RECEIVED
DATE 3/6/14 BY PJCHR

THE HON MICHAEL KEENAN MP
Minister for Justice

MC14/09613

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Dean

Thank you for your letter of 13 May 2014 on behalf of the Parliamentary Joint Committee on Human Rights (the Committee) about the G20 (Safety and Security) Complementary Bill 2014 (the Bill) and the *Commonwealth Places (Application of Laws) Act 1970* (Commonwealth Places Act).

The Committee has sought my advice on the compatibility of the Queensland *G20 (Safety and Security) Act 2013* (Queensland Act) with human rights, on the basis that the Bill would allow the Queensland Act to be applied as a Commonwealth law in places it would not otherwise have applied.

The Queensland Act was enacted by the Queensland Parliament to provide powers, offences and other arrangements it considers necessary to ensure the safety and security of the G20 Summit to be held in Queensland this year. These arrangements are consistent with arrangements for previous special events in Australia, such as the Asia Pacific Economic Cooperation forum in 2007 and the Commonwealth Heads of Government Meeting in 2011.

The powers conferred by the Queensland Act are exercisable for a limited period and apply only at those locations specified in the Queensland Act. This includes part of the Brisbane Airport which is a Commonwealth place.

The Bill does not apply the Queensland legislation, including its powers, in circumstances where that legislation otherwise would not – the Queensland Act already applies the relevant provisions to the declared security area at the Brisbane Airport. The Bill will confirm that the provisions in the Queensland Act and those in existing Commonwealth aviation legislation apply concurrently at that Commonwealth place. In addition, to avoid confusion about the source of any powers being exercised at a particular time, the Bill clarifies that, in the event there is any overlap between those sets of provisions, the provisions in the Queensland Act prevail.

In other words, the Bill does not extend the application of the Queensland provisions to any additional locations. It merely avoids ambiguity by addressing any potential overlap in the two sets of laws for an effective period of five days in November.

Parliament House Canberra ACT 2600 • Telephone: (02) 6277 7290 Facsimile: (02) 6273 7098

On this basis, the Bill will not substantially engage and limit human rights.

The Committee also requests a statement of compatibility for the Commonwealth Places Act with Australia's human rights obligations, particularly with respect to the compatibility of measures that have or may be applied as Commonwealth law by its operation.

The Commonwealth Places Act ensures that State laws can apply to Commonwealth places within each jurisdiction to facilitate consistent and seamless application of each State's laws across the jurisdiction. Because it is necessary for the Commonwealth Places Act to apply to a large number of State laws, it has been framed in open and general terms so that State laws apply automatically to Commonwealth places without first needing to be identified and specifically prescribed.

The Commonwealth Places Act applies State laws to Commonwealth places within that State. The Act is facilitative, rather than enacting specific powers and obligations in its own right. Accordingly, the Commonwealth Places Act would have the same impact on Australia's human rights obligations as the relevant State laws being applied.

Thank you again for writing on this matter and informing me of the Committees views.
I trust this information is of assistance to the Committee.

Yours sincerely

Michael Keenan

29 MAY 2014

RECEIVED
DATE 16/5/14 BY PJCHR

THE HON JULIE BISHOP MP

Minister for Foreign Affairs

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

Dear Senator Smith

Thank you for your letter in relation to the Parliamentary Joint Committee on Human Rights' comments on the *International Organisations (Privileges and Immunities) (International Committee of the Red Cross) Regulation 2013* [F2013L01916].

I attach for the Committee's information a response prepared by the Department of Foreign Affairs and Trade which clarifies the points raised by the Committee. I trust that this information will be of assistance to the Committee in completing its review of the Regulation.

Yours sincerely

Julie Bishop
16 MAY 2014

Telephone (02) 6277 7500 Parliament House, Canberra ACT 2600, Australia Facsimile (02) 6273 4112

Response to the Parliamentary Joint Committee on Human Rights on its request for information concerning the *International Organisations (Privileges and Immunities) (International Committee of the Red Cross) Regulation 2013* (Cth)

1. This paper has been prepared by the Department of Foreign Affairs and Trade in response to the request for further information from the Chair of the Parliamentary Joint Committee on Human Rights in his letter to the Minister for Foreign Affairs and Trade of 10 December 2013 regarding the *International Organisations (Privileges and Immunities) (International Committee of the Red Cross) Regulation 2013* (Cth) (Regulation).

2. The Committee, in its *First Report of the 44th Parliament*, questioned the compatibility of this Regulation with human rights, in particular the right to a fair hearing (and any possible right of access to court) in Article 14 of the *International Covenant on Civil and Political Rights* (ICCPR). It noted its intention to write to the Minister to seek clarification on this point. The Committee also drew to the Minister's attention the comments of its predecessor committee on the possible inconsistency of Australia's laws on privileges and immunities with Australia's obligations under the *Convention Against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT). It requested the Minister to undertake a review of those laws in relation to this aspect of their operation. This paper will address each issue in turn.

Compatibility with human rights

3. There is no incompatibility between this Regulation and the human rights and freedoms recognised in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). In particular, there is no legal basis on which to assert that the conferral of privileges and immunities on an international organisation would breach any rights conferred by Article 14 of the ICCPR, which provides for an accused's right to a fair trial before an impartial court or tribunal.

4. The first sentence of Article 14(1) provides that "All persons shall be equal before the courts and tribunals". Article 14(1) goes on to outline specific provisions regarding a fair hearing, while Article 14(3) sets out the minimum guarantees of the accused in criminal proceedings. In his leading commentary on the ICCPR, Nowak elaborates further on the content of the rights conferred in Article 14(1), identifying that the principle of "equality of arms" between plaintiff and respondent (or between prosecutor and defendant) is an important component of a fair trial. This is the principle that each party to a proceeding should have an equal opportunity to present his case. Nonetheless, Nowak notes that the right to equality before courts and tribunals does not affect diplomatic privilege or parliamentary immunity.[1]

5. The Regulation also provides some restrictions on the privileges and immunities conferred on the ICRC. The purpose of conferring privileges and immunities on

---

[1] Novak, M. *UN Covenant on Civil and Political Rights – CCPR Commentary (2nd Ed.)*, Kehl, 2005, pp308-309.

an organisation such as the ICRC is to assist it to fulfil its mandate. Protecting the confidential nature of the ICRC's work, including through immunity from legal processes, helps it to maintain the access it needs to perform its functions and the security of its personnel. The Regulation makes clear that the privileges and immunities conferred are for the benefit of the ICRC, therefore, and not the personal benefit of individuals (subsection 15(1)).

6. The Regulation also provides that the privileges and immunities conferred on the ICRC and its Delegates in Division 1 of the Regulation (Privileges and Immunities of the ICRC) and Division 2 (Privileges and Immunities of delegates of ICRC) do not apply if, in the ICRC's view, their application would impede the course of justice, as long as the purposes for which the privileges or immunities were conferred are not prejudiced (subsections 15(3) and 15(4). Given the ICRC's mandate to promote and ensure compliance with international humanitarian law, we expect that the ICRC would be favourably disposed to any requests from the Australian Government to waive immunity in appropriate circumstances.

Consistency of Australia's laws on privileges and immunities with Australia's obligations under CAT

7. The question of the application of immunities to serious international crimes, including torture, remains unsettled under international law. There has been limited jurisprudence on this point and such jurisprudence as there has been is not determinative. For this reason, it would be premature to propose further legislative amendments addressing this issue. As such, a review of the legislation is not warranted at this time.

RECEIVED
DATE 19/6/14 BY PJCHR

Senator the Hon. Michael Ronaldson
Minister for Veterans' Affairs
Minister Assisting the Prime Minister for the Centenary of ANZAC
Special Minister of State

Ref: M14/1698

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Smith,

Thank you for your letter of 13 May 2014, drawing my attention to the Committee's comments in the Sixth Report of the 44th Parliament (the Report), concerning the Veterans' Affairs Legislation Amendment (Mental Health and Other Measures) Bill 2014 (the Bill).

