



SENATE STANDING COMMITTEE
FOR THE
SCRUTINY OF BILLS

FOURTH REPORT
OF
2015

25 March 2015

ISSN 0729-6258 (Print)

ISSN 2204-3985 (Online)

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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

FOURTH REPORT OF 2015

The committee presents its *Fourth 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:

Bills	Page No.
Appropriation Bill (No. 3) 2014-2015	267
Biosecurity Bill 2014	272
Quarantine Charges (Imposition—Customs) Amendment Bill 2014	284
Quarantine Charges (Imposition—Excise) Amendment Bill 2014	
Quarantine Charges (Imposition—General) Amendment Bill 2014	

Appropriation Bill (No. 3) 2014-2015

Introduced into the House of Representatives on 12 February 2015

Passed both Houses on 17 March 2015

Portfolio: Finance

Introduction

The committee dealt with this bill in *Alert Digest No. 2 of 2015*. The Minister for Agriculture responded to the committee's comments in a letter dated 23 March 2015. A copy of the letter is attached to this report.

Background

This bill provides for additional appropriations from the Consolidated Revenue Fund for the ordinary annual services of the government in addition to the appropriations provided for by the *Appropriation Act (No. 1) 2014-2015*.

Insufficient parliamentary scrutiny of legislative power

Various provisions

The inappropriate classification of items in appropriation bills as ordinary annual services when they in fact relate to new programs or projects undermines the Senate's constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the government. The issue is relevant to the committee's role in reporting on whether the exercise of legislative power is subject to sufficient parliamentary scrutiny (see Senate standing order 24(1)(a)(v)).

By way of background, under section 53 of the Constitution the Senate cannot amend proposed laws appropriating revenue or moneys for the ordinary annual services of the government. Further, section 54 of the Constitution provides that any proposed law which appropriates revenue or moneys for the ordinary annual services of the government shall be limited to dealing only with such appropriation. Noting these provisions, the Senate Standing Committee on Appropriations and Staffing has kept the issue of items possibly inappropriately classified as ordinary annual services of the government under active consideration over many years (50th Report, p. 3).

The distinction between appropriations for the ordinary annual services of the government and other appropriations is reflected in the division of proposed appropriations into pairs of bills—odd-numbered bills which should only contain appropriations for the ordinary annual services of the government and even-numbered bills which should contain all other appropriations (and be amendable by the Senate). However, the Appropriations and Staffing Committee has noted that the division of items in appropriation bills since the adoption of accrual budgeting has been based on a mistaken assumption that any expenditure falling within an existing departmental outcome should be classified as

ordinary annual services expenditure (45th Report, p. 2). The Senate has not accepted this assumption.

As a result of continuing concerns relating to the misallocation of some items, on 22 June 2010 (in accordance with a recommendation made in the 50th Report of the Appropriations and Staffing Committee), the Senate resolved:

- 1) To reaffirm its constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the Government; [and]
- 2) That appropriations for expenditure on:
 - a) the construction of public works and buildings;
 - b) the acquisition of sites and buildings;
 - c) items of plant and equipment which are clearly definable as capital expenditure (but not including the acquisition of computers or the fitting out of buildings);
 - d) grants to the states under section 96 of the Constitution;
 - e) new policies not previously authorised by special legislation;
 - f) items regarded as equity injections and loans; and
 - g) existing asset replacement (which is to be regarded as depreciation),

are not appropriations for the ordinary annual services of the Government and that proposed laws for the appropriation of revenue or moneys for expenditure on the said matters shall be presented to the Senate in a separate appropriation bill subject to amendment by the Senate.

There were also two other parts to the resolution: the Senate clarified its view of the correct characterisation of payments to international organisations and, finally, the order provided that all appropriation items for continuing activities, for which appropriations have been made in the past, be regarded as part of ordinary annual services. (*Journals of the Senate*, 22 June 2010, pp 3642–3643).

The committee concurs with the view expressed by the Appropriations and Staffing Committee that if ‘ordinary annual services of the government’ is to include items that fall within existing departmental outcomes then:

...completely new programs and projects may be started up using money appropriated for the ordinary annual services of the government, and the Senate [may be] unable to distinguish between normal ongoing activities of government and new programs and projects or to identify the expenditure on each of those areas. (45th Report, p. 2).

The Appropriations and Staffing Committee considers that the solution to any inappropriate classification of items is to ensure that new policies for which no money has been appropriated in previous years are separately identified in their first year in the appropriation bill that is not for the ordinary annual services of the government (45th Report, p. 2).

Despite these comments and the Senate resolution of 22 June 2010, it appears that a reliance on existing broad ‘departmental outcomes’ to categorise appropriations, rather than on individual assessment as to whether an appropriation relates to a new program or project, continues and appears to be reflected in the allocation of some items in the most recent appropriation bills.

For example, it seems that the initial expenditure in relation to the following items in the Health portfolio may have been inappropriately classified as ordinary annual services (and therefore included in Appropriation Bill (No. 3) 2014-2015, which is not amendable by the Senate):

- Gold Coast Suns AFL Club — upgrade of Metricon Stadium facilities (Mid-Year Economic and Fiscal Outlook 2014-15, p. 167)
- South Sydney Rabbitohs Community and High Performance Centre of Excellence — contribution (Mid-Year Economic and Fiscal Outlook 2014-15, p. 172)

The committee wrote to the Minister for Finance in relation to this general matter following tabling of its *Alert Digest No. 7 of 2014* (which included consideration of Appropriation Bill (No. 1) 2014-2015). The Minister’s response was considered and published in the committee’s *Tenth Report of 2014* (at pp 402–406). In that report the committee noted that the government does not intend to reconsider its approach to the classification of items that constitute ordinary annual services of the government.

The committee reiterates its agreement with the comments made on this matter by the Senate Standing Committee on Appropriations and Staffing, and in particular that the division of items in appropriation bills since the adoption of accrual budgeting has been based on a mistaken assumption that any expenditure falling within an existing outcome should be classified as ordinary annual services expenditure. The history of this matter set out in Appendix 1 to the Appropriation and Staffing Committee’s 2005-06 Annual Report shows that the Senate has not accepted this mistaken assumption.

