



Department of the Senate

Senate Scrutiny of Bills Committee

NEWS

11 May 2015 (drawing on material in the committee's *Alert Digest No. 4 of 2015* and *Fourth Report of 2015*)

Introduction

This newsletter highlights key aspects of the Senate Scrutiny of Bills Committee's work, with a particular focus on information that may be useful when bills are debated and to raise awareness about scrutiny principles (see Senate Standing Order 24).

For more detail and discussion of these matters and comments on additional bills look to the committee's [Alert Digests](#) and [Reports](#). An index to all committee comments is available [here](#).

Key scrutiny issues

- **Biosecurity Bill 2014** ([Fourth Report of 2015](#))

- ❖ Trespass on personal rights and liberties—fairness: This bill provides for a fit and proper person test to be applied when making certain decisions (such as a decision to grant a permit to import goods). The committee sought advice from the Minister in relation to the potential for unfairness that may arise as a result of the broad definition of 'associate' within the fit and proper person test. An 'associate' is defined as including a person who is in a range of business or familial relationships with the first person (e.g. the person seeking a permit). The committee was therefore concerned that there may be circumstances where a person is denied a privilege on the basis of an 'associate' with whom they have no meaningful and/or relevant association.

The Minister noted that the definition of an 'associate' is deliberately broad to allow a full range of business and familial relationships to be considered when applying the fit and proper test. The Minister also noted that detailed information about how the department will apply the fit and proper person test will be contained in administrative guidelines, and that any person subject to an adverse decision will be able to seek review.

The committee welcomed the fact that the guidelines will be made publicly available, however the committee noted that at least some parameters in relation to the fit and proper person test could be provided in the bill (or in a disallowable instrument) to allow some level of Parliamentary scrutiny of the operation of the test. The committee draws this issue to the attention of Senators and leaves the question of whether the broad definition of 'associate' is appropriate to the Senate as a whole.

- ❖ Trespass on personal rights and liberties—reasonableness requirement: The bill outlines a list of factors of which biosecurity officials must be satisfied before exercising certain powers (which may significantly restrict individual rights and liberties). These factors, broadly speaking, require decision-makers to be satisfied that measures taken will be effective and proportionate responses to particular risks. However, there is no requirement for the decision-maker's belief to be held on reasonable grounds. The committee therefore sought the Minister's advice as to whether the bill can be amended to require the decision-maker to be satisfied on reasonable grounds.

The Minister responded that he did not 'believe the concept of reasonableness would provide any additional protection from a trespass on personal rights and liberties, as the term 'satisfied' includes an element of objectiveness'.

The committee noted that some powers in the bill are expressly conditioned on a reasonable grounds requirement and that this may influence the interpretation of clauses which are not. For this reason,

the committee retains a level of concern about these clauses and would prefer to have an express requirement of reasonableness included in this provision. The committee draws this issue to the attention of Senators and leaves the question of whether the proposed approach is appropriate to the Senate as a whole.

- ❖ Trespass on personal rights and liberties—entry without consent or warrant: A clause in the bill allows biosecurity officers to enter any premises for the purposes of exercising a number of specified powers during a biosecurity emergency period. The committee noted that entry to premises under this clause would only be authorised if the officers suspected on reasonable grounds that a declaration disease or pest may be present in or on the premises. As a detailed justification is provided in the explanatory memorandum, the committee left to the Senate as a whole the general issue of whether entry without consent or warrant is justifiable in the contest of a biosecurity emergency. However, the committee requested that the Minister include accountability mechanisms relating to authorisation and reporting in the bill.

The Minister noted existing limitations in the bill on the exercise of the power, that the department will be required to meet the requirements of the Australian Government Investigations Standards (AGIS), and that it is intended that administrative arrangements will be put in place to meet the requirements of the AGIS.

The committee noted the Minister’s advice, but reiterated its view that it would be more appropriate for further accountability requirements in relation to this entry power to be included in the primary legislation (or at least in a disallowable legislative instrument) to ensure that the Parliament is able to properly assess whether this power will be appropriately constrained. The committee draws this issue to the attention of Senators and leaves the question of whether the proposed approach is appropriate to the Senate as a whole.

Other bills for which advice is being sought from the Minister or proposer

(Alert Digest No. 4 of 2015)

The Senate Scrutiny of Bills Committee is also seeking advice from the relevant Minister or proposer in relation to provisions of other bills (responses will be considered and tabled in the committee’s future *Reports*), including:

- **Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2015; and**
- **Fair Work (Registered Organisations) Amendment Bill 2015 [No. 2].**

Other responses received *(Fourth Report of 2015)*

- **Appropriation Bill (No. 3) 2014-2015;**
- **Quarantine Charges (Imposition—Customs) Amendment Bill 2014;**
- **Quarantine Charges (Imposition—Excise) Amendment Bill 2014; and**
- **Quarantine Charges (Imposition—General) Amendment Bill 2014.**

This document contains a very brief summary of some recent comments made by the Senate Scrutiny of Bills Committee (Chair: Senator Helen Polley and Deputy Chair: Senator John Williams).

For any comments or questions, please contact:

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