



Australian Government
Attorney-General's Department

Civil Law Division

12/5640-02

6 March 2013

Senator Trish Crossin
Chair
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Crossin

Department response to questions raised in Senate Legal and Constitutional Committee's Inquiry into the Regulatory Powers (Standard Provisions) Bill 2012

During the Senate Legal and Constitutional Legislation Committee hearing held on 26 February 2005, the Department took a question from Senator Humphries on notice. Subsequently, the secretariat indicated that you also had questions you wished to be taken on notice.

Senator Humphries' question

Senator Humphries asked the Department to give an example of a problem we have right now with the lack of a standard set of regulatory powers.

Two such problems are:

- the need for standardised identity cards for use by officers, and
- the need for standardised provisions for removing electronic equipment from premises and bringing expert assistance to premises.

Standard identity cards

A current example of problems caused by lack of uniformity in regulatory powers relates to requirements for officers to carry identity cards. During consultation on the Bill a department identified trivial variations in legislative provisions relating to identity cards that inadvertently undermine prosecutions and increase regulatory costs.

That department administers fifteen Acts for which identity cards are required. The variations in the provision regulating the design of the cards meant that the same officer exercising powers under different Acts would need to carry and show multiple identity cards.

We understand the legislative variations were the result of uncoordinated drafting and machinery of government changes. These issues would be resolved by adopting the standard provisions in the Bill.

*Removal of electronic equipment from premises for examination
Bringing expert assistance to premises*

Another issue that emerged during consultation on the Bill is that variations in provisions allowing search of premises meant that in some circumstances officers could not remove electronic equipment from the premises or bring expert assistance to the premises being searched.

Electronic equipment includes not only most correspondence, photos and records (the equivalent of all traditional paper records) but also very portable devices including mobile phones, tablets, thumb and external drives, cameras, SD cards and GPSs. Proper execution involving such equipment sometimes requires that the equipment be removed or that it be examined by a technical expert. Variations in search provisions mean that some searches are unable to have a proper examination of electronic equipment while in others the evidence obtainable from electronic equipment is limited.

Additional questions on notice

On 4 March 2014 the secretariat indicated that you requested answers to the following questions:

1. Which bills currently before the parliament include powers that are based on the model in the Bill?
2. Which bills currently before the parliament include the full text in the Bill?
3. Which Acts passed in the last year, and the year before, include the text of the Bill?

The Department provides the following information in respect of those questions.

1. *Which bills currently before the parliament include powers that are based on the model in the Bill?*

The following Bills currently before the Parliament include provisions based on the model in the Regulatory Powers (Standard Provisions) Bill 2012 (the Bill).

- Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012;
- Australian Sports Anti-Doping Authority Amendment Bill 2013;
- Biosecurity Bill 2012.

2 *Which bills currently before the parliament include the full text in the Bill?*

We have assumed that by “full text in the Bill” the Committee would like to identify cases where a Bill before Parliament includes provisions dealing with all of the matters dealt with in the Regulatory Powers Bill (compliance, investigation, civil penalties, infringement notices, enforceable undertakings and injunctions). The Biosecurity Bill 2012 is currently before Parliament and does that.

Which Acts passed in the last year, and the year before, include the text of the Bill?

A list of the Acts that include provisions based on the model in the Regulatory Powers Bill is set out below. Some of these Acts, such as the *National Gambling Reform Act 2012* and the *Greenhouse and Energy Minimum Standards Act 2012*, include provisions dealing with all of the matters dealt with in the Regulatory Powers Bill (compliance, investigation, civil penalties, infringement notices, enforceable undertakings and injunctions). The other Acts include provisions based on parts of the model in the Regulatory Powers Bill, such as the civil penalties provisions.

- *Australian Charities and Not-for-profits Commission Act 2012;*
- *Antarctic Treaty (Environment Protection) Amendment Act 2012;*
- *Coal Mining Industry (Long Service Leave) Legislation Amendment Act 2011;*
- *Coastal Trading (Revitalising Australian Shipping) Act 2012;*
- *Greenhouse and Energy Minimum Standards Act 2012;*
- *Horse Disease Response Levy Collection Act 2011;*
- *Illegal Logging Prohibition Act 2012;*
- *National Gambling Reform Act 2012;*
- *Privacy Amendment (Enhancing Privacy Protection) Act 2012.*
- *Product Stewardship Act 2011;*
- *Shipping Registration Amendment (Australian International Shipping Register) Act 2012;*
- *Stronger Futures in the Northern Territory Act 2012*
- *Tertiary Education Quality and Standards Agency Act 2011;*
- *Tobacco Plain Packaging Act 2011;*
- *Water Efficiency Labelling and Standards Amendment (Scheme Enhancements) Act 2012.*

I hope this information is of assistance.

The action officer for this matter is Quentin O'Keefe who can be contacted on

Yours sincerely

Richard Glenn
 Assistant Secretary
 Business and Information Law Branch