The committee further notes that the current approach to the classification of ordinary annual services expenditure in appropriation bills is not consistent with the Senate resolution of 22 June 2010.

The committee draws the 2010 Senate resolution to the attention of Senators and notes that the inappropriate classification of items in appropriation bills undermines

the Senate's constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the government. Such inappropriate classification of items impacts on the Senate's ability to effectively scrutinise proposed appropriations as the Senate may be unable to distinguish between normal ongoing activities of government and new programs or projects.

The committee draws this matter to the attention of Senators as it appears that the initial expenditure in relation to some items in the additional estimates bills may have been inappropriately classified as ordinary annual services (and therefore included in Appropriation Bill (No. 3) 2014-2015 which is not amendable by the Senate).

The committee also seeks the Minister's advice in relation to whether any further consideration has been given to addressing this issue and whether the government considers that the two measures in the Health portfolio identified above may have been inappropriately classified as ordinary annual services of the government.

The committee draws Senators' attention to this matter, as the current approach to the classification of ordinary annual services expenditure in appropriation bills may be considered to insufficiently subject the exercise of legislative power to parliamentary scrutiny, in breach of principle 1(a)(v) of the committee's terms of reference.

Minister's response - extract

Your Committee sought my advice as to what consideration has been given to the classification of items in Appropriation Bills. The Committee specifically raised the classification of two items in 2014-15 Appropriation Bill No. 3 as potentially not being for the ordinary annual services of the Government. These are the provision of funding to the Gold Coast Suns AFL Club for the upgrade of Metricon Stadium facilities and to the South Sydney Rabbitohs as a contribution towards the construction of a Community High Performance Centre of Excellence to support health, education and Indigenous employment programmes.

Appropriation for both measures is provided for in Bill No. 3 as they are directly attributable to the existing Outcome 10 for the Department of Health which relates to sport and recreation. The Outcome Statement is as follows:

Improved opportunities for community participation in sport and recreation, and excellence in high-performance athletes, through initiatives to help protect the integrity of sport, investment in sport infrastructure, coordination of Commonwealth involvement in major sporting events, and research and international cooperation on sport issues.

As I indicated in my letter to you of 17 July 2014, this Government continues to prepare Appropriation Bills in a manner consistent with the view that administered annual appropriations for new outcomes are included in even-numbered Appropriation Bills.

Committee Response

The committee thanks the Minister for this response.

The committee notes the Minister's advice that appropriation for both of the measures identified by the committee was provided for in Bill No. 3 (the non-amendable bill) 'as they are directly attributable to the existing Outcome 10 for the Department of Health which relates to sport and recreation'. The committee notes that this approach aligns with the Minister's statement that 'this Government continues to prepare Appropriation Bills in a manner consistent with the view that administered annual appropriations for *new outcomes* are included in even-numbered Appropriation Bills' [emphasis added].

However, as previously noted, this approach is not consistent with the Senate resolution of 22 June 2010 relating to the classification of ordinary annual services expenditure in appropriation bills.

The committee again reiterates its agreement with the comments made on this matter by the Senate Standing Committee on Appropriations and Staffing, and in particular that the division of items in appropriation bills since the adoption of accrual budgeting has been based on a mistaken assumption that any expenditure falling within an existing outcome should be classified as ordinary annual services expenditure.

The committee draws the 2010 Senate resolution to the attention of Senators and notes that the inappropriate classification of items in appropriation bills undermines the Senate's constitutional right to amend proposed laws appropriating revenue or moneys for expenditure on all matters not involving the ordinary annual services of the government. Such inappropriate classification of items impacts on the Senate's ability to effectively scrutinise proposed appropriations as the Senate may be unable to distinguish between normal ongoing activities of government and new programs or projects.

The committee draws this matter to the attention of Senators as it appears that the initial expenditure in relation to some items in the additional appropriation bills (such as the two items in the Health portfolio identified above) may have been inappropriately classified as ordinary annual services (and therefore included in Appropriation Bill (No. 3) 2014-2015 which was not amendable by the Senate).

The committee notes that this particular appropriation bill has already passed both Houses of the Parliament, however the committee will continue to draw this important matter to the attention of Senators where appropriate in the future.

Biosecurity Bill 2014

Introduced into the House of Representatives on 27 November 2014

Portfolio: Agriculture

Introduction

The committee dealt with this bill in *Alert Digest No. 2 of 2015*. The Minister for Agriculture responded to the committee's comments in a letter dated 18 March 2015. A copy of the letter is attached to this report.

The Minister advised that as the Biosecurity Bill 2014 and related bills are co-administered, the Minister for Health would provide a separate response in relation to her portfolio responsibilities. The committee will report on these aspects of the bill once the response from the Minister for Health is received.

Alert Digest No. 2 of 2015 - extract

Background

This bill provides a regulatory framework to manage the risk of pests and diseases entering Australian territory and causing harm to animal, plant and human health.

This bill is substantially similar to the bill that was introduced into the House of Representatives on 28 November 2012. This Alert Digest includes the committee's previous comments to the extent that they are applicable to this bill.

Trespass on personal rights and liberties—fairness Clauses 11 and 530

In relation to an import permit or approved arrangement, clause 11 defines the term 'associate' very broadly to include a person who was or is engaged in the business of the first person and also to include specified familial relationships, including a cousin, aunt, uncle, nephew or niece. In determining whether a person is a fit and proper person under clause 530 (for the purpose of exercising a number powers, such as decisions relating to permits and proposed arrangements) the Director of Biosecurity or Director of Human Biosecurity must have regard to relevant matters in relation the first person (i.e. the person directly affected) but also in relation to their 'associates'.

