



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



**THE SENATE**

**BILLS**

**Freedom of Information Amendment  
(Parliamentary Budget Office) Bill  
2012, Law Enforcement Integrity  
Legislation Amendment Bill 2012,  
Superannuation Legislation Amendment  
(New Zealand Arrangement) Bill 2012**

**Second Reading**

**SPEECH**

**Tuesday, 30 October 2012**

BY AUTHORITY OF THE SENATE

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# SPEECH

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**Speaker** Feeney, Sen David

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**Senator FEENEY** (Victoria—Parliamentary Secretary for Defence) (17:47): I move:

That these bills be now read a second time.

I seek leave to have the second reading speeches incorporated in *Hansard*.

Leave granted.

*The speech es read as follows—*

## FREEDOM OF INFORMATION (PARLIAMENTARY BUDGET OFFICE) BILL 2012

This Government has established the Parliamentary Budget Office – an independent and non-partisan institution which will strengthen Australia's fiscal and budget frameworks.

The Parliamentary Budget Office's functions include: preparing budget analyses and policy costings on requests by individual senators and members; preparing submissions to inquiries of Parliamentary Committees; and, at its own initiative, conducting and publishing research on the budget and fiscal policy settings.

With the creation of the Parliamentary Budget Office all senators and members, for the first time, have access to independent and non partisan budget analyses and policy costings over the entire course of the three year electoral cycle.

A key element of the new arrangements are that outside of the caretaker period for a general election a senator or member can request that the Parliamentary Budget Office's services be provided on a confidential basis for policy costings.

The Parliamentary Budget Office is already an exempt agency under the Freedom of Information Act 1982 (FOI Act). However, the FOI Act does not currently provide a specific exemption for documents relating to requests from the Parliamentary Budget Office that may be held by departments and other agencies.

As a result, requests for information made to agencies by the Parliamentary Budget Office, and information provided to the Parliamentary Budget Office by agencies, may not be as fully protected from release under the FOI Act as they ought to be to give effect to the Parliamentary Budget Office's special position.

In addition, FOI requests may be made to agencies for the sole purpose of finding out whether or not the Parliamentary Budget Office has received a confidential request in relation to a particular matter. A response from an agency that documents could not be released because a relevant exemption applied would in effect confirm the existence of the documents and the fact that a confidential request had been made to the Parliamentary Budget Office.

Procedures and protocols between the Parliamentary Budget Office and departments have been established but this bill takes a further step in clarifying the appropriate protections.

The bill amends the FOI Act to provide an exemption for information held by departments and agencies that relates to a confidential request to the Parliamentary Budget Office. This will ensure that the integrity of the Parliamentary Budget Office's processes in these matters which are critical to the successful operation of the Parliamentary Budget Office will not be undermined.

The bill also amends section 25 of the FOI Act to provide that an agency is not required to give information as to the existence or non-existence of a document where it is exempt under the new provisions.

The bill also contains a consequential amendment to section 34 of the Privacy Act 1988. Section 34 of the Privacy Act 1988 provides that the Commissioner in carrying out functions under the Privacy Act 1988, for example investigating an act or practice of an agency that may be a breach of privacy, must not give a person any information as to the existence or non-existence of a document where it is exempt under the FOI Act.

It is proposed to amend section 34 to refer to the new Parliamentary Budget Office exemption, reflecting the amendment to section 25 of the FOI Act and ensuring that Parliamentary Budget Office documents are confidential.

Given the importance of this issue and the Parliamentary Budget Office's independence and integrity, it is proposed that the bill will operate retrospectively from the day after introduction.

The work of the Parliamentary Budget Office is undertaken for the benefit of the Parliament. These reforms are critical to the success of the independent Parliamentary Budget Office. They will enhance the operation of the Parliamentary Budget Office for senators and members from all political parties.

The establishment of the Parliamentary Budget Office has strengthened Australia's fiscal and budget frameworks by providing non-partisan and independent information to the Parliament on the budget, fiscal policy and financial implications of proposals.

These reforms will protect the confidentiality of the Parliamentary Budget Office's work and ensure that it will operate as it was intended when the Parliament expressly exempted the Parliamentary Budget Office from the FOI Act.

#### LAW ENFORCEMENT INTEGRITY LEGISLATION AMENDMENT BILL 2012

The vast majority of Commonwealth law enforcement officers are good, honest hardworking people.

But it is an unfortunate fact that criminals target law enforcement officers.

Organised crime groups actively target our law enforcement officers because of the nature of the work that they do—and because of their access to sensitive information.