You sought my advice in relation to the compatibility of proposed new provisions with rights guaranteed by the International Covenant on Civil and Political Rights. Specifically, you asked for my advice as to:

1. the compatibility of new section 170 with the right to freedom of opinion and expression, and particularly:
   - whether the measure is rationally connected to its stated objective; and
   - whether the measure is proportionate to achieving that objective; and

2. the compatibility of new subsections 170(3) and 170(4) with the right to freedom of assembly, and particularly:
   - whether the measures are rationally connected to their apparent objective; and
   - whether the measures are proportionate to achieving that objective.

As background, it is noted that the amendments to the contempt provisions of the Veterans' Review Board (the Board) were in response to the Report of the Strategic Review of Small and Medium Agencies in the Attorney General's portfolio (the Skehill Review) recommendations proposing consistency between the statutory frameworks of Tribunals. To achieve this consistency, the contempt provisions of the *Administrative Appeals Tribunal Act 1975* have been replicated in the *Veterans' Entitlements Act 1986*.

The objective of the new provisions is for the Board to be able to conduct its business without disruption in a fair and equitable manner. It is noted that the Report states this objective as 'the protection of the Board and its hearings'. The proposed limitations are likely to be effective in achieving this objective because the existence of these provisions will act as a deterrent to inappropriate behaviour that would disrupt the Board and its hearings. Therefore, the proposed limitations are rationally connected to the objective.

As to the question of proportionality, it is noted that on occasion the Board operates from non-secure, non-government premises, and protections are required to ensure the safety and proper function of the Board and its members. However, the Board would not use these provisions lightly. It would require an extreme event to warrant consideration of applying the contempt provisions and the decision to prosecute would be undertaken by the Commonwealth Director of Public Prosecutions on referral from the police.

Further, in relation to the concerns raised about the nature of the penalties for the proposed offences, it should be noted that section 4B of the *Crimes Act 1914* provides for the imposition of a pecuniary penalty instead of, or in addition to, a penalty of imprisonment.

I hope the information I have provided is of assistance to the Committee.

Yours sincerely,

SENATOR THE HON. MICHAEL RONALDSON

16 JUN 2014

THE HON MICHAEL KEENAN MP
Minister for Justice

RECEIVED
DATE 7/5/14 BY PJCHR

MC14/06086

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

human.rights@aph.gov.au

Dear Senator Dean

Thank you for your letter dated 18 March 2014 on behalf of the Parliamentary Joint Committee on Human Rights regarding the Crimes Legislation Amendment (Unexplained Wealth and Other Matters) Bill 2014 (the Bill). The Government welcomes the opportunity to provide the following comments in response to the issues identified by the Committee.

Right to fair hearing

The Committee has sought my clarification in relation to amendments in the Bill designed to ensure a court is not prevented from making an unexplained wealth order where a person who is subject to the order fails to appear at an unexplained wealth proceeding. The Committee notes that a possible consequence of this measure is that a person may be the subject of an unexplained wealth order without being notified of it. The Committee further notes that it has concerns regarding the compatibility of this measure with the right to a fair hearing, given that the scheme operates on the basis of a presumption of unlawful conduct which a person must rebut in order to avoid the making of an unexplained wealth order against them.

These amendments are designed to clarify the existing provisions in the *Proceeds of Crime Act 2002* (the POC Act) to ensure that a person cannot frustrate unexplained wealth proceedings by simply failing to appear before the court. They will operate in conjunction with existing provisions in the POC Act which protect the rights of a person who is subject to an application for an unexplained wealth order by imposing notification requirements on the proceeds of crime authority that has applied for an order against that person.

Under the current provisions in the POC Act, the process for seeking an unexplained wealth order commences with a proceeds of crime authority (either the Australian Federal Police or the Commonwealth Director of Public Prosecutions) making an application for an unexplained wealth restraining order (followed by a preliminary unexplained wealth order), or a preliminary unexplained wealth order. As the Committee has noted in its Report, these preliminary orders may be sought *ex parte* in some circumstances to ensure that a person does not disperse his or her assets during the time between the preliminary order being sought, and the time a final unexplained wealth order is made.

Section 179N of the POC Act sets out the notice requirements if a proceeds of crime authority has made an application for an unexplained wealth order. Subsection 179N (2) currently provides that if a court makes a preliminary unexplained wealth order, the proceeds of crime authority that has applied for the order must, within seven days:

- give written notice of the order to the person who would be subject to the final unexplained wealth order if it were made, and
- provide to the person a copy of the application for the unexplained wealth order, and affidavits used to support that order.

Subsection 179N (3) provides that the proceeds of crime authority must also ensure that the person is provided with a copy of other affidavits used to support the application for the preliminary order. The provision of this information must occur within a reasonable time before the hearing in relation to whether the unexplained wealth order is to be made.

The Bill makes two amendments to extend the period in which notice can be provided. New subsection 179N (2A) will allow a court to make an order extending the time limit for serving notice by up to 28 days where the court is satisfied that it is appropriate to do so, if a proceeds of crime authority applies before the end of the original period for serving the notice. New subsection 179N (2B) will provide that the court may extend the notice period more than once. Extending the time limit for giving notice aims to cover situations where, for example, a suspect is attempting to avoid service of the notice or is temporarily absent from the jurisdiction. A court will have the discretion as to whether to extend the time limit for serving notice, meaning that independent consideration will be given as to whether an extension is appropriate.

The Committee has requested examples of where the absence of a person who has failed to appear as required by a preliminary unexplained wealth order has frustrated the objective of the unexplained wealth scheme. The 2012 report of the Parliamentary Joint Committee on Law Enforcement from its inquiry into Commonwealth unexplained wealth legislation and arrangements noted that the unexplained wealth provisions of the POC Act are not working as intended. To date, no unexplained wealth applications have been made by proceeds of crime authorities. The aim of the Bill is to generally strengthen Commonwealth unexplained wealth laws to ensure the Commonwealth's unexplained wealth scheme is as effective as possible.

Right to privacy

In relation to the provisions of the Bill that extend the purposes for which information obtained under the coercive powers of the POC Act can be shared with a foreign authority, the Committee reiterated its expectation that statements of compatibility include sufficient justification of proposed limitations on rights, including how such limitations are proportionate to the objective sought to be achieved.

The Committee indicated that it does not intend to make further comment on this issue and has not sought further comment from me with respect to these measures. However, in response to the Committee's comments I note that the Bill does not provide a general power to share proceeds of crime information with foreign agencies. Disclosures to foreign authorities will only occur for the purpose of identifying, locating, tracing, investigating or confiscating proceeds or instruments of crime, and such disclosures will only be made where the proceeds or instruments of crime concerned would be capable of being confiscated under Australian proceeds of crime laws.

As outlined in the Bill's explanatory material, it is essential that proceeds of crime authorities have the ability to share information to effectively pursue proceeds of crime offshore, and assist our foreign counterparts in doing so. Accordingly, I consider that any limitations on rights resulting from this measure are proportionate to the aims it seeks to achieve.

Statement of compatibility

Finally, the Committee indicated that the statement of compatibility for the Bill does not address the concerns raised by the Committee on the previous Government's Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012, which lapsed when Parliament was prorogued prior to the 2013 Federal election. While I note this comment, I also note that the current Bill and its supporting materials, including the statement of compatibility, differ in a number of respects from the 2012 Bill. Officers responsible for the Bill are aware of the Committee's expectation that statements of compatibility need to address all measures with human rights implications in any particular legislative instrument.

The responsible adviser for this matter in my Office is Tim Wellington who can be contacted on (02) 6277 7290.

Thank you again for writing on this matter.

Yours sincerely

Michael Keenan

29 APR 2014

RECEIVED
DATE 17/6/14 BY PJCHR

Senator the Hon David Johnston
Minister for Defence

MA14-001547

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Chair

Thank you for your letter of 13 May 2014 regarding the report by Parliamentary Joint Committee on Human Rights (the committee) on the *Defence Legislation Amendment (Woomera Prohibited Area) Bill 2014* (the Bill).

I note the committee seeks further advice on a number of measures provided for in the Bill in relation to the compatibility with human rights. My response to the committee is set out below.