The justification for considering the actions or circumstances of associates in applying the fit and proper person tests given is that:

An import permit or an approved arrangement is a privilege rather than a right and means that the person is allowed to do certain things the general public are not allowed to do. It is important that such persons are considered fit and proper to be able to conduct these activities and that there is no reason to believe that the person will not operate within the scope of their approval or adhere in any conditions or requirements that are placed on it. (explanatory memorandum, p. 318)

It may be accepted that the purpose of withholding such a privilege to a person where they may act on the behalf of an associate who is not a fit and proper person is a legitimate one. However, there is a question of fairness that may arise given the breadth of the definition of 'associate'. There may be circumstances where a person is denied a privilege, to which they would otherwise have access, on the basis of an 'associate' with whom they have no meaningful and/or relevant association.

The committee therefore seeks the Minister's advice as to how this problem of unfairness will be dealt with in practice and whether consideration has been given to legislative requirements to minimise this risk.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

Minister's response - extract

Trespass on personal rights and liberties—fairness – Clause 11 and 530

The Committee has sought my advice about how the administrative practice and legislation would deal with any potential unfairness arising through the application of the definition of 'associates' within the fit and proper persons test.

Clause 530 provides for a fit and proper person test to be applied when making a decision to grant a permit to bring in or import goods (under clause 179), approve a proposed arrangement (under clause 406), varying, suspending or revoking an approved arrangement (under clauses 413, 418 and 423) or under any other provisions of the Act prescribed by the regulations. The test also applies to an associate of the person who is applying for a permit or proposed arrangement or is a holder of an approved arrangement. Clause 11 defines the meaning of an 'associate' to include a person who is or was engaged in the business of the first person or in range of a business or familial relationships with the first person. The definition of an associate is deliberately broad, to allow the full range of business and familial relationships to be considered when applying the test and to determine whether a person is acting on behalf of another person who does not pass the fit and proper test. In practice, the definition of associate is not intended to be used to deny an

associate a privilege under the legislation if the relationship has no meaningful and/or relevant association.

There have been instances in the past where the Department of Agriculture has become aware of a person or industry member with a history of non-compliance using the name of an associate (for example, a family member or business partner) to apply for a permission to import a good or to operate under an industry arrangement. The primary aim of the associate test is to give the department more effective tools to manage the risk of this occurring.

Detailed information about how the department will apply the fit and proper person test will be contained in administrative guidelines, drafted as part of the legislation implementation process. This will ensure that a consistent approach is taken when applying the test and that the test achieves the desired outcome. Appropriate administrative guidance will be published on my department's website to provide further public detail about the application of this test.

If a person is affected by a decision to refuse to grant a permit or approve a proposed arrangement or to vary, suspend or revoke an approved arrangement and believes that the decision was unfairly made, he or she will be able to request an internal review of the decision (clause 574). In response to this request the person will receive a notice containing the decision, terms of the decision, the reasons for the decision and details of the person's right to have the decision reviewed by the Administrative Appeals Tribunal. Following the internal review, if the affected person is unsatisfied he or she will have an option to seek further review through the Administrative Appeals Tribunal.

An affected person also has the right to seek judicial review of a decision under *Administrative Decisions (Judicial Review) Act 1977* or common law principles.

Based on these controls, I can assure the Committee that there are practical and legislative tools available to prevent this test being applied unfairly, without requiring amendments to the Bill.

Committee Response

The committee thanks the Minister for this detailed response and **requests that the key information provided above be included in the explanatory memorandum.**

The committee notes the Minister's advice that:

- (a) the definition of an associate is deliberately broad to allow the full range of business and familial relationships to be considered and to determine whether a person is acting on behalf of another person who does not pass the fit and proper test;
- (b) the justification for the broad provision is based on departmental experience with non-compliance (though this is not quantified);

continued

(c) detailed information about how the department will apply the fit and proper person test will be contained in administrative guidelines and that appropriate administrative guidance will be published on the department's website to provide further public detail about the application of this test; and

(d) where a person is affected by a decision to refuse to grant a permit, etc. he or she will be able to request an internal review of the decision and further review through the Administrative Appeals Tribunal (judicial review will also be available).

The committee notes that detailed information in relation to the operation of the fit and proper person test will be provided in administrative guidelines. The committee welcomes the fact that these guidelines will be made publicly available, however it is noted that at least some parameters in relation to the 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.

In the circumstances, the committee draws this issue to the attention of Senators and leaves the question of whether the broad definition of 'associates' for the purpose of the fit and proper persons test in the bill is appropriate to the consideration of the Senate as a whole.

Alert Digest No. 2 of 2015 - extract

Trespass on personal rights and liberties

Clauses 32 and 34, subclause 447(1)

These clauses outline a list of factors of which relevant biosecurity officials must be satisfied before exercising powers specified in the bill. 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 additional requirement that there be reasonable grounds to justify the decision-maker's satisfaction of the relevant matters. It may be noted that exercise of the specified powers under the bill are apt to significantly restrict individual rights and liberties.

The same issue also arises in relation to the matters the Minister must be satisfied of in subclause 447(1).

The committee therefore seeks the Minister's advice as to whether consideration has been given to amending the bill to require the decision-maker to be satisfied on reasonable grounds that the various criteria for the exercise of power are met.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

Minister's response - extract

Trespass on personal rights and liberties – Clauses 32 and 34, subclause 447(1)

Clauses 32, 34 and subclause 447(1) outline a list of factors of which relevant biosecurity officials must be satisfied before exercising powers specified in the Bill. The Committee has sought my advice on whether consideration has been given to amending the Bill to require the decision-maker to be satisfied on reasonable grounds that the various criteria for the exercise of power are met before exercising powers specified under the Bill.

As noted, my colleague, the Hon. Sussan Ley MP, Minister for Health, will respond to the Committee on matters connected to her portfolio responsibilities. I will provide advice as to the operation of clause 32 and subclause 447(1) for the Committee's information.

Clause 32 and subclause 447(1) operate to ensure that before a power is exercised by a biosecurity official (or the Agriculture Minister (in relation to subclause 447(1))), the official must be satisfied of all of the criteria listed within the provision. I believe the concept of reasonableness would not provide any additional protection from a trespass on personal rights and liberties, as the term 'satisfied' includes an element of objectiveness.

Senior departmental officers (such as the Director of Biosecurity) will, taking into account their skills, expertise and experience, be satisfied or not that such an exercise of power meets all the criteria listed. It could be argued that this level of objectivity, through the specific knowledge of the senior officer, is of a higher order than what may be considered reasonable.