It happens all around the world.

There is no place for corruption in the public sector.

That is why the Minister for Justice has brought this legislation forward.

That's why the Minister for Justice has made it one of his top priorities.

Where we find corruption, we have to weed it out.

This bill is an important step in this process.

It will give our law enforcement agencies more power to prevent corruption, and increase the tools and the powers they have to weed it out where they find it.

The bill contains three key measures:

1. It introduces targeted integrity testing for the Australian Federal Police, Australian Crime Commission and the Australian Customs and Border Protection Service Officers suspected of corrupt conduct;
2. It doubles the number of law enforcement agencies covered by the Australian Commission for Law Enforcement Integrity; and
3. It strengthens the powers of the Chief Executive Officer of the Australian Customs and Border Protection Service to deal with suspected corruption.

I will outline each of these measures.

**Integrity Testing**

First, integrity testing.

An integrity test is an operation designed to test whether an official will respond to a simulated or controlled situation in a manner that is inconsistent with an agency's standards of integrity.

Examples of integrity testing include:

Leaving valuable goods at a simulated crime scene to test whether an officer steals the item, or

Putting false information in a database to catch a person suspected of unlawfully disclosing information.

Officers in State police forces are subject to integrity testing.

This includes New South Wales, where testing was introduced following the Wood Royal Commission, and Queensland, where testing is conducted by the Crime and Misconduct Commission.

The Parliamentary Joint Committee on the Australian Commission for Law Enforcement Integrity recommended the introduction of targeted integrity testing at a Commonwealth level last year.

The power of integrity testing is that it puts fear in the mind of the corrupt. It is a psychological war against corruption.

They will need to think twice before accepting a bribe from a criminal because that criminal could be an undercover police officer.

The Committee made a number of recommendations regarding the form that Commonwealth integrity testing should take—and safeguards that should be included. I thank them for their work.

The Government accepted these recommendations, and this bill gives effect to this.

Only senior officers of the Australian Federal Police, Australian Crime Commission and Customs will be able to authorise integrity tests.

The Integrity Commissioner will also be able to authorise integrity testing to support a corruption investigation.

An integrity test will only be able to be authorised where the senior officer has a reasonable suspicion that an offence, punishable by at least 12 months imprisonment, has been or is likely to be committed.

Integrity testing is not 'entrapment' or 'inducement'.

The inherent principle of integrity testing is that there be clear and equal opportunity for a person who is subject to the test to pass the test or fail the test.

Entrapment is where a person is induced to commit an offence that they would not otherwise have committed.

Tests will be carefully designed and carried out in a way which upholds this distinction.

It is important that, in conducting integrity tests, law enforcement agencies have available to them the full suite of covert powers that they otherwise have at their disposal for investigating serious and organised crime.

This was also recommended by the Parliamentary Joint Committee as part of its inquiry.

For this reason the bill contains amendments to the controlled operations provisions in the Crimes Act and to the Telecommunications (Interception and Access) Act and Surveillance Devices Act to ensure these powers are available in an integrity testing context.

The use of these powers will remain subject to existing safeguards.

**Expansion of the Australian Commission for Law Enforcement Integrity's jurisdiction**

Second, doubling the number of law enforcement agencies covered by the Australian Commission for Law Enforcement Integrity.

The Australian Commission for Law Enforcement Integrity was established in 2007 to detect, disrupt and deter potential corruption in Federal law enforcement agencies.

It currently oversees the Australian Federal Police, the Australian Crime Commission and Customs, and deals with corruption issues from the former National Crime Authority.

This bill extends the jurisdiction of the Australian Commission for Law Enforcement Integrity to cover the Australian Transactions Reporting and Analysis Centre (AUSTRAC), the CrimTrac Agency, and prescribed staff members in the Department of Agriculture Fisheries and Forestry.

These law enforcement agencies should be subject to the additional oversight that the Australian Commission for Law Enforcement Integrity provides.

The work performed by these agencies also makes them a target of organised crime.

ACLEI's new jurisdiction will commence on 1 July 2013 to enable appropriate compliance and administrative arrangements to be put in place prior to this occurring.

The Government will also provide the Australian Commission for Law Enforcement Integrity with additional resourcing to meet the costs of this expanded jurisdiction.

In February this year the Minister for Justice also commissioned a review of the first year of the Australian Commission for Law Enforcement Integrity's oversight of Customs.

The Government received the report from this review in April.

