

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

Monday 2 May 2016

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Thirty-seventh Report of the 44th Parliament.

The committee's report examines the compatibility of bills and legislative instruments with Australia's human rights obligations. This report considers bills introduced into the Parliament from 15 to 17 March 2016 and legislative instruments received from 4 to 17 March 2016. The report also includes the committee's consideration of ten responses to matters raised in previous reports.

Sixteen new bills are assessed as not raising human rights concerns. The committee has also concluded its examination of six bills and nine regulations.

This report concludes consideration of the Australian Border Force Bill 2015. The bill provides the legislative framework for the establishment of the Australian Border Force within the Department of Immigration and Border Protection. The minister's response in this instance enabled the committee to conclude that a number of measures were compatible with human rights. This includes measures which give the departmental secretary the power to delay an employee's resignation by up to 90 days in circumstances where the employee may have engaged in serious misconduct, and measures

that may require border force workers to disclose matters that may be self-incriminatory. On two measures, relating to the application of additional employment screening measures across the department and extending alcohol and drug testing to the entire department, committee members came to differing conclusions as to whether the measures were compatible with human rights.

The committee did, however, find that the secrecy offence provision, which criminalises the disclosure by an immigration and border protection worker of any information obtained in their capacity as an immigration protection worker, is likely to be incompatible with the right to a fair trial. This is because the offence provision includes limited exceptions which reverse the onus of proof and place an evidential burden on the defendant to prove that the statutory exception applies in a particular case. An offence provision which reverses the onus of proof engages and limits the presumption of innocence. This is because a defendant's failure to discharge the burden of proof may permit their conviction despite reasonable doubt as to their guilt.

Reversing the onus of proof may be justified where an element of the offence is peculiarly within the knowledge of the defendant, and it would be significantly more difficult and costly for the prosecution to disprove than for the defendant to establish the matter. The committee considered that reversing the burden of proof in this case was not justified.

The committee also concluded that measures which would enable the exclusion of certain remedies for unfair dismissal under the *Fair Work Act 2009* may be incompatible with the right to just and favourable conditions of work. The committee considered that it was unlikely that the Fair Work Commission would order the department to reinstate an employee found to have engaged in serious misconduct and, accordingly, the committee considered the measure had not been justified as necessary and proportionate.

I encourage my fellow Members and others to examine the committee's report to better inform their understanding of the committee's deliberations.

With these comments, I commend the committee's Thirty-seventh Report of the 44th Parliament to the chamber.