The exercise of powers to which the clauses apply themselves include threshold tests for the use of powers (after the above preconditions are met) - for example, the direction requiring an aircraft not to land at any landing place in Australian territory under subclause 241(1) must not be given without the written approval of the Director of Biosecurity and the Director must not give the approval unless he or she is satisfied, on reasonable grounds, that the level of biosecurity risk associated with the aircraft of any person or thing on board the aircraft is unacceptable and biosecurity measures cannot be taken to reduce that level of biosecurity risk to an acceptable level.

In addition, the normal principles of administrative law such as reasonableness, proportionality and natural justice will apply to an exercise of the powers to which

clause 32 and subclause 447(1) apply. For these reasons I do not believe it is necessary to make amendments to the Bill.

Committee Response

The committee thanks the Minister for this response and **requests that the key information provided above be included in the explanatory memorandum.**

The committee notes the view that the power would be read in accordance with administrative law principles and that courts would usually (at least) imply that a state of satisfaction must be reached reasonably. However, the committee also notes that (as pointed out by the Minister) some powers in the bill include a threshold test which requires that the decision-maker be satisfied of particular matters ‘on reasonable grounds’. It is possible that the fact some powers are expressly conditioned on a reasonable grounds requirement may influence the interpretation of clauses which are not.

For this reason, the committee retains a level of concern about these clauses and, therefore, would prefer to have an express reasonableness requirement included in the bill.

However, the committee draws this matter to this attention of Senators and leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.

Alert Digest No. 2 of 2015 - extract

Trespass on personal rights and liberties—reversal of burden of proof Subclauses 120(4) and 193(3)

Subclause 120(4) provides that the regulations may prescribe exceptions to the requirement to give a notice under clause 120 (notice of goods to be unloaded in Australian territory). The details to be included in the notice are also to be prescribed in the regulations, and failure to comply is a fault based offence (penalty: 2 years imprisonment or 120 penalty units). The Note to subclause 120(4) states that a defendant bears an evidential burden in relation to any exceptions prescribed for the purposes of this subsection. It is difficult to assess the appropriateness of placing an evidential burden without more information about the nature of the exceptions.

A similar issue arises in relation to subclause 193(3).

The committee therefore seeks further information about whether the exceptions to be prescribed will be consistent with defendants bearing an evidential burden according to the principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee's terms of reference.

Minister's response - extract

Trespass on personal rights and liberties—reversal of burden of proof – Subclauses 120(4) and 193(3)

The Committee has sought further information and my assurance whether the exceptions to be prescribed in regulations made under subclauses 120(4) and 193(3) will be consistent with defendants bearing an evidential burden according to the principles set out in the *Guide to framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide).

Subclause 120(4) provides that the regulations may prescribe exceptions to the requirement to give a notice of goods to be unloaded in Australian territory. Subclause 193(3) provides that the regulations may prescribe exceptions to the requirement to give a pre-arrival report as required by clause 193. The defendant bears an evidential burden in relation to any exemption prescribed. An example of an exception to the requirement to give a notice under subclause 120(4) which will be prescribed is that a passenger will not be required to provide a notice in relation to their personal baggage.

For a person to rely on that exception, that person must satisfy the evidential burden to show that the prescribed exemption applies (that the baggage is for their personal use). In this example the relevant information is known peculiarly by the defendant and it would be significantly more difficult for the prosecution to prove that it is not the defendant's personal baggage than it is for the defendant to prove that it is. I believe that such an approach is appropriate in the circumstances and it is also consistent with the Guide.

I can confirm that regulations made under these provisions and any exceptions prescribed will be consistent with the principles set out in the Guide and that my department will consult with the Attorney-General's Department where appropriate. In addition, the regulations will be subject to review by the Senate Standing Committee on Regulations and Ordinances and disallowance by the Parliament.

Committee Response

The committee thanks the Minister for this response and for confirming that regulations made under these provisions and any exceptions prescribed will be consistent with the principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*.

The committee requests that the key information provided above be included in the explanatory memorandum.

The committee also draws this matter to the attention of the Regulations and Ordinances Committee for information.

Alert Digest No. 2 of 2015 - extract

Trespass on personal rights and liberties—entry without consent or warrant

Clause 470

This clause allows biosecurity officers and biosecurity enforcement officers to enter any premises for the purposes of exercising a number of specified powers enabling the assessment and management of biosecurity risks during a biosecurity emergency period. The justification for these extraordinary powers is that there is a ‘nationally significant threat or harm being posed by the declaration disease or pest to Australia’s plant health, animal health, the environment or related economic activities’ (explanatory memorandum at p. 290). The explanatory memorandum illustrates these risks by citing the costs estimated to be incurred were there to be an outbreak of foot-and-mouth disease in Australia (p. 290).

It is noted that entry to premises under this clause would only be authorised if the officers suspected on reasonable grounds that the declaration disease or pest may be present in or on the premises or goods on the premises. It is also a requirement that a biosecurity enforcement officer accompany a biosecurity officer for the purposes of assisting in entering the premises and exercising the associated powers. There is a discussion of the general approach and justification in the explanatory memorandum at pages 16–17. **The committee leaves the general issue of whether entry without consent or warrant is justifiable in the context of a biosecurity emergency having been declared, to the consideration of the Senate as a whole.**

Nevertheless, the bill could contain further accountability mechanisms to minimise the likelihood of any abuse of these powers. Although the explanatory memorandum suggests that ‘administrative arrangements will be put in place to ensure that senior executive authorisation is given before the power is exercised and there are appropriate reporting requirements’, it is of concern that these requirements are not included in the bill. **As there is no explanation for relegating these important issues to ‘administrative arrangements’, the committee requests that the Minister includes appropriate requirements relating to authorisation and reporting in the bill, and seeks the Minister’s advice in this regard.**

Pending the Minister’s reply, the committee draws Senators’ attention to the provisions, as they may be considered to trespass unduly on personal rights and liberties, in breach of principle 1(a)(i) of the committee’s terms of reference.