It recommended:

1. That ACLEI explore the scope for seconding suitably senior and experienced staff from law enforcement agencies to assure ACLEI maintains up-to-date major investigation experience and expertise
2. That the Integrity Commissioner continue to build an understanding among ACLEI staff of ACLEI's role and the need to work jointly with other agencies
3. That ACLEI establish a regular forum for relevant Customs and ACLEI staff to meet to discuss integrity issues
4. That funding go towards completing ACLEI's information management project within the next 12 months
5. That ACLEI work with Customs on communications and training strategies around increasing awareness of ACLEI's role and improving lessons learned from current integrity investigations
6. Measures to refine ACLEI's processes for managing and investigating integrity matters referred by law enforcement agencies.

The Government has agreed to all of the recommendations made in the report.

As a result of this review, the Government has also doubled the annual funding provided to the Australian Commission for Law Enforcement Integrity for its work in overseeing Customs, to allow it to undertake further significant activities in prevention and case work.

**Strengthening of the powers of the Chief Executive Officer of Customs**

Third, the strengthening of the powers of the Chief Executive Officer of Customs.

In February this year the Minister for Justice also wrote to the Commissioner of the Australian Federal Police, the CEO of the Australian Crime Commission and the CEO of Customs and Border Protection outlining my expectations in detecting, disrupting and preventing corruption.

The Minister for Justice also asked for their advice about further action that needs to be taken to strengthen the corruption resistance of Commonwealth enforcement agencies.

The agencies have responded with the following anti-corruption measures.

The Australian Federal Police are:

Working with ACLEI to develop a strategic intelligence assessment of corruption risks within ACT Policing;

Working closely with ACLEI and the Commonwealth Ombudsman to continue to develop a better understanding of roles and responsibilities regarding prevention, detection and response to integrity issues;

Working with the Commonwealth Ombudsman to improve the timeliness of investigations into integrity issues; and

Continuing to develop its capability including recruitment screening, targeted drug testing and alcohol screening, and early intervention.

The Australian Crime Commission is:

Expanding random drug and alcohol testing to all staff;

Reviewing fraud and corruption risk assessments and plans; and

Developing additional training tools to assist staff in apply their integrity and anti-corruption responsibilities.

Customs and Border Protection has conducted a review of their integrity framework.

This was completed in June.

It recommended a range of reforms to strengthen Customs' anti-corruption culture, prevent corruption and weed it out.

This includes:

Establishing a Support and Referral Network similar to the Australian Federal Police's 'Confidant' model. This will provide a facility for staff to readily access support, advice, and the ability to come forward with information about corruption and criminal behaviour.

Enhanced tools to ensure Customs select appropriate staff, and mechanisms to prevent corrupt behaviours emerging right through the employment cycle;

Increased education and guidance for staff, including the development of a 'Customs and Border Protection Officers Handbook' as the core reference document for all staff.

This bill contains additional measures focused on improving the integrity culture within Customs.

Criminals and organised crime groups are always changing.

As they change, our law enforcement agencies need to change as well.

Customs and Border Protection are an important part of this.

Their work is just as important as the work done by the Australian Federal Police and the Australian Crime Commission.

And they are just as likely to be targeted by organised criminals.

That is why it is essential that they have the same powers and tools to tackle corruption and weed it out.

This bill contains a series of measures to bring Customs and Border Protection's powers to act against corruption and misconduct into line with the Australian Crime Commission and the Australian Federal Police.

This includes:

the power to authorise drug and alcohol testing;

the power for the Customs CEO to make an order declaring that the termination of an employee was for serious misconduct; and

the power to issue orders including mandatory reporting requirements, whereby staff members will be required to report any suspected misconduct.

The Australian Federal Police and the Australian Crime Commission both currently undertake drug and alcohol testing.

Officers of Customs and Border Protection operate and respond in similar surroundings to officers of these agencies.

It is essential that they also be subject to the same standards of integrity.

Drug and alcohol testing will first focus on high-risk areas of Customs, including where officers perform similar functions to and work in close proximity to other law enforcement officers who are subject to drug and alcohol testing.

Officers that are under the influence of drugs or alcohol not only pose a safety risk to co-workers – they are also potentially a target for organised crime groups that are seeking to infiltrate law enforcement.

An officer using illicit drugs may be willing to undertake 'favours' for crime groups in return for the supply of illicit drugs.

Identification of this behaviour is an important part of improving corruption resistance and tackling organised crime.

The bill will also provide a new power for the CEO of Customs to make a declaration, following the termination of a staff member's employment, that the termination was for serious misconduct.