Right to privacy

The Woomera Prohibited Area (WPA) has been the site of weapons testing since the 1950s and contains unexploded ordnance and the debris from weapons testing. The WPA is an extremely large remote land area and it is difficult for the Department of Defence to monitor the movements and activities of people on the WPA.

The non-consensual search powers under Part VIA of the *Defence Act 1903* will only apply generally where a person does not have authorisation to be on Defence premises, where they constitute a threat to safety or have committed or may commit a criminal offence in relation to the Defence premises. These powers may also apply at Defence access control points.

These powers are required to ensure that people and vehicles leaving the WPA through Defence access control points are not removing war materiel or equipment. If a person attempting to enter the WPA through an access point refuses a consensual search, it is within the power of a Defence security official to refuse to allow that person to enter the WPA. In circumstances where the person is intending to leave the WPA and refuses a consensual search, a special Defence security official requires the proposed powers to conduct a non-consensual search to ensure that no materiel, including unexploded ordnance, debris from weapons testing or war materiel is removed from the WPA.

In light of the sensitive nature of testing activities and the potential hazards associated with materiel that may be present in the WPA, a mechanism to control access and ensure people's safety is compatible with this limitation on the right to privacy.

Right to security of the person and freedom from arbitrary detention

The committee has requested advice as to the compatibility of the requirement that a detained person be brought 'as soon as practicable' before a member or special member of the Australian Federal Police or member of a state or territory police force, with the right to be brought promptly before a court. In addition, advice has been requested on what protection may apply to the right to security of the person and freedom from arbitrary detention.

Defence advises the arrest and detention powers in this Bill already apply to 'Defence Premises' through Pt VIA of the *Defence Act 1903*, this Bill will only extend the application of these existing powers to the WPA.

The vast and remote nature of the WPA combined with safety concerns associated with testing may give rise to a situation where it may take time for a detained person to be brought before a member of the police force which in any event will be done as soon as practicable. This is compatible with the right to be brought promptly before a court in that a detained person will be brought before a member of a police force as soon as circumstances allow this to occur.

Right to enjoy and benefit from culture
Right to self-determination

The committee sought advice on the compatibility of the Bill with the right to enjoy and benefit from culture and the right to self-determination, with particular attention to native title and whether the increased economic activity in the WPA enabled by the Bill might limit Indigenous groups' enjoyment of these rights.

Indigenous groups will retain current access rights and will not require permission under this Bill. I note that section 72TB of the Bill specifically excludes existing users of the WPA from the application of the Bill. This includes Indigenous groups with an interest in the land. Additionally, permit holders under the Bill will be required to respect the rights of the local Indigenous groups and comply with all relevant laws and pertaining to native title and the protection of these sites. Defence engages in ongoing consultation and discussion with all stakeholders, including Indigenous groups, to ensure there is minimal disruption caused by Defence testing.

With respect to economic activity, the Bill only creates a permission system to access a prohibited area. Any economic activity that takes place in the WPA, specifically mining activity, is regulated by the South Australian Government under its *Mining Act 1971*.

Right to a fair trial and fair hearing rights

The inclusion in the Bill of the proposed s 121A is designed to ensure there can be no doubt about the validity of the 1989 declaration of the WPA. The purpose of s 121A is to address technical arguments that could be raised in relation to the 1989 declaration and some acts taken pursuant to it. The only perceived basis for this is that the Defence Force Regulations 1952 did not fully provide for just terms compensation for any acquisitions of property consequent on that declaration or those acts for the purposes of s 51(xxxi) of the Constitution (although Defence is not aware of any particular cases in which this may have occurred). Section 121A rectifies any constitutional deficiencies by providing just terms compensation in accordance with s 51(xxxi).

There are no *pending* or *completed* proceedings that would be affected by the proposed s 121A. Nor is Defence aware of any circumstances that would give rise to new proceedings in relation to the period covered by the proposed s 121A.

Even if there were such proceedings s 121A would merely prevent a person from attempting to indirectly escape liability by arguing that he or she could not have been in the WPA because the declaration of that area as a prohibited area was invalid as it effected an acquisition of property other than on just terms. Further, any such liability would not be imposed on a person who could not have reasonably known of the liability at the time the conduct constituting the offence was committed.

In any case, Defence is not aware of any information that suggests any person is likely to be prosecuted for an offence against reg 35 for conduct occurring before this Bill. There are no current investigations or prosecutions. Accordingly, to the best of Defence's knowledge, the proposed s 121A will not operate in practice so as to cause, indirectly, any retrospective imposition of criminal liability.

Yours sincerely

David Johnston

17 JUN 2014

RECEIVED
DATE 7/5/14 BY PJCHR

THE HON ANDREW ROBB MP

MINISTER FOR TRADE AND INVESTMENT

01 MAY 2014

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear ~~Senator~~ Dean

Thank you for your letter of 18 March 2014 on behalf of the Parliamentary Joint Committee on Human Rights advising me of the Committee's concern that the "fit and proper" provision in the Export Market Development Grants Amendment Bill (EMDG) 2014 appears to limit the rights of EMDG consultants, as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Committee had noted that the statement of compatibility accompanying the bill did not fully conform to the Committee's expectations in regard to:

1. Whether the limitation is aimed at achieving a legitimate objective;
2. Whether there is a rational connection between the limitation and that objective; and
3. Whether the limitation is proportionate to that objective.

Objective of the provision

The EMDG scheme is the only significant financial assistance program for Australian small exporters. The total amount payable under the scheme is capped. Any grant that is paid on the basis of false information reduces the amount available to other applicants. Also, the amounts spent on monitoring and investigating claims reduces the overall amount available. It is not feasible for Austrade to fully verify every application (approximately 3000 applications each year). It is important that the EMDG scheme be able to operate on the basis that applications are honest.

EMDG consultants advise applicants on claims under the EMDG scheme. These consultants usually work on a success fee basis, essentially a 10 per cent

commission on grants obtained for their clients, which can be a very substantial amount. Approximately 50 per cent to 60 per cent of claims are prepared by consultants.

The Government, applicants and EMDG consultants all share an interest in the EMDG scheme maintaining broad public support. This public support depends upon public confidence in the probity of the scheme. EMDG consultants are a significant part of the scheme. They are publically linked to the scheme, undertake significant promotion of the scheme, manage the majority of applications to the scheme, and earn fees from the scheme, usually on a commission basis. The probity and good public image of EMDG consultants therefore has a significant impact on public perception of the EMDG scheme and the Government's management of it. It is therefore appropriate that just as applicants are required to be fit and proper to receive a grant, so should consultants meet a similar standard. If the scheme were to be withdrawn due to negative public perception it would cause disruption and damage to thousands of businesses.

Connection between the limitation and its objective

The "fit and proper person" test for applicants, that has been in place since 2004, provides an incentive for them to act honestly. The new provisions appropriately extend this requirement to consultants who prepare applications, often for applicants who themselves have little or no knowledge or experience of the scheme requirements. Because consultants' fees are a percentage of the grant received, there is an incentive for consultants to maximise the amount claimed. The current Bill is intended to provide a further incentive to consultants not to make false claims, and an incidental incentive to applicants not to use consultants with a poor record for financial probity.

EMDG consultants are not subject to the disciplinary rules of any professional or industrial body. The only control the government has over the conduct of consultants in the preparation of claims is through the mechanism of preventing them from preparing and lodging further claims, as proposed in the Bill. If a criminal offence (such as fraud or attempted fraud) can be proved in a particular case, a criminal prosecution can be brought, and in that case they will be automatically disqualified under s78 of the
EMDG Act from preparing applications for a period of at least 5 years. However, this will occur after the claim has been lodged, possibly after a grant has been paid and certainly after damage to the public reputation of the export grants scheme and the government's management of the scheme.

The proposed provisions will therefore protect taxpayers' funds from fraudulent or excessive claims, ensure the proper operation of the scheme and, importantly, maintain public confidence in the scheme.