Minister’s response - extract

Trespass on personal rights and liberties—entry without consent or warrant – Clause 470

The Committee has sought my advice as to whether the Bill could contain further accountability mechanisms to minimise the likelihood of any abuse of the powers provided for in clause 470. The Committee indicated its concern regarding the use of administrative arrangements and that appropriate requirements relating to authorisation and reporting be included in the Bill.

Clause 470 of the Biosecurity Bill allows biosecurity officers and biosecurity enforcement officers to enter any premises during a declared biosecurity emergency period for the purposes of exercising a range of different powers for the assessment and management of biosecurity risks. However, the exercise of power under clause 470 is limited, in that it can only be exercised for one or more of the purposes as outlined in subclause 470(1) of the Bill.

In addition, before powers under clause 470 can be exercised, clause 32 provides that a biosecurity official must be satisfied before exercising the power that; exercising the power it is likely to be effective in, or contribute to achieving the purpose for which the power is to be exercised; exercising the power is appropriate and adapted to achieve the purpose; the manner in which the power is to be exercised is no more restrictive or intrusive than is required in the circumstances, and the power is to be exercised only as long as necessary (if to be exercised during a period).

Subclause 470(2) also provides that a biosecurity officer or biosecurity enforcement officer is not authorised to enter premises unless the officer suspects on reasonable grounds that the declaration disease or pest may be present in or on the premises or goods on the

premises and a biosecurity enforcement officer accompanies the biosecurity officer for the purposes of assisting in entering the premises and exercising the powers in accordance to subclause 470(1).

Consistent with the Commonwealth Fraud Control Guidelines, my department is required to meet the requirements of the Australian Government Investigations Standards (AGIS). This includes the requirement that staff involved in any potential investigation meet minimum levels of training or qualifications and that the department meets the minimum standards for effective and efficient management of investigations, including record keeping.

Quality assurance reviews of investigations can be undertaken to establish whether investigations conducted under clause 470 of the Bill were conducted in a way that complies with the AGIS. A quality assurance review is conducted by the Australian Federal Police in relation to criminal investigations and, in relation to non-criminal investigations, a review may be conducted by another agency with the necessary skills and capacity.

As part of the implementation process being undertaken by my department, I can assure the Committee that I intend to ensure that administrative arrangements that are put into place meet the requirements of the AGIS. I believe that these compulsory requirements can be adequately addressed through administrative arrangements rather than including the AGIS requirements in the Bill.

Committee Response

The committee thanks the Minister for this response and **requests that the key information provided above be included in the explanatory memorandum.**

The committee notes the Minister's advice:

- (a) about existing limitations in the bill on the exercise of the power under clause 470 to enter any premises during a declared biosecurity emergency period;
- (b) that the department will be required to meet the requirements of the Australian Government Investigations Standards (AGIS); and
- (c) that it is intended that administrative arrangements will be put in place to meet the requirements of the AGIS.

However, the committee reiterates 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.

continued

The committee draws this issue to the attention of Senators and leaves the question of whether the proposed approach is appropriate to the consideration of the Senate as a whole.

Alert Digest No. 2 of 2015 - extract

**Insufficiently defined administrative power
Subclause 541(3)**

This subclause provides that the Director of Biosecurity may do anything incidental or conducive to the performance of his or her functions or exercise of his or her powers. The explanatory memorandum indicates that this power is ‘intended to give flexibility to the Director to ensure that the functions and powers of the Director can be exercised to their full effect’ (p. 323). However, given the broad ranging nature of the Director’s functions and powers it is unclear what additional functions and powers this provision may confer or why it is necessary. To better assess what further powers might be conferred by this subclause and whether it is sufficiently defined in light of the manner in which the Director’s actions and decisions are liable to affect personal rights and liberties, **the committee seeks the Minister’s further advice in relation to the intended operation of the provision. The committee may be assisted if it is possible to give examples of situations in which reliance on this subclause as a source of legal authority for the decisions and actions of the Director may be necessary.**

Pending the Minister’s reply, the committee draws Senators’ attention to the provisions, as they may be considered to make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers, in breach of principle 1(a)(ii) of the committee’s terms of reference.

Minister’s response - extract

Insufficiently defined administrative power – Subclause 541 (3)

The Committee has sought my advice in relation to the intended operation of subclause 541(3). The Committee noted that it may be assisted if it is possible to give examples of situations in which reliance on this subclause as a source of legal authority for the decisions and actions of the Director may be necessary.

Subclause 541(3) provides that the Director of Biosecurity may do anything incidental or conducive to the performance or exercise of his or her powers. This provision provides the Director of Biosecurity with the necessary flexibility to perform his or her functions and exercise his or her powers under the Bill. Whilst the powers conferred on the Director under subclause 541(3) may be taken to be broad ranging, the Director must exercise the powers within the scope and objects of the Bill as set out in clause 4.

An example of an incidental action under subclause 541(3) may include the production of administrative guidelines, including instructional material to detail how specific powers are to be exercised and what processes are to be followed in performing specific functions, in a manner that is consistent with the legislation. While administrative guidelines are not legal instruments, they are incidental to the exercise of power and provide the practical instructions required for officers to perform functions or exercise powers in a consistent and best practice manner.

I therefore believe that the power conferred under subclause 541(3) is appropriate.

Committee Response

The committee thanks the Minister for this response and **requests that the key information provided above be included in the explanatory memorandum.**

The committee notes the Minister's advice that subclause 541(3) will provide the Director of Biosecurity 'with the necessary flexibility to perform his or her functions and exercise his or her powers under the Bill'. The committee also notes the example of an incidental action provided by the Minister. However, it remains the case that the administrative power conferred under this provision is broad in that it provides that the Director of Biosecurity may do *anything incidental or conducive to the performance or exercise of his or her powers.*

The committee draws this issue to the attention of Senators and leaves the question of whether this provision (which may be considered to insufficiently define administrative power) is appropriate to the consideration of the Senate as a whole.

