

Law Enforcement Integrity Legislation Amendment Bill 2012

Introduced into the House of Representatives on 10 October 2012; passed both Houses on 27 November 2012

Portfolio: Home Affairs

PJCHR comments: [Report 5/12](#), tabled on 10 October 2012

Ministerial response dated: 29 October 2012

Committee view

3.1 The committee thanks the Minister for his response and for tabling a revised statement of compatibility in the Senate to address the committee's concerns.

3.2 The committee is satisfied that the exclusion of independent merits review for unfair dismissal under Part 3-2 of the *Fair Work Act 2009* is likely to be compatible with the right to a fair hearing in article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) on the basis that the bill retains the ability for a customs officer to seek review of the dismissal under Part 3-1 of the *Fair Work Act 2009* (which covers workplace rights, freedom of association and protection from workplace discrimination), as well as judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.

3.3 The committee acknowledges the Minister's view that it is not practicable to provide a prescriptive definition for 'prohibited drugs' in primary legislation but reiterates its concerns that the legislation does not set out any criteria to guide the CEO's decision-making. This leaves open the possibility that substances unrelated to the objectives of the drug testing regime (i.e. workplace safety and integrity) could be listed. Requiring the CEO to take account of these objectives before listing a particular substance would go some way towards ensuring the drug testing regime remains reasonable, necessary and proportionate to a legitimate aim.

Background

3.4 This bill introduced a range of measures aimed at preventing corruption in Commonwealth law enforcement agencies, and improving the response of law enforcement agencies to cases of suspected corruption.

3.5 The committee sought further information from the Minister on several issues. The Minister's response is attached. The Minister's response addressed most of the committee's identified concerns. The committee however agreed to defer

finalising its views on the compatibility of the bill to enable closer consideration of the following issues:

- the partial exclusion of review rights under the *Fair Work Act 2009* for dismissals which have been declared to amount to serious misconduct; and
- the lack of criteria for listing substances as 'prohibited drugs' for the purposes of the proposed mandatory drug testing regime.