Limitation proportionate to its objective

I recognise that the making of a finding that a consultant is a not fit and proper person is significant and therefore it is appropriate that such a finding should be subject to administrative law. Consultants will therefore have access to merits review by the Administrative Appeals Tribunal (AAT) of an adverse decision under s79A. In addition, consultants would be entitled to judicial review under the

Administrative Decisions (Judicial Review) Act 1977 as well as under the common law. Judicial review would consider the lawfulness of a decision under s79A of the EMDG Act, in particular, in relation to whether the decision complied with the rules of administrative law. It is also important to note that s79A operates in relation to each individual application lodged by the consultant.

If, in relation to one application, Austrade's CEO forms the opinion that the consultant who prepared it is not a fit and proper person, the application in question is taken not to have been made. However, it does not automatically affect other applications. If the same consultant later prepares a new application, that new application will be taken not to have been made only if the CEO again forms the opinion that the consultant is not a fit and proper person. In doing so, the CEO will have to take into account any relevant submissions by the consultant and any change in the circumstances, such as a successful appeal against a conviction and the lapse of time since any adverse event.

Consultants will be permitted to continue to lodge claims on behalf of their clients whilst being investigated, and only when a not fit and proper determination has been made and communicated to the consultant will they be precluded from lodging further applications. There will therefore be no disadvantage to consultants when a not fit and proper decision is delayed, as they will be permitted to continue to lodge grant applications on behalf of their clients until an adverse decision is determined.

It is important to note that a decision by the CEO that a consultant is not a fit and proper person does not operate indefinitely into the future. An excluded consultant may apply in writing to the CEO of Austrade for the CEO to revoke a not fit and proper determination and the CEO must revoke such a determination if the excluded consultant has made this application and the CEO is satisfied that the circumstances that resulted in the determination no longer exist, and the CEO is not aware of any other reason for the determination to remain in force.

I consider that, in light of these various safeguards, s79A and the related provisions proposed in the Bill are a reasonable and appropriate measure to give effect to the aim pursued. Moreover, I do not consider that they breach, or limit, a consultant's right to be protected from unlawful attacks on their reputation.

I note that very similar provisions were the subject of an examination by the Committee in the last Parliament and at that time the Committee found no matters of concern.

Yours sincerely

Andrew Robb

RECEIVED
DATE 3/6/14 BY PJCHR

THE HON PETER DUTTON MP
MINISTER FOR HEALTH
MINISTER FOR SPORT

Ref No: MC14-005720

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear.
Dear Chair

Thank you for your correspondence of 13 May 2014 in relation to the Parliamentary Joint Committee on Human Rights comments with regard to the Major Sporting Events (Indicia and Images) Protection Bill 2014 (the Bill) as reported in the *Sixth Report of the 44th Parliament*.

I note the legislation received Royal Assent on 27 May 2014 and is due to commence on 1 July 2014.

The Committee has raised two issues around which it seeks clarification;

1. Criticism, review and provision of information (section 14); and
2. Power to order corrective advertisement (section 47).

Criticism, review and provision of information

The legislation provides for the use the protected indicia or images for news reporting and criticism and review. It does this by balancing a commercial use test at section 12 with an exemption at section 14.

At section 12 three elements need to be established to satisfy the commercial use test:

1. protected indicia or images are applied to the user's goods or services (section 12(1)(a));
2. the application is for the primary purpose of advertising or promotion or enhancing the demand for the goods or services (section12(1)(b)); and
3. the application would suggest to a reasonable person that the user is or was a sponsor or provider of support for the event (section 12(1)(c).

Section 14 modifies section 12(1)(c) so that where the purpose of the use of the protected indicia or images is, for example, only and genuinely to report the news or critically or satirically review the events, then such use would not suggest that a

sponsorship arrangement exists between the writer/reviewer/broadcaster and the event (which is otherwise prohibited by section 12(1)(c) above).

For a breach to occur, it would need to be considered that the images and indicia were applied by the user for the primary purpose of advertising or promoting or enhancing demand for the user's goods or services. That is, the primary purpose would not be for the purposes of genuine criticism, review or the provision of information (which is a requirement of the exemption at section 14). Further, the reasonable person test at 12(1)(c) would still need to be satisfied and all three elements of the commercial use test successfully proven through action brought by someone claiming their rights had been breached. In such a circumstance the use of the indicia or images in question would, appropriately, be considered a breach of the legislation and would not be consistent with the use envisaged by section 14.

Therefore the proposed restriction is considered appropriate in the context of the purposes of this legislation.

Power to order corrective advertisement

The Bill provides that the court may make an order requiring a person to publish at their own expense a corrective advertisement, if the court is satisfied that the person has used a protected indicia or image without authorisation. Remedies are available to the authorising bodies under the legislation as a means of protecting their commercial interests. Without sponsorship the cost of staging major international sporting events would rely heavily on government support.

The objective of the corrective advertisement mechanism is to reverse the harm done by the false impression that may be created by the unauthorised use of the event indicia and images. Although this may involve a restriction on the unauthorised user's freedom of expression, this is considered justifiable; both to alert the community to the unauthorised use and to preserve the protection of the authorised user's rights that the Bill is intended to afford. This is proportionate to the harm created by the unauthorised use because the use of advertising is an equivalent means of correcting the false impression created by the unauthorised use. The power to order corrective advertising also serves to deter future contraventions and encourages compliance.

Accordingly the limitation of a person's right to freedom of expression, including the right not to be compelled to engage in particular forms of expression is reasonable, necessary and proportionate to the objective of promoting the right of the Australian public to access and benefit from the staging of major sporting events.

Yours sincerely

2/6/14

PETER DUTTON

cc: human.rights@aph.gov.au

The Hon Scott Morrison MP
Minister for Immigration and Border Protection

RECEIVED
DATE 16/6/14 BY PJCHR

Reference: 1405/01142.

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator

Response to question received from Parliamentary Joint Committee on Human Rights

Thank you for your letter of 13 May 2014 in which further information was requested on the Migration Amendment (Offshore Resources Activity) Repeal Bill 2014.

My response in respect of that Bill is attached.

I trust the information provided is helpful.

Yours sincerely

The Hon Scott Morrison MP
Minister for Immigration and Border Protection
16 / 6 /2014

Migration Amendment (Offshore Resources Activity) Repeal Bill 2014

"[T]he committee notes that, while the specific measures of the ORA Act are yet to commence, the Act itself is an operative Commonwealth law. In the committee's view, the effect of the bill is therefore properly characterised as being to remove measures that would otherwise enter into force."

"[T]he committee's usual expectation is that the statement of compatibility provide an assessment of whether the repeal of those arrangements may reduce or remove human rights protections, and whether remaining or proposed arrangements in place of the repealed measures may offer equivalent or greater protection of human rights."

"The committee therefore requests the advice of the Minister for Immigration and Border Protection as to the compatibility of the bill with the right to work and rights at work."

The right to work

Article 6 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides:

> *The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.*

The Migration Amendment (Offshore Resources Activity) Repeal Bill 2014 (the Bill) does not operate to deprive people of the right to work. In particular, it does not seek to preclude non-citizens from working in Australia's offshore resources industry, or to limit the conditions under which they may work in the industry by way of a prescribed visa.

For their part, Australian citizens already have the right to work in the offshore resources industry, and the Bill does not limit their capacity to do so.

Rights at work

Article 7 of ICESCR provides for recognition of the "right of everyone to the enjoyment of just and favourable conditions of work". Such conditions include fair wages and equal remuneration, safe and healthy working conditions, equal opportunity in respect of promotion and rest and leisure.

The Bill does not operate as an impediment to the recognition of the right to just and favourable conditions of work. The *Migration Amendment (Offshore Resources Activity) Act 2013* (the ORA Act) establishes a legislative framework for a visa to be prescribed for non-citizens who are participating in, or supporting, an offshore resources activity.

The ORA Act itself is silent on what visa (other than a permanent visa) a non-citizen must hold to participate in, or to support, an offshore resources activity as this was to be determined at a later date following a period of consultation with the industry.
The appropriate visa, including relevant visa conditions, is to be prescribed in the *Migration Regulations 1994*. In any event, though visas may prescribe (by way of sponsorship obligations) certain terms and conditions that must be provided to the sponsored person,

conditions of employment more broadly are regulated under Australian workplace laws and agreements, and not under migration laws. Neither the ORA Act nor the Bill affects the geographical application of Australia's workplace laws.