Quarantine Charges (Imposition—Customs) Amendment Bill 2014

Quarantine Charges (Imposition—Excise) Amendment Bill 2014

Quarantine Charges (Imposition—General) Amendment Bill 2014

Introduced into the House of Representatives on 27 November 2014
Portfolio: Agriculture

Introduction

The committee dealt with these bills in *Alert Digest No. 2 of 2015*. The committee commented on the Quarantine Charges (Imposition—Customs) Bill 2015, but also noted that the other two bills raise identical issues. The Minister responded to the committee's comments in a letter dated 18 March 2015. A copy of the letter is attached to this report.

Alert Digest No. 2 of 2015 - extract

Background

These bills enable cost-recovery of activities connected with the administration of the Biosecurity Bill, such as scientific analysis, intelligence and surveillance.

Delegation of legislative power

Item 4

This item substitutes section 7 of the Act with a new section 7 which permits the Commonwealth to impose charges in relation to prescribed matters connected with the administration of the Biosecurity Act. Although the charges imposed are imposed as taxes, the explanatory memorandum notes that the charges 'will not raise additional revenue above the costs of providing the indirect biosecurity services by the department' (at p. 9). In general, the committee is concerned that the rate of a tax is set by the Parliament, not the makers of subordinate legislation.

The explanatory memorandum argues that it is appropriate that 'the amount of the cost-recovery charges and who is liable to pay' those charges be set in delegated legislation because 'setting the charges through delegated legislation will allow the Minister for Agriculture to make appropriate and timely adjustments to the charges, avoiding future over or under recoveries'. Although it may be accepted that the need to make timely

adjustments may mean that the use of delegated legislation is appropriate, **the committee seeks the Minister's advice as to whether consideration has been given to including a provision in the bill which limits the charges to cost-recovery.**

Pending the Minister's reply, the committee draws Senators' attention to the provisions, as they may be considered to delegate legislative powers inappropriately, in breach of principle 1(a)(iv) of the committee's terms of reference.

Minister's response - extract

Delegation of legislative power

The Committee seeks advice as to whether consideration has been given to include a provision in each of the Bills which limits the imposition of charges to only the amount which represents the likely costs incurred.

Item 4 of the Quarantine Charges (Imposition—Customs) Amendment Bill 2014 substitutes section 7 of the *Quarantine Charges (Imposition—Customs) Act 2014*. It provides that a regulation may impose a charge in relation to a prescribed matter connected with the administration of the Biosecurity Act. The imposed charge is a duty of customs within the meaning of section 55 of the Constitution and is imposed as a tax. Similar amendments are proposed to the *Quarantine Charges (Imposition—Excises) Act 2014* and the *Quarantine Charges (Imposition - General) Act 2014*.

Subsections 8(2) of the *Quarantine Charges (Imposition—Customs) Act 2014*, 7(2) of the *Quarantine Charges (Imposition—Excise) Act 2014* and 8(2) of the *Quarantine Charges (Imposition—General) Act 2014* currently provide that any imposed charges are limited to cost recovery.

They state that before the Governor-General makes a regulation prescribing a charge in relation to a prescribed matter connected with the administration of the *Quarantine Act 1908* (Biosecurity Act), the Minister must be satisfied that the amount of the charge is set at a level that is designed to recover no more than the Commonwealth's likely costs in connection with the matter.

As there will be no changes made to these provisions (apart from the change in reference from the *Quarantine Act 1908* to the Biosecurity Act), the requirement as noted by the Committee to ensure that any imposed charges are limited to cost recovery currently exists and will not be amended. I believe that it is not necessary to make any amendments to the Bills.

Committee Response

The committee thanks the Minister for this response and **requests that the key information provided above be included in the explanatory memorandum to these bills.**

Senator Helen Polley
Chair




SENATOR THE HON MATHIAS CORMANN
Minister for Finance

REF: MS15-000423

Senator Helen Polley
Chair
Senate Standing Committee for the Scrutiny of Bills
The Senate
Parliament House
CANBERRA ACT 2600

RECEIVED
23 MAR 2015
Senate Standing C'ttee
for the Scrutiny
of Bills


Dear Senator Polley

I refer to the letter of Thursday, 5 March 2015, sent to my senior adviser by Ms Toni Dawes, Secretary to the Senate's Standing Committee for the Scrutiny of Bills (the Committee). That letter drew my attention to the Committee's *Alert Digest No. 2 of 2015* (the Digest).

Your Committee sought my advice as to what consideration has been given to the classification of items in Appropriation Bills. The Committee specifically raised the classification of two items in 2014-15 Appropriation Bill No. 3 as potentially not being for the ordinary annual services of the Government. These are the provision of funding to the Gold Coast Suns AFL Club for the upgrade of Metricon Stadium facilities and to the South Sydney Rabbitohs as a contribution towards the construction of a Community High Performance Centre of Excellence to support health, education and Indigenous employment programmes.

Appropriation for both measures is provided for in Bill No. 3 as they are directly attributable to the existing Outcome 10 for the Department of Health which relates to sport and recreation. The Outcome Statement is as follows:

Improved opportunities for community participation in sport and recreation, and excellence in high-performance athletes, through initiatives to help protect the integrity of sport, investment in sport infrastructure, coordination of Commonwealth involvement in major sporting events, and research and international cooperation on sport issues.

As I indicated in my letter to you of 17 July 2014, this Government continues to prepare Appropriation Bills in a manner consistent with the view that administered annual appropriations for new outcomes are included in even-numbered Appropriation Bills.

Kind regards /

/ Mathias Cormann
Minister for Finance

20 March 2015



RECEIVED

18 MAR 2015

Senate Standing C'ttee
for the Scrutiny
of Bills

The Hon. Barnaby Joyce MP

Minister for Agriculture
Federal Member for New England

Ref: MC15-001897

Senator Helen Polley
Chair
Standing Committee for the Scrutiny of Bills
Parliament House
CANBERRA ACT 2600

Dear Senator *Helen*

Thank you for your letter of 5 March 2014 about the Senate Scrutiny of Bills Committee's consideration of the Biosecurity Bill 2014 and related Bills (the Bills).

