

# **Appendix 1**

## **Correspondence**

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**THE HON JULIE BISHOP MP**

Minister for Foreign Affairs

The Hon Philip Ruddock MP  
Chair  
Parliamentary Joint Committee on Human Rights  
Parliament House  
CANBERRA ACT 2600

Dear Mr *Philip* Ruddock

I write in response to your letter of 17 September 2015 in which you note the Parliamentary Joint Committee on Human Rights (the Committee) seeks my advice in relation to the human rights compatibility of the Autonomous Sanctions Act 2011 and Charter of the United Nations Act 1945 (COTUNA) and subordinate legislation.

Both I, and the Department of Foreign Affairs and Trade, share the Committee's concern for the protection and promotion of human rights both in Australia and internationally. The protection and promotion of human rights is vital to global efforts to achieve lasting peace and security, and freedom and dignity for all. Australia's commitment to human rights is an underlying principle of our engagement with the international community.

I have noted previously that Australia implements autonomous and United Nations (UN) sanction regimes in situations of international concern, including the grave repression of human rights and the proliferation of weapons of mass destruction. The Committee has sought my advice on whether certain sanctions measures are proportionate to the objectives of each sanction legislative regime. I am confident that the sanction measures implemented by Australia through the UN and autonomous sanctions regimes are directly proportionate to the objectives of each regime.

As recognised in the Committee's report, Australia is under an international legal obligation to implement UN Security Council (UNSC) resolutions. This includes not only designating in Australian law those persons designated through the UN Security Council sanctions committees, but also implementing the administrative sanction measures mandated within UNSC resolutions such as the 'freezing' of designated persons' assets.

As noted by the Committee, from a legal perspective, such UNSC obligations prevail over Australia's obligations under international human rights law. The inclusion of sanction measures in the UNSC resolutions also reflects the international community's view that the administrative sanction measures are proportional to the objectives that they are designed to achieve.

Australia does not impose sanction measures on individuals, or countries, lightly. It is the Government's view that those administrative sanctions measures are proportionate and appropriate in targeting those responsible for repressing human rights and democratic freedoms or to end regionally or internationally destabilising actions.

Yours sincerely

Julie Bishop

30 NOV 2015



# Tim Watts MP

FEDERAL LABOR MEMBER FOR GELLIBRAND



27 November 2015

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

Dear Mr Ruddock,

## **Criminal Code Amendment (Private Sexual Material) Bill 2015**

Thank you for the opportunity to provide a response about the human rights compatibility of the Criminal Code Amendment (Private Sexual Material) Bill 2015.

Firstly, as is stated in the Explanatory Memorandum to the bill, the defences proposed in section 474.24H mirror the defences in the Criminal Code for offences relating to 'child pornography material' and 'child abuse material' along with the addition of a new defence for 'media activities' in proposed subsection 474.24H(3). It would lead to inconsistent results if an evidential burden were placed on the defendant for the other identical defences in the Criminal Code, but not for the defences for the proposed new offences in the bill.

In addition, reversing the onus of proof may be justified where it is particularly difficult for a prosecution to meet a legal burden. It may be considered justifiable to reverse the onus of proof on an issue that is 'peculiarly within the knowledge' of the accused. In regard to the defence for 'media activities', the reversal is justified because the defences goes to why the defendant engaged in the conduct (paragraph (3)(a)), the intention of the defendant (paragraph (3)(b)) and the reasonable belief of the defendant (paragraph (3)(c)), all of which are peculiarly within the knowledge of the defendant.

Further, the seriousness of a crime may justify placing a legal burden of proof on the accused. For the other defences proposed in section 474.24H, the seriousness of the offending conduct means that the defendant should not even consider engaging in the conduct in reliance on the defence unless they can point to evidence suggesting that defence applies.

Yours sincerely,

**Tim Watts MP**  
**Federal Member for Gellibrand**



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ATTORNEY-GENERAL

CANBERRA

MC15-008196

30 NOV 2015

The Hon Philip Ruddock MP  
Chair  
Parliamentary Joint Committee on Human Rights  
Parliament House  
CANBERRA ACT 2600

Dear Chair

Thank you for your letter of 2 November 2015 regarding the Parliamentary Joint Committee on Human Rights' consideration of the *Federal Courts Legislation Amendment (Fees) Regulation 2015* (the Regulation). I note that you also wrote to me in relation to this matter on 11 August 2015; however this correspondence was not received by my Office until 5 November 2015.

I acknowledge that the Committee has considered the Regulation in its *Twenty-fifth Report of the 44th Parliament* and has sought my advice about whether changes to general federal law fees pursuant to the Regulation are a limitation to access to justice, thereby raising questions about its compatibility with Article 14 of the International Covenant on Civil and Political Rights (right to a fair hearing).

As you know, the imposition of a reasonable fee in relation to Court proceedings (or an increase to an existing fee) does not of itself constitute denial of access to justice so as to violate Article 14. I consider that this increase falls well within that principle.

As stated in the explanatory materials, changes to federal law fees under the Regulation increased all general federal law fees by 10 per cent (except for those fees not subject to a biennial fee increase), following a restructure of fee categories for public authorities and publicly listed companies filing matters, other than bankruptcy matters, in the Federal Court and Federal Circuit Court of Australia.

The changes did not, however, affect existing exemptions, deferral and waiver provisions in the *Federal Court and Federal Circuit Court Regulation 2012*. These provisions continue to apply to general federal law fees.

Division 2.3 of the Federal Court and Federal Circuit Court Regulation provides that fee exemptions are available across all general federal law fee categories, with the exception of the filing fee to register a New Zealand judgment under the *Trans-Tasman Proceedings Act 2010*. Listed categories of vulnerable users of the court, such as individuals under the age of 18 years, holders of pension, concession or health care cards and those who have been granted legal aid, are specifically exempted from paying court fees. Additionally,

Division 2.3 provides a broad discretion to grant fee exemptions to individuals where payment of fees would cause financial hardship to the individual, having regard to the individual's income, day-to-day living expenses, liabilities and assets.

Division 2.4 of the Federal Court and Federal Circuit Court Regulation provides for the waiver of fees for proceedings under specific legislation, such as hearing appeals in relation to unlawful discrimination proceedings under the *Australian Human Rights Commission Act 1986* or *Fair Work Act 2009*.

Division 2.5 of the Federal Court and Federal Circuit Court Regulation provides a broad discretion to grant a deferral of payment of most general federal law fees in circumstances where an individual urgently needs to file a document or where, considering an individual's financial circumstances, it would be oppressive or otherwise unreasonable to require payment of the fee.

I consider the availability of fee exemptions, waivers and deferrals to be an important safeguard to ensure that those facing financial hardship or other difficult circumstances are not affected by any changes to court fees. On the basis that fee exemptions, deferrals and waivers continue to apply, I do not consider that the changes to general federal law fees provided in the Regulation limit the ability of parties to access justice or the right to a fair hearing.

Thank you again for writing on this matter.

Yours faithfully

(George Brandis)