The ORA Act did not address the conditions of work that would apply to a non-citizen holding a prescribed visa for the purposes of working in Australia's offshore resources industry. As the Bill seeks to repeal the provisions introduced by the ORA Act, it also does not engage conditions of work for the purposes of article 7 of the ICESCR.

RECEIVED
DATE 1/5/14 BY PJCHR

SENATOR THE HON. ERIC ABETZ
LEADER OF THE GOVERNMENT IN THE SENATE
MINISTER FOR EMPLOYMENT
MINISTER ASSISTING THE PRIME MINISTER FOR THE PUBLIC SERVICE
LIBERAL SENATOR FOR TASMANIA

Senator Dean Smith
Chairman
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
CANBERRA ACT 2600

1 MAY 2014

Dear Senator

Thank you for your letter of 25 March 2014, on behalf of the Parliamentary Joint Committee on Human Rights (the Committee), concerning the examination of the Safety, Rehabilitation and Compensation Legislation Amendment Bill 2014 (the Bill).

The Committee has sought clarification as to whether the proposed changes to the licensing system may limit the right to social security and the right to enjoy just and favourable conditions of work and, if so, whether the limitation is aimed at achieving a legitimate objective; whether there is a rational connection between the limitation and that objective; and whether the limitation is proportionate to that objective.

The Committee noted that, if passed, the Bill will have the effect of expanding and changing the eligibility criteria for licencing under the *Safety, Rehabilitation and Compensation Act 1988*, which will bring more employers, and therefore employees, under the (Commonwealth) Comcare scheme. It also noted that the 'minor variations' between the Comcare scheme and the state and territory workers' compensation schemes might reduce the amount of compensation being received by an injured worker who has moved from a state or territory scheme to the Comcare scheme. The Committee noted that such variations may represent a limitation on the right to social security and the right to enjoy just and favourable conditions of work.

The Coalition Government submits that the minor variations in compensation amounts between the Comcare scheme and the state and territory schemes merely reflect different approaches and priorities by the different jurisdictions in implementing a workers' compensation scheme, and therefore should not be considered a limitation on human rights. Regardless of which jurisdiction they fall under, employees have access to a very comprehensive no-fault compensation and rehabilitation scheme for injuries arising out of, or in the course of, their employment. With respect, the Australian Work Health and Safety and workers compensation schemes are widely recognised as the best in the world. Improvements to the Comcare scheme will improve its operation and any suggestion that people will be left worse off, compared to both national and international standards are unsustainable.

For instance, the Government notes that in many respects the Comcare scheme provides equal, if not higher, compensation to injured workers than many of the state or territory workers' compensation schemes. For example, under the Comcare scheme, weekly incapacity benefits (the income replacement component of compensation) are paid at 100 per cent of an injured worker's normal weekly earnings for up to 45 weeks. For longer term incapacity the amount is reduced to between 70 and 75 per cent of normal weekly earnings and ceases at 65 years of age. State and territory schemes mostly pay 100 per cent of normal weekly earnings for the first 13 weeks, after which payments reduce in varying increments and at

CANBERRA: MG 68, Parliament House, Canberra ACT 2600. Phone: 02 6277 7320 Fax: 02 6273 4115
HOBART: 136 Davey Street, Hobart TAS 7001 Phone: 03 6224 3707 Fax: 03 6224 3709
minister@employment.gov.au http://abetz.com.au

varying time intervals from the date of injury. Those reductions result in payments ranging from 65 per cent to 95 per cent of normal weekly earnings. Comcare's longer initial payment period means that it continues to be at least as generous as the other schemes in the longer term.

Another example relates to compensation for medical expenses. Under the Comcare scheme compensation is available as long as treatment is reasonably required, which is also the case in the Australian Capital Territory, the Northern Territory and South Australia. In the other schemes (as at 30 September 2012) limits are imposed on compensation for medical expenses:

- in New South Wales, the limit is $50 000 (or a greater amount if prescribed or directed by the Workers' Compensation Commission)
- in Victoria, medical payments cease 52 weeks after the cessation of weekly incapacity benefits
- in Western Australia, medical payments are limited to $59 510 (or in exceptional medical circumstances with a severe injury to a maximum of $250 000); and in Queensland there is a five year limit on the payment of medical expenses.

Each scheme also pays for attendant care services, home help and other costs such as home modifications. All states either set fees, limit duration of payments, limit the amounts that can be paid or do a combination of these. Comcare has no limits on these costs, except that payment amounts are as Comcare determines are appropriate to the medical treatment of the compensable injury or illness.

Lump sum payments to compensate for permanent impairment also vary considerably across the schemes. As at 30 September 2012, lump sums for permanent impairment varied from a maximum of $198 365 in Western Australia to a maximum of $543 920 in Victoria. Comcare's permanent impairment maximum lump sum amount is $231 831. Lump sum death entitlement payments to surviving dependants also vary across schemes: as at 30 September 2012 they ranged from a maximum of $271 935 in Western Australia to a maximum of $538 715 in Queensland, with the Comcare scheme amount being $475 962. All schemes also separately pay funeral expenses, with the exception of Tasmania.

Based on components such as income replacement amounts, the periods for which they are paid and the reimbursement for medical and hospital costs, Comcare is one of the more generous schemes. On other scheme elements, while comparisons become more difficult because of the different emphases placed on each element of each scheme, Comcare is in the middle or upper range of benefits paid.

To the extent that these variations could be considered potential limitations on the right to social security and the right to enjoy just and favourable conditions of work, they are nonetheless proportionate to the legitimate objective they are aimed at achieving. The objective aimed at is the reduction of the regulatory burden on multi-state employers by enabling them to access a single workers' compensation jurisdiction. Reducing the regulatory burden on multi-state employers will enhance other human rights, through enabling employers to reallocate resources to growing their enterprises (which promotes the right to work), and to developing practical work health and safety programs (which promotes the right to safe and healthy working conditions).

The regulatory burden caused by multi-state employers falling under several different workers' compensation schemes is caused, in part, by the numerous minor variations between the different state and territory schemes. This regulatory burden can only be reduced by allowing these employers to move to a single workers' compensation scheme. The changes are part of reforms which will reduce the regulatory impact on the economy by $32.8 million each year for the next 10 years.

Thank you for providing me with the opportunity to clarify my position about this aspect of the Bill and I hope that the Committee takes a more real-world view in its approach to this legislation than its consideration of previous portfolio legislation.

Yours sincerely

ERIC ABETZ

Senator
Rachel Siewert
Australian Greens Senator for Western Australia

Senator Dean Smith
Chair, Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600
Via email: Senator.Smith@aph.gov.au

Cc: human.rights@aph.gov.au

12 June 2014

Dear Senator Smith

Re: Save our Sharks Bill 2014

Thank you for your letter of 13 May 2014, in relation to the above bill.

I am writing to provide clarification on some matters set out in your letter, and in the Parliamentary Joint Committee on Human Rights' *Sixth Report of the 44th Parliament*.

In its report, the Committee states it seeks clarification on whether the bill is consistent with the right to life and the right to work, as recognised in article 6 of the International Covenant on Economic, Social and Cultural Rights.

The Australian Greens, in introducing this bill, believe that its key function of preventing future shark culling does not unreasonably limit the right to life.

The practical effect of the bill, should it become law, would be that no state or territory government would be able to introduce a great white shark culling program without environmental assessment.

The projections which suggest that preventing future shark culls would result in any loss of life are flawed and the effectiveness of the shark cull on reducing the likelihood of shark-related death is greatly contested.

This bill is aimed at achieving the legitimate objective of protecting our marine life, and even if a limitation on the right to life was presumed to exist by not mitigating shark attacks, there are a number of other methods including beach nets and watchtowers available to the Government which have not yet been fully explored.

THE GREENS

1/151 Brisbane St, Northbridge WA 6000
Perth: 08 9228 3277 | Canberra: 02 6277 3587 | WA Freecall: 1300 881 218
senator.siewert@aph.gov.au | www.rachelsiewert.org.au

Senator
Rachel Siewert
Australian Greens Senator for Western Australia

Nor do the Australian Greens, in introducing this bill, believe that its key function of preventing future shark culling unreasonably limits the right to work.