The effect of this declaration will enable the terminated employee to be immediately removed from the workplace.

Judicial review will remain available to terminated officials under the Administrative Decisions (Judicial Review) Act, whereby the Federal Court can consider the lawfulness of the CEO's decision.

This power replicates powers currently available to the heads of the Australian Federal Police and Australian Crime Commission.

It is not a power that will be exercised lightly, and will be reserved for serious cases of misconduct.

The decision made by the CEO will follow assessment and advice from a panel independent of the CEO.

The bill will also provide an ability for the CEO of Customs to issue written orders to staff requiring them to report any suspected instances of misconduct.

It is important that law enforcement agencies develop a strong culture of resisting corruption.

Corruption can thrive in an environment where it is the norm to turn a blind eye to misconduct.

This measure will ensure that where an employee of Customs observes an incident which may involve misconduct, he or she is in no doubt as to what the appropriate action should be.

**Conclusion**

This is a major package of reforms to target corruption – and give our law enforcement agencies the power to prevent it from happening, and when it does happen – weed it out.

As I said earlier, there is no place for corruption in the public sector.

I choose these words carefully. There is a darker side of the human condition that is vulnerable to corruption. Our job is to make the public sector as corruption resistant as it can be.

That's why the Government have made this a top priority.

This is the first tranche of reforms that the Government will bring forward.

There is more work to do.

The Government is working on those reforms now and will bring those reforms forward when they are finalised.

**SUPERANNUATION LEGISLATION AMENDMENT (NEW ZEALAND ARRANGEMENT) BILL 2012**

This bill amends various taxation and superannuation laws to introduce a voluntary scheme for Australians and New Zealanders to permit them to transfer their superannuation savings between Australia and New Zealand.

This new scheme will permit Australians and New Zealanders who have lived and worked in both countries to make the most of their retirement savings.

The Australian Government is committed to the closest possible relations with New Zealand. In 2009 the Government and the New Zealand Government signed a Memorandum of Understanding to develop a Trans-Tasman Retirement Savings Portability Scheme. The scheme is scheduled to commence on 1 July 2013 and is expected to assist the thousands of Australians and New Zealanders who move across the Tasman each year. The New Zealand Parliament passed the legislation necessary for the new scheme in 2010.

Currently, Australians and New Zealanders working in Australia must leave their superannuation behind when they permanently leave Australia.

More than 50,000 New Zealanders moved to Australia last year, while about 14,000 people left Australia permanently for New Zealand.

In 2007, a Working Group of Australian and New Zealand officials was established to investigate options for the portability of retirement savings between Australia and New Zealand.

On 16 July 2009, the Australian and New Zealand Governments jointly announced the scheme and signed a Memorandum of Understanding establishing the scheme and outlining its working arrangements.

Consistent with the Memorandum of Understanding, this bill will permit the transfer of retirement savings between APRA regulated Australian superannuation funds and New Zealand KiwiSaver schemes.

New Zealanders who move to Australia will be able to transfer their New Zealand retirement savings to Australia and add them to their Australian superannuation benefits.

Similarly, Australians moving to New Zealand, and New Zealanders returning home, will be able to take their Australian benefits with them, to consolidate with their New Zealand retirement savings.

As the scheme is voluntary, Australians and New Zealanders can leave their superannuation behind, if they wish.

Superannuation is to be transferred tax free between Australia and New Zealand, although New Zealand transfers into the Australian superannuation system are subject to the contributions cap arrangements, consistent with the terms of the Memorandum of Understanding.



In general, the tax and superannuation laws of the host country will apply to the transferred savings, with a couple of exceptions where source country rules will apply. These exceptions are designed to preserve unique features of each country's retirement savings system.

The portability scheme enhances the development of a seamless trans Tasman labour market, by removing an impediment to labour mobility between the two countries.

The introduction of the scheme is an important step in our closer economic relations with New Zealand, and supports ongoing progress toward a single economic market. Both Governments are committed to this goal through the Australia New Zealand Closer Economic Relations Trade Agreement.

At a personal level, the scheme will enable Australians and New Zealanders to streamline their financial affairs when they move across the Tasman. Individuals will be able to consolidate their superannuation in their country of residence, and avoid paying unnecessary fees and charges on multiple accounts held in the two countries.

This is the first time an international superannuation portability scheme has been implemented in Australia and is another important Gillard Government measure to improve the efficiency of Australia's world leading superannuation system.

Full details of the measure are contained in the explanatory memorandum.

I commend this bill to the Senate.