I note the Committee's report and enclose my response to the matters raised in relation to my portfolio responsibilities. As the Bills are co-administered, the Hon. Sussan Ley MP, Minister for Health, will provide a separate response in relation to her portfolio responsibilities.

I have sent a copy of this letter to the Hon. Sussan Ley MP, Minister for Health.

Thank you again for your letter.

I trust this information is of assistance.

Yours sincerely

Barnaby Joyce MP

Enc.

cc the Hon. Sussan Ley MP, Minister for Health

18 MAR 2015

Clarification of issues raised by the Senate Standing Committee for the Scrutiny of Bills relating to the Biosecurity Bill 2014, Quarantine Charges (Imposition–Customs) Amendment Bill 2014, Quarantine Charges (Imposition–Excise) Amendment Bill 2014 and Quarantine Charges (Imposition–General) Amendment Bill 2014

Biosecurity Bill 2014

Trespass on personal rights and liberties–fairness – Clause 11 and 530

1. The Committee has sought my advice about how the administrative practice and legislation would deal with any potential unfairness arising through the application of the definition of ‘associates’ within the fit and proper persons test.
2. Clause 530 provides for a fit and proper person test to be applied when making a decision to grant a permit to bring in or import goods (under clause 179), approve a proposed arrangement (under clause 406), varying, suspending or revoking an approved arrangement (under clauses 413, 418 and 423) or under any other provisions of the Act prescribed by the regulations. The test also applies to an associate of the person who is applying for a permit or proposed arrangement or is a holder of an approved arrangement. Clause 11 defines the meaning of an ‘associate’ to include a person who is or was engaged in the business of the first person or in range of a business or familial relationships with the first person. The definition of an associate is deliberately broad, to allow the full range of business and familial relationships to be considered when applying the test and to determine whether a person is acting on behalf of another person who does not pass the fit and proper test. In practice, the definition of associate is not intended to be used to deny an associate a privilege under the legislation if the relationship has no meaningful and/or relevant association.
3. There have been instances in the past where the Department of Agriculture has become aware of a person or industry member with a history of non-compliance using the name of an associate (for example, a family member or business partner) to apply for a permission to import a good or to operate under an industry arrangement. The primary aim of the associate test is to give the department more effective tools to manage the risk of this occurring.
4. Detailed information about how the department will apply the fit and proper person test will be contained in administrative guidelines, drafted as part of the legislation implementation process. This will ensure that a consistent approach is taken when applying the test and that the test achieves the desired outcome. Appropriate administrative guidance will be published on my department’s website to provide further public detail about the application of this test.
5. If a person is affected by a decision to refuse to grant a permit or approve a proposed arrangement or to vary, suspend or revoke an approved arrangement and believes that the decision was unfairly made, he or she will be able to request an internal review of the decision (clause 574). In response to this request the person will receive a notice containing the decision, terms of the decision, the reasons for the decision and details of the person’s right to have the decision reviewed by the Administrative Appeals Tribunal.

Following the internal review, if the affected person is unsatisfied he or she will have an option to seek further review through the Administrative Appeals Tribunal.

6. An affected person also has the right to seek judicial review of a decision under *Administrative Decisions (Judicial Review) Act 1977* or common law principles.
7. Based on these controls, I can assure the Committee that there are practical and legislative tools available to prevent this test being applied unfairly, without requiring amendments to the Bill.

Trespass on personal rights and liberties – Clauses 32 and 34, subclause 447(1)

8. Clause 32, 34 and subclause 447(1) outline a list of factors of which relevant biosecurity officials must be satisfied before exercising powers specified in the Bill. The Committee has sought my advice on whether consideration has been given to amending the Bill to require the decision-maker to be satisfied on reasonable grounds that the various criteria for the exercise of power are met before exercising powers specified under the Bill.
9. As noted, my colleague, the Hon. Sussan Ley MP, Minister for Health, will respond to the Committee on matters connected to her portfolio responsibilities. I will provide advice as to the operation of clause 32 and subclause 447(1) for the Committee's information.
10. Clause 32 and subclause 447(1) operate to ensure that before a power is exercised by a biosecurity official (or the Agriculture Minister (in relation to subclause 447(1))), the official must be satisfied of all of the criteria listed within the provision. I believe the concept of reasonableness would not provide any additional protection from a trespass on personal rights and liberties, as the term 'satisfied' includes an element of objectiveness.
11. Senior departmental officers (such as the Director of Biosecurity) will, taking into account their skills, expertise and experience, be satisfied or not that such an exercise of power meets all the criteria listed. It could be argued that this level of objectivity, through the specific knowledge of the senior officer, is of a higher order than what may be considered reasonable.
12. The exercise of powers to which the clauses apply themselves include threshold tests for the use of powers (after the above preconditions are met) – for example, the direction requiring an aircraft not to land at any landing place in Australian territory under subclause 241(1) must not be given without the written approval of the Director of Biosecurity and the Director must not give the approval unless he or she is satisfied, on reasonable grounds, that the level of biosecurity risk associated with the aircraft of any person or thing on board the aircraft is unacceptable and biosecurity measures cannot be taken to reduce that level of biosecurity risk to an acceptable level.
13. In addition, the normal principles of administrative law such as reasonableness, proportionality and natural justice will apply to an exercise of the powers to which clause 32 and subclause 447(1) apply. For these reasons I do not believe it is necessary to make amendments to the Bill.

Trespass on personal rights and liberties–reversal of burden of proof – Subclauses 120(4) and 193(3)

14. The Committee has sought further information and my assurance whether the exceptions to be prescribed in regulations made under subclauses 120(4) and 193(3) will be

consistent with defendants bearing an evidential burden according to the principles set out in the *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (the Guide).