There are no projections which suggest that preventing future shark culls would result in any job losses, or any impact on the local economy, to the extent that people's right to work would be affected. Rather, it has been argued that the cull in WA this summer has had a negative impact on tourism operators as it has deterred international visitors.

I note, as the Committee's report notes, that the right to work is not absolute and may be subject to permissible limitations where they are aimed at a legitimate objective, and are reasonable, necessary and proportionate to that objective. With this in mind, even if a limitation on the right to work were presumed to exist, this would be aimed at achieving the legitimate objective of protecting our marine life, by ensuring that the population numbers of apex predators that are vital to the health and wellbeing of entire marine ecosystem are not reduced to endangered levels. The critical species are not just great white sharks, but also tiger sharks – the WA Government's public environmental review predicts about 900 tiger sharks, 25 great white sharks and only a few bull sharks will be caught over the next three years. If these animals are removed from the ecosystem, there will be a much more significant impact on not just the work of tourism operators but also of commercial fishers who rely on health oceans for abundant fish stocks.

In conclusion, because the bill does not limit the right to life, and only limits the rights to work in tourism to the extent to which it protects our marine health which is vital to promoting the broader rights of work across all marine based industries including fisheries, the Australian Greens are of the view that this bill is compatible with Australia's human rights obligations.

I thank you for bringing these matters to my attention.

Yours sincerely

Senator Rachel Siewert
Australian Greens Senator for WA

THE GREENS

1/151 Brisbane St, Northbridge WA 6000
Perth: 08 9228 3277 | Canberra: 02 6277 3587 | WA Freecall: 1300 881 218
senator.siewert@aph.gov.au | www.rachelsiewert.org.au

RECEIVED
DATE 27/7/14 BY JCHR

THE HON. LUKE HARTSUYKER MP
DEPUTY LEADER OF THE HOUSE
ASSISTANT MINISTER FOR EMPLOYMENT

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

27 JUN 2014

Dear Senator Smith

Thank you for your letter of 4 March 2014 to Senator the Hon. Eric Abetz, Minister for Employment, on behalf of the Parliamentary Joint Committee on Human Rights concerning the Social Security Legislation Amendment (Increased Employment Participation) Bill 2014 (now an Act). As the matter raised falls within my portfolio responsibilities as Assistant Minister for Employment, your letter was referred to me for reply. I apologise for the delay in responding.

The Parliamentary Joint Committee on Human Rights asked for clarification as to why it is considered necessary to exclude protected Special Category Visa holders from accessing the Job Commitment Bonus, and the basis for considering their inclusion may jeopardise the goals of the measure.

The Parliamentary Joint Committee on Human Rights also requested information about the proposal to extend the non-payment period for certain income support payments from 12 weeks to 26 weeks. This occurs where people receive assistance under the new Relocation Assistance to Take Up a Job programme and leave their job voluntarily without good reason or due to misconduct less than six months after they received the relocation assistance. The Act as passed on 16 June 2014, maintained the 12 week non-payment period.

Further information to assist the Parliamentary Joint Committee on Human Rights in relation to both the above matters is enclosed.

Thank you for raising this matter.

Yours sincerely

LUKE HARTSUYKER

Encl.

CANBERRA: M1 48, Parliament House, Canberra ACT 2600. Phone: 02 6277 7540 Fax: 02 6273 0207
COFFS HARBOUR: 39 Little Street, Coffs Harbour NSW 2450 Phone: 02 6652 6233 Fax: 02 6651 4346
Luke.Hartsuyker.MP@aph.gov.au http://lukehartsuyker.com.au

Our Ref MC14-002685

Exclusion of protected Special Category Visa holders from eligibility for the Job Commitment Bonus

The Parliamentary Joint Committee on Human Rights sought clarification on 'why it is considered necessary to exclude protected Special Category Visa holders from accessing the Job Commitment Bonus, and the basis for considering the inclusion of Special Category Visa holders may jeopardise the goals of the measure'.

The Australian Government considers it necessary to exclude protected Special Category Visa holders from eligibility and this exclusion is consistent with the 2001 Social Security Agreement between Australia and New Zealand.

The Job Commitment Bonus is an incentive for Australians 18–30 years of age who have been recipients of certain income support payments for 12 months or more, to find and remain in gainful work for 12 months or more while remaining off income support.

The *Social Security Legislation Amendment (Increased Employment Participation) Act 2014* provides that a person must be an Australian resident throughout the period of work on which they rely to claim the Job Commitment Bonus.

For the purpose of the Job Commitment Bonus, the term 'Australian resident' is defined as a person who resides in Australia and who is an Australian citizen or who is the holder of a permanent visa. The term does not include a person who resides in Australia and is the holder of a protected Special Category Visa. Protected Special Category Visa holders are able to apply to become an 'Australian resident'.

Broadly, protected Special Category Visa holders are New Zealand citizens who arrived in Australia on a New Zealand passport and were in Australia on 26 February 2001, or were in Australia for 12 months in the two years immediately before this date and later returned to Australia, or who are in certain other similar categories. New Zealand citizens are able to work in Australia due to the 1973 Trans-Tasman Travel Arrangement.

The designation of protected Special Category Visa holders came as a result of the bilateral Social Security Agreement between Australia and New Zealand announced on 26 February 2001. The agreement only sets out arrangements for the payment of Age Pension, Disability Support Pension and Carer Payment to New Zealand citizens in Australia. Importantly, the agreement recognised the right of each country to determine access to social security benefits not covered by the agreement and to set related residence and citizenship rules within legislative and policy frameworks. The *Social Security Legislation Amendment (Increased Employment Participation) Act 2014* is not intended to alter access to income support related payments that were negotiated in the 2001 agreement.

The Job Commitment Bonus is not aimed at providing support to people so that they can meet the basic costs of living—that is the purpose of income support. Protected Special Category Visa holders can normally claim income support as long as they satisfy the usual qualification criteria and serve any relevant waiting periods. Protected Special Category Visa holders' ineligibility for the Job Commitment Bonus does not impact on their access to income support.

Getting more Australians into paid employment has both economic and social benefits for individuals, their families and the community and therefore it is reasonable to provide an incentive for certain young Australians to find and remain in gainful work. However, it is

necessary to set parameters on the eligibility for the Job Commitment Bonus (for example, the age requirements and the requirements for persons to have been on certain income support payments for 12 months and to remain in gainful work for at least 12 months).

Relocation Assistance to Take Up a Job

The Parliamentary Joint Committee on Human Rights sought information on the levels of assistance provided under the current 'Move 2 Work' programme, including how the present non-payment period of up to 12 weeks correlates with the applicable relocation assistance provided to eligible individuals. The Parliamentary Joint Committee on Human Rights also sought information on whether for some individuals the proposed non-payment period of up to 26 weeks may amount to more than the relocation assistance received. The *Social Security Legislation Amendment (Increased Employment Participation) Act 2014* maintains the previous 12 week non-payment period rather than the originally proposed 26 weeks non-payment period.

Under the current Move 2 Work programme eligible job seekers may be reimbursed up to $6500 if relocating with dependants and $4500 if relocating with no dependants. Under the new Relocation Assistance to Take Up a Job programme, those who relocate to a regional area, whether from a capital city or another regional area, will receive up to $6000. Those who move to a capital city from a regional area will receive up to $3000. Families with dependent children will be provided with up to an additional $3000. A maximum of $9000 of assistance is available.

The maximum financial impact of a 12 weeks non-payment period is $4197.60 for an individual receiving Parenting Payment (Parenting Payment has higher payment rates than Newstart Allowance or Youth Allowance).

The 12 week non-payment period is considered to be a penalty for job seekers who choose not to remain in a job for which they have relocated and received generous relocation assistance. While in some cases the amount of relocation assistance received by a person could be less than the financial impact of the 12 week non-payment period, it is important to note that the non-payment period will continue to be able to be ended at any time, based on existing provisions in the social security law, for certain cohorts of job seekers (including those with children) who are in severe financial hardship.

