



## AUSTRALIAN CAPITAL TERRITORY



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Our Reference: RCR:AMH:B27007  
Your Reference: JM

25 January 2007

Ms Jackie Morris  
Acting Committee Secretary  
Standing Committee on Legal and Constitutional Affairs  
PO Box 6100  
PARLIAMENT HOUSE  
CANBERRA ACT 2600

By Facsimile: (02) 6277 5794

Dear Ms Morris

**INQUIRY INTO CUSTOMS LEGISLATION AMENDMENT (AUGMENTING  
OFFSHORE POWERS AND OTHER MEASURES) BILL 2006**

Thank you for your letter of 11 December 2006 inviting me to make a submission to the above Inquiry. I regret that I have not been able to do so within the time specified in your letter but I make the following comments in the hope that they may nevertheless still be able to be taken into account.

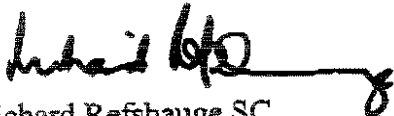
1. Definition of "frisk search". Though identical to the definition of the same phrase in section 3C of the *Crimes Act 1914*, I suggest that consideration be given to updating the definition (and, therefore, also that in the *Crimes Act 1914* to ensure consistency) to include an additional provision such as a search conducted by passing an electronic metal detection device over or close to the person's clothing".
2. The proposals for search powers in proposed sub-section 185AA(1A) seem too wide. The background is that the search may be conducted when a customs officer boards a ship. The power to board, contained in section 185(1) and (2), is exercisable after a request has been made under section 184A. The circumstances in that section are quite broad and, in particular, do not require that there be any suspicion or belief that any offence is or may have been committed. To then allow boarding is one thing, but to allow further a search which, if conducted on the Australian land mass would be quite unlawful - that is warrantless, without suspicion of the commission of an

offence and even without suspicion of the likely destruction of evidence – is placing greatly enhanced powers in the hands of customs officers which does not easily seem justifiable.

3. Proposed section 185AA(3) does not appear to permit legitimate claims of legal professional privilege (or, indeed, other privileges protected under Part 3.10 of the *Evidence Act 1995*) to be claimed, even though they may apply to documents. It would not be difficult for documents in respect of which such claims are made to be placed in a secure container (such as a sealed envelope) secured in the presence of the claimant even if kept by the customs officer, only to be opened by consent or by order of a competent court. This would respect an important right over which the proposed amendments clearly leave only arguably able to be protected and, indeed, possibly abrogated.

I trust these comments may be of assistance to the Committee in its deliberation.

Yours sincerely



Richard Refshauge SC  
Director