappropriately delegate legislative powers; or
  - (v) insufficiently subject the exercise of legislative power to parliamentary scrutiny.
- (b) The committee, for the purpose of reporting on its terms of reference, may consider any proposed law or other document or information available to it, including an exposure draft of proposed legislation, notwithstanding that such proposed law, document or information has not been presented to the Senate.
- (c) The committee, for the purpose of reporting on term of reference (a)(iv), shall take into account the extent to which a proposed law relies on delegated legislation and whether a draft of that legislation is available to the Senate at the time the bill is considered.



# SENATE STANDING COMMITTEE FOR THE SCRUTINY OF BILLS

## THIRTEENTH REPORT OF 2015

The committee presents its *Thirteenth Report of 2015* to the Senate.

The committee draws the attention of the Senate to clauses of the following bills which contain provisions that the committee considers may fall within principles 1(a)(i) to 1(a)(v) of Standing Order 24:

<b>Bills</b>	<b>Page No.</b>
Aviation Transport Security Amendment (Cargo) Bill 2015	753





# Aviation Transport Security Amendment (Cargo) Bill 2015

Introduced into the House of Representatives on 17 September 2015  
Portfolio: Infrastructure and Regional Development

## *Introduction*

The committee dealt with this bill in *Alert Digest No.11 of 2015*. The Minister responded to the committee's comments in a letter dated 12 November 2015. A copy of the letter is attached to this report.

## *Alert Digest No. 11 of 2015 - extract*

## **Background**

This bill amends the *Aviation Transport Security Act 2004* to:

- introduce a new aviation industry participant—an air cargo *Known Consignor*; and
- ensure that Australia's air cargo security is aligned with international standards.

## **Delegation of legislative power**

### **Trespass on personal rights and liberties**

#### **Item 23, proposed subsection 44C(3A)**

Proposed subsection 44C(3A) provides, to avoid doubt, that regulations or other legislative instruments dealing with the examination of cargo may provide for or require cargo to be opened, deconsolidated or unpacked. The examination of the cargo may be authorised regardless of consent given by the owner of the cargo or any other person.

The explanatory memorandum indicates that the purpose of examining cargo is to detect explosives and that the provision is intended to 'alter any common law principles or fundamental rights that might otherwise exist in relation to opening cargo' (at p. 10).

**The committee notes that the breadth of the power as currently drafted could give rise to the risk of undue trespass on common law principles or fundamental rights. The committee therefore seeks the Minister's advice as to whether the power to make legislative instruments authorising the opening, deconsolidation or unpacking of cargo can be expressly limited to the intended purpose of detecting explosives.**

*Pending the Minister's reply, the committee draws Senators' attention to the provision, as it may be considered to trespass unduly on personal rights and liberties and to delegate legislative powers inappropriately, in breach of principles 1(a)(i) and (iv) of the committee's terms of reference.*

### *Minister's response - extract*

This provision provides that regulations or other legislative instruments dealing with the examination of cargo may provide for or require cargo to be opened, deconsolidated or unpacked, regardless of consent given by the owner of the cargo or any other person. I understand that the Committee is concerned this provision could give rise to the risk of undue trespass on common law principles or fundamental rights, and may delegate legislative powers inappropriately.

The purpose of examining cargo is limited to safeguarding against unlawful interference with aviation. Unlawful interference is defined in Section 10 of the Act and includes, without lawful authority, placing, or causing to be placed on board an aircraft in service, anything that puts at risk the safety of the aircraft or any person on board or outside the aircraft. This would include placing an explosive on the aircraft.

It is not necessary to expressly limit this provision, as Section 10 of the Act does not provide a blanket protection for certain persons to open cargo. A person who opens a box beyond the narrow remit of preventing unlawful interference against aviation will not be protected by the law. Further, expressly limiting the provision to the purpose of detecting explosives could impede future cargo examination requirements (e.g. if a need to examine cargo for detection of biological weapons arises).

Proposed subsection 44C(3A) and any delegated legislation made under it clarify that persons so authorised have the means available to examine cargo effectively to ensure the security of the air cargo supply chain. The provision is in line with international standards, and currently many freight service providers include contractual conditions of carriage which allow them to open and inspect the contents of freight for a variety of purposes, including aviation security.

### *Committee response*

The committee thanks the Minister for his detailed response and **requests that the key information above be included in the explanatory memorandum, noting the importance of these documents as a point of access to understanding the law and, if needed, as extrinsic material to assist with interpretation e.g. section 15AB of the Acts Interpretation Act 1901.**

*continued*

The committee notes the Minister's advice that that the authority to open cargo is limited to safeguarding against unlawful interference with aviation and that expressly limiting the provision could impede future cargo examination requirements.

**In light of the Minister's explanation the committee makes no further comment about this matter.**

Senator Helen Polley  
Chair





## The Hon Warren Truss MP

Deputy Prime Minister  
Minister for Infrastructure and Regional Development  
Leader of The Nationals  
Member for Wide Bay

12 NOV 2015

*PDR ID: MS15-001779*

Senator Helen Polley  
Chair  
Senate Scrutiny of Bills Committee  
Suite 1.111  
Parliament House  
CANBERRA ACT 2600

Dear Senator Polley

Thank you for your query dated 15 October 2015 regarding the Aviation Transport Security Amendment (Cargo) Bill 2015, particularly in relation to proposed subsection 44C(3A) of the *Aviation Transport Security Act 2004* (the Act). This provision provides that regulations or other legislative instruments dealing with the examination of cargo may provide for or require cargo to be opened, deconsolidated or unpacked, regardless of consent given by the owner of the cargo or any other person. I understand that the Committee is concerned this provision could give rise to the risk of undue trespass on common law principles or fundamental rights, and may delegate legislative powers inappropriately.

The purpose of examining cargo is limited to safeguarding against unlawful interference with aviation. Unlawful interference is defined in Section 10 of the Act and includes, without lawful authority, placing, or causing to be placed on board an aircraft in service, anything that puts at risk the safety of the aircraft or any person on board or outside the aircraft. This would include placing an explosive on the aircraft.

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Proposed subsection 44C(3A) and any delegated legislation made under it clarify that persons so authorised have the means available to examine cargo effectively to ensure the security of the air cargo supply chain. The provision is in line with international standards, and currently many freight service providers include contractual conditions of carriage which allow them to open and inspect the contents of freight for a variety of purposes, including aviation security.

Thank you again for taking the time to write and inform me of your concerns on this matter.

Yours sincerely

A blue handwritten checkmark or signature mark.

**WARREN TRUSS**