The maximum non-payment period is therefore consistent with the right to social security and the right to an adequate standard of living, as explained in the statement of compatibility with human rights for the Social Security Legislation Amendment (Increased Employment Participation) Bill 2014.

As also noted in the Social Security Legislation Amendment (Increased Employment Participation) Bill 2014 statement of compatibility with human rights, it is necessary to discourage job seekers from not only making ill-considered decisions to relocate, but from relocating purely to take illegitimate advantage of financial assistance from the Commonwealth without a genuine intention of remaining in the job for which they purportedly relocated. This will help ensure that finite resources are used for the benefit of genuine job seekers, to assist those genuine job seekers to realise their right to work.

RECEIVED
DATE 2/5/14 BY PJCHR

THE HON STEVEN CIOBO MP
Parliamentary Secretary to the Treasurer

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
CANBERRA ACT 2600

Dear Senator Smith

Thank you for your letter on behalf of the Parliamentary Joint Committee on Human Rights (Committee) regarding the Committee's recent examination of the Tax and Superannuation Laws Amendment (2014 Measures No. 1) Bill 2014.

I am responding on the Treasurer's behalf and apologise for the delay in doing so, given the Bill has now passed both Houses of Parliament.

The Committee sought clarification in relation to the civil penalty regime in Schedule 1 to the Bill as to why a maximum penalty of $340,000 for an individual is considered to be appropriate. The Committee also sought further information regarding the phase-out of the net medical expenses tax offset (NMETO) in Schedule 3 to the Bill.

Schedule 1

All members who contribute to superannuation receive the same substantial tax concessions, which are provided to encourage individuals to save for their retirement. Whilst the structure of funds within the industry differs, there is no maximum amount that an individual may accumulate within their superannuation account and therefore the amount of benefit they may receive from these generous tax concessions.

Specifically, in relation to the measure in Schedule 1 to the Bill, the maximum penalty of $340,000 is considered appropriate to provide sufficient deterrence to promoters involved in schemes aimed at facilitating the illegal early release of several million dollars and targeting many members.

As noted in the statement of compatibility, a court will determine the appropriate amount of any monetary penalty, taking into account the facts and circumstances of the case, which will include the size of the superannuation fund, the value of the assets involved and the severity of the contravention. Further information is provided in the statement of compatibility.

Parliament House Canberra ACT 2600 Australia
Telephone: 02 6277 2330 Facsimile: 02 6273 8452

Schedule 3

The Committee sought further information regarding whether any limitations on the right to health that may result from the phasing out of the NMETO are reasonable and proportionate to the achievement of the Government's fiscal priorities.

The NMETO has a number of shortcomings. First, it does not provide financial assistance when the medical expense is incurred, therefore it does not necessarily make the treatment more affordable for individuals on low incomes. Secondly, only taxpayers who have a tax liability receive a benefit from the offset, therefore individuals on low incomes with no tax liability do not benefit from the offset, which undermines the principle of equity.

The phase-out and eventual repeal of this offset is aimed at the objective of allowing for more effective, alternative mechanisms and further funding of Government priorities, including health care. The Government has determined that directing funding to health care through the indirect method of the NMETO and the tax system is not the most effective way of supporting the objective of funding Australia's health care system.

The Committee also sought clarification as to whether the repeal of the NMETO is consistent with the rights of persons with disabilities, including whether the National Disability Insurance Scheme (NDIS) and other relevant supports will adequately compensate for any gap left by its abolition.

The NDIS is expected to cover all related expenses previously covered by the NMETO for those eligible for a funded plan from the NDIS and is consistent with the rights of persons with disabilities.

I trust this information will be of assistance to the Committee.

Yours sincerely

Steven Ciobo

28 APR 2014

RECEIVED
DATE 9/7/14 BY PJCHR

THE HON IAN MACFARLANE MP

MINISTER FOR INDUSTRY

PO BOX 6022
PARLIAMENT HOUSE
CANBERRA ACT 2600

08 JUL 2014

MC14-001861

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
Parliament House
CANBERRA ACT 2600

Dear Senator Smith Dean

Thank you for your letter of 18 June 2014 requesting a response to the Committee's comments in the *Seventh Report of the 44th Parliament* concerning the Textile, Clothing and Footwear Investment and Innovations Programs Amendment Bill 2014 (the Bill).

I note the Committee has raised concerns about the compatibility of the Bill with the right to work and rights at work as guaranteed by the International Covenant on Economic, Social and Cultural Rights (ICESCR). The Committee is concerned that early closure of the Textile, Clothing and Footwear Small Business Program (TCF-SBP) and the Clothing and Household Textiles Building Innovative Capability (BIC) scheme may reduce the employment opportunities of those working in the industry.

The TCF-SBP and the BIC scheme are just two of a number of programmes that were created to help Australia's TCF manufacturing industry to transition to a lower import tariff regime. These programmes are part of a range of industry support initiatives through which the Australian Government has paid over $1.2 billion to the TCF manufacturing industry since 2001–02. Tariffs on TCF items, which in 1990 ranged from 15-55 per cent, have gradually been reduced. By 1 January 2015, all TCF tariffs will be 5 per cent.

The Government's aim is to create an economy-wide environment conducive to private sector investment and jobs growth, including investment in innovation.

The Government remains committed to ensuring Australia's manufacturing industries are internationally competitive and that they move in step with the global transition to the niche, value adding and export-focused industries of the future. The $50 million Manufacturing Transition Grants Programme will support firms to transition and build capability in higher value activities in new or growing sectors. The Government also recently announced the details of a $155 million Growth Fund to ensure that workers affected by the closure of the car manufacturing industry transition to new jobs, businesses find new markets and invest in capital equipment and regions invest in infrastructure projects.

Phone: (02) 6277 7070 Fax: (02) 6273 3662

Additionally, the R&D Tax Incentive is a targeted, generous and easy to access entitlement programme that helps businesses of all sizes in all sectors to offset some of the costs of doing R&D. Also, the Entrepreneurs' Infrastructure Programme (EIP) offers easy to access practical support to Australian businesses. The EIP is a new approach to the way Government provides services to business. It will offer support to businesses through three streams: business management; research connections; and commercialising ideas.

The TCF industry has now largely restructured and the early closure of the TCF-SBP and the BIC scheme are part of the Government's industry policy of setting the right economic environment by reducing red tape, reducing taxes, equipping businesses with key market information and the opportunity to expand or export. The objective is to improve the overall competiveness of Australian industry and encourage entrepreneurship. This will deliver a strong economy with sustainable job opportunities. The Bill is therefore compatible with the right to work and rights at work.

Yours sincerely

Ian Macfarlane

RECEIVED
DATE 6/5/14 BY PJCHR

The Hon Kevin Andrews MP
Minister for Social Services

Parliament House
CANBERRA ACT 2600

Telephone: (02) 6277 7560
Facsimile: (02) 6273 4122

MN14-000295

06 MAY 2014

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Smith Dean,

Thank you for your letter of 4 March 2014 in relation to the Direction I issued on the administration of the Automatic Teller Machine (ATM) measure (the Direction), pursuant to section 110(1) of the *National Gambling Reform Act 2012* (the Act). I understand the Committee sought further information about the Direction, within the disallowance period, to assist it in forming a view on the Direction's compatibility with human rights.

As you may be aware, as a result of recent amendments to the Act to repeal the ATM measure (among other matters), the Direction no longer has any application. The repeal took effect on 31 March 2014, the date of Royal Assent, and I refer you to Schedule 1 of the *Social Services and Other Legislation Amendment Act 2014*. However, I understand a response to the matters raised is still warranted for the period in which the Direction operated. In light of these developments, a response by 24 April, rather than 14 March (as originally requested), has been agreed.

I understand from the Committee's Third Report of the 44th Parliament (the Report) that its key concern with the Direction relates to its understanding of this instrument's purpose. The Committee characterised this purpose as being to '*delay implementation of the enforcement provisions with respect to the ATM measure under the Act*'. As the ATM measure promoted human rights, the Committee requested further information on:

- how the Direction relates to amendments in the Social Services and Other Legislation Amendment Bill 2013 (Bill), which was then before Parliament; and
- what impact the 'cooperative engagement' approach implemented by the Direction will have on human rights.