15. Subclause 120(4) provides that the regulations may prescribe exceptions to the requirement to give a notice of goods to be unloaded in Australian territory. Subclause 193(3) provides that the regulations may prescribe exceptions to the requirement to give a pre-arrival report as required by clause 193. The defendant bears an evidential burden in relation to any exemption prescribed. An example of an exception to the requirement to give a notice under subclause 120(4) which will be prescribed is that a passenger will not be required to provide a notice in relation to their personal baggage.
16. For a person to rely on that exception, that person must satisfy the evidential burden to show that the prescribed exemption applies (that the baggage is for their personal use). In this example the relevant information is known peculiarly by the defendant and it would be significantly more difficult for the prosecution to prove that it is not the defendant's personal baggage than it is for the defendant to prove that it is. I believe that such an approach is appropriate in the circumstances and it is also consistent with the Guide.
17. I can confirm that regulations made under these provisions and any exceptions prescribed will be consistent with the principles set out in the Guide and that my department will consult with the Attorney-General's Department where appropriate. In addition, the regulations will be subject to review by the Senate Standing Committee on Regulations and Ordinances and disallowance by the Parliament.

Trespass on personal rights and liberties—entry without consent or warrant – Clause 470

18. The Committee has sought my advice as to whether the Bill could contain further accountability mechanisms to minimise the likelihood of any abuse of the powers provided for in clause 470. The Committee indicated its concern regarding the use of administrative arrangements and that appropriate requirements relating to authorisation and reporting be included in the Bill.
19. Clause 470 of the Biosecurity Bill allows biosecurity officers and biosecurity enforcement officers to enter any premises during a declared biosecurity emergency period for the purposes of exercising a range of different powers for the assessment and management of biosecurity risks. However, the exercise of power under clause 470 is limited, in that it can only be exercised for one or more of the purposes as outlined in subclause 470(1) of the Bill.
20. In addition, before powers under clause 470 can be exercised, clause 32 provides that a biosecurity official must be satisfied before exercising the power that; exercising the power it is likely to be effective in, or contribute to achieving the purpose for which the power is to be exercised; exercising the power is appropriate and adapted to achieve the purpose; the manner in which the power is to be exercised is no more restrictive or intrusive than is required in the circumstances, and the power is to be exercised only as long as necessary (if to be exercised during a period).
21. Subclause 470(2) also provides that a biosecurity officer or biosecurity enforcement officer is not authorised to enter premises unless the officer suspects on reasonable grounds that the declaration disease or pest may be present in or on the premises or goods on the premises and a biosecurity enforcement officer accompanies the biosecurity officer

for the purposes of assisting in entering the premises and exercising the powers in accordance to subclause 470(1).

22. Consistent with the Commonwealth Fraud Control Guidelines, my department is required to meet the requirements of the Australian Government Investigations Standards (AGIS). This includes the requirement that staff involved in any potential investigation meet minimum levels of training or qualifications and that the department meets the minimum standards for effective and efficient management of investigations, including record keeping.
23. Quality assurance reviews of investigations can be undertaken to establish whether investigations conducted under clause 470 of the Bill were conducted in a way that complies with the AGIS. A quality assurance review is conducted by the Australian Federal Police in relation to criminal investigations and, in relation to non-criminal investigations, a review may be conducted by another agency with the necessary skills and capacity.
24. As part of the implementation process being undertaken by my department, I can assure the Committee that I intend to ensure that administrative arrangements that are put into place meet the requirements of the AGIS. I believe that these compulsory requirements can be adequately addressed through administrative arrangements rather than including the AGIS requirements in the Bill.

Insufficiently defined administrative power – Subclause 541(3)

25. The Committee has sought my advice in relation to the intended operation of subclause 541(3). The Committee noted that it may be assisted if it is possible to give examples of situations in which reliance on this subclause as a source of legal authority for the decisions and actions of the Director may be necessary.
26. Subclause 541(3) provides that the Director of Biosecurity may do anything incidental or conducive to the performance or exercise of his or her powers. This provision provides the Director of Biosecurity with the necessary flexibility to perform his or her functions and exercise his or her powers under the Bill. Whilst the powers conferred on the Director under subclause 541(3) may be taken to be broad ranging, the Director must exercise the powers within the scope and objects of the Bill as set out in clause 4.
27. An example of an incidental action under subclause 541(3) may include the production of administrative guidelines, including instructional material to detail how specific powers are to be exercised and what processes are to be followed in performing specific functions, in a manner that is consistent with the legislation. While administrative guidelines are not legal instruments, they are incidental to the exercise of power and provide the practical instructions required for officers to perform functions or exercise powers in a consistent and best practice manner.
28. I therefore believe that the power conferred under subclause 541(3) is appropriate.

Quarantine Charges (Imposition–Customs) Amendment Bill 2014

Quarantine Charges (Imposition–Excise) Amendment Bill 2014

Quarantine Charges (Imposition–General) Amendment Bill 2014

Delegation of legislative power

29. The Committee seeks advice as to whether consideration has been given to include a provision in each of the Bills which limits the imposition of charges to only the amount which represents the likely costs incurred.
30. Item 4 of the Quarantine Charges (Imposition–Customs) Amendment Bill 2014 substitutes section 7 of the *Quarantine Charges (Imposition–Customs) Act 2014*. It provides that a regulation may impose a charge in relation to a prescribed matter connected with the administration of the Biosecurity Act. The imposed charge is a duty of customs within the meaning of section 55 of the Constitution and is imposed as a tax. Similar amendments are proposed to the *Quarantine Charges (Imposition–Excises) Act 2014* and the *Quarantine Charges (Imposition–General) Act 2014*
31. Subsections 8(2) of the *Quarantine Charges (Imposition–Customs) Act 2014*, 7(2) of the *Quarantine Charges (Imposition–Excise) Act 2014* and 8(2) of the *Quarantine Charges (Imposition–General) Act 2014* currently provide that any imposed charges are limited to cost recovery.
32. They state that before the Governor-General makes a regulation prescribing a charge in relation to a prescribed matter connected with the administration of the *Quarantine Act 1908* (Biosecurity Act), the Minister must be satisfied that the amount of the charge is set at a level that is designed to recover no more than the Commonwealth's likely costs in connection with the matter.
33. As there will be no changes made to these provisions (apart from the change in reference from the *Quarantine Act 1908* to the Biosecurity Act), the requirement as noted by the Committee to ensure that any imposed charges are limited to cost recovery currently exists and will not be amended. I believe that it is not necessary to make any amendments to the Bills.