The Government's response is set out below.

Repeal of the ATM measure

As you may be aware, the Bill for the repeal of the ATM measure (and other matters) was introduced in November 2013 prior to the commencement of the ATM measure from 1 February 2014. I understand the timing of the proposed repeal may have provided the basis for confusion among some regulated entities and members of the public regarding the status of the ATM measure, and therefore the purpose of the Direction. In particular, some understood this purpose as related to, or aligned with, the proposed repeal of the ATM measure, and as intended to apply while considered by Parliament.

The purpose of the Direction was not to further or support the objectives of the proposed repeal of the ATM measure or delay implementation of enforcement provisions with respect to the ATM measure under the Act. The Direction was made in accordance with the powers under the Act to establish an approach to regulation that aimed to achieve compliance, with an emphasis on cooperation with and educating regulated entities. I note that the Regulation and Ordinances Committee scrutinised the Direction on 5 March 2014, with regard to matters including the consistency of the instrument with its enabling legislation, without issue.

The purpose of the Direction and the regulatory approach it provided was consistent with the objectives of the Act, being (as the Committee notes), to address the harms caused by gaming machines to individuals, their families and communities. As explored further below, given the confusion over the application of the measure, the Direction's priority for education and cooperative engagement was considered appropriate, as a regulatory approach. As a practical matter, I understand the Direction also proved useful in confirming compliance was required of regulated entities.

Impact of 'cooperative engagement' approach implemented by the Direction on human rights

The educative approach to compliance provided for in the Direction, primarily in terms of the regulatory priorities specified (section 5), and the procedures for responding to non-compliance (section 8), did not prevent the Regulator from taking punitive action to enforce compliance. Rather, it emphasised the use of non-punitive strategies to facilitate compliance as *an initial* response. It recognised that in particular regulatory contexts (such as in the gambling context), taking premature action to penalise regulated entities for non-compliance can be counterproductive.

In the context of the former Regulator's enabling legislation, the educative approach to compliance was consistent with the obligations and the broad discretion conferred on the Regulator to promote, monitor and enforce compliance. Further, a cooperative enforcement posture is recognised as one of the most effective and sustainable ways of administering regulatory schemes. Applied appropriately, these types of regulatory approaches are well accepted as consistent with contemporary best practice.

For further information, I refer you to the Australian National Audit Office's 2007 *Better Practice Guide* to *'Administering Regulation'* which, consistent with the educative approach, advocates for a graduated and escalating approach to compliance. In addition, I refer you to the recommendations of the Productivity Commission's report on *'Regulator Engagement with Small Business'* in September 2013 which demonstrates the value of engaging cooperatively with regulated entities. You may wish to note that this approach is particularly relevant for engaging small businesses which comprise a major proportion of all gaming venues subject to the previous Act.

In conclusion, as an instrument that facilitated the implementation of the ATM measure, it follows that the Direction was an instrument that supported human rights. It ensured that best practice was adopted in line with the objectives of the Government's broader deregulation agenda.

Yours sincerely

KEVIN ANDREWS MP

SENATOR THE HON MITCH FIFIELD

ASSISTANT MINISTER FOR SOCIAL SERVICES

MC14-004269

Senator Dean Smith
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Senator Smith

Thank you for your letter of 10 December 2013 to the Hon Peter Dutton MP, Minister for Health, in relation to the *Australian Sports Anti-Doping Authority Amendment Regulation 2013 (No. 1)* and *User Rights Amendment (Various Measures) Principle 2013*. As the Assistant Minister for Social Services, with portfolio responsibility for aged care-related matters, your letter was recently referred to me also for response in relation to the latter legislative instrument. This instrument makes amendments to home care-related provisions within the *User Rights Principles 1997* (the User Rights Principles), and similar provisions also exist for residential care.

Your letter requested information related to the following issues:

- the criteria applied for determining when a care recipient has breached their responsibilities under the *Charter of Rights and Responsibilities for Home Care* (the Charter) with the consequence that their place in a home care service is reallocated;
- the mechanisms available for a care recipient to appeal or seek review of a decision to reallocate their place in a home care service; and
- what, if any, assistance will be provided to a care recipient to find suitable alternative accommodation.

Before a care recipient begins receiving home care, the User Rights Principles require that a home care agreement must be offered to the prospective care recipient and the approved provider must provide the prospective care recipient with guidance (and, if appropriate, interpreter services) to understand the terms and effect of the proposed agreement (see section 23.93 of the User Rights Principles). The home care agreement must include, among other matters, conditions under which either party may terminate the home care services (see paragraph 21.95(d) of the User Rights Principles).

The approved provider must also give the prospective care recipient a copy of the Charter and assist them to understand it (see item 5 of the rights specified in the Charter). These provisions are designed to ensure that a care recipient is made aware of his or her rights and responsibilities and understands the circumstances in which they could place their security of tenure at risk.

PARLIAMENT HOUSE, CANBERRA ACT 2600 TELEPHONE: 02 6277 7280 EMAIL: MINISTER.FIFIELD@DSS.GOV.AU

Proudly printed in an Australian Disability Enterprise

If an approved provider were to seek to rely on a care recipient's failure to meet his or her responsibilities under the Charter to reallocate the care recipient's home care place, the care recipient would have the avenues of assistance and appeal outlined below, which include recourse to the Aged Care Complaints Scheme. In interpreting the Charter, Complaints Scheme officers adopt a reasonable person test.

The Commonwealth pays advocacy grants under section 81-1 of the *Aged Care Act 1997* to organisations in each state and territory to provide free, independent and confidential advocacy services to care recipients in relation to their rights.

In accordance with section 56-4 of the Aged Care Act, an approved provider of a home care service must establish a complaints resolution mechanism for the service and use the mechanism to address any complaints made by or on behalf of a person to whom care is provided through the service. The approved provider must also advise the person of any other mechanisms that are available to address complaints, such as aged care advocacy services and the Aged Care Complaints Scheme, and provide such assistance as the person requires to use those mechanisms.

A care recipient, or another person on the care recipient's behalf, can lodge a complaint with the Aged Care Complaints Scheme regarding any issue relating to an approved provider's responsibilities under the Aged Care Act, which include responsibilities in relation to security of tenure (see the *Complaints Principles 2011* made under section 96-1 of the Aged Care Act). If the Complaints Scheme were to find that the loss of a home care recipient's security of tenure was an unreasonable and disproportionate response to the actions of the care recipient, the Complaints Scheme could give a direction to the approved provider requiring the approved provider to take stated actions, such as restoration of the care recipient's home care place, to comply with the approved provider's responsibilities. Failure by the approved provider to comply with a direction given by the Complaints Scheme could result in compliance action under Part 4.4 of the Aged Care Act, including the imposition of sanctions on the approved provider.

If either the complainant or the approved provider is dissatisfied with a decision made by the Complaints Scheme, they can apply to an independent statutory office holder, the Aged Care Commissioner, for examination of the decision. They may also seek review through the Commonwealth Ombudsman. Parties to a complaint are advised of these avenues of appeal in correspondence from the Scheme.

As home care is provided by the approved provider in the care recipient's own home, the reallocation of a care recipient's home care place would affect the care recipient's care and services rather than his or her accommodation. If an approved provider were to endanger the safety, health and wellbeing of a care recipient by withdrawing home care services peremptorily, without making an effort to assist the care recipient to make other arrangements, such a breach of the provider's common law duty of care would call into question the provider's suitability to be an approved provider of aged care. Action can be taken under section 10-3 of the Aged Care Act if the Secretary is satisfied that a provider has ceased to be suitable to provide aged care.

The framework in which the security of place operates (paragraph 23.21(e) of the User Rights Principles) balances the rights of care recipients to health and to an adequate standard of living with the rights of others, such as care workers. The avenues of appeal, outlined above, allow for a proportionate consideration and response to a care recipient's failure to meet his or her responsibilities as set out in the Charter.

I trust this information addresses the concerns of the Committee in relation to the amending instrument. Please advise if I can be of further assistance.

Thank you again for writing.

Yours sincerely

MITCH FIFIELD

2/6/14