

Appendix 1

Correspondence



The Hon Greg Hunt MP

Minister for the Environment

Hon Phillip Ruddock MP
Chair
Parliamentary Joint Committee on Human Rights
PO Box 6100
Parliament House
CANBERRA ACT 2600

MC16-002853

23 MAR 2016

Dear Mr Ruddock

A handwritten signature in blue ink, appearing to read 'Phil'.

Thank you for your letter of 25 February 2016 in which the Parliamentary Joint Committee on Human Rights requested further advice regarding the human rights compatibility of the Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015.

In particular, the Committee has requested further advice as to whether the repeal of the extended standing provisions of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) imposes a justified limitation on the right to health. The Committee has also requested evidence as to the nature and extent of the emerging risk of the extended standing provisions being used to disrupt and delay key project and infrastructure development.

In response to the Committee's request, I refer the Committee to a campaign document titled *Stopping the Australian Coal Export Boom: Funding proposal for the Australian anti-coal movement* prepared in 2011 by a number of environmental organisations. As I mentioned in my second reading speech, the strategy outlined in the document is "to 'disrupt and delay' key projects and infrastructure while gradually eroding public and political support for the industry and continually building the power of the movement to win more."

In relation to litigation the document goes on to state that "legal challenges can stop projects outright, or can delay them, in order to buy time to build a much stronger movement and powerful public campaigns. They can also expose the impacts, increase costs, raise investor uncertainty, and create a powerful platform for public campaigns" (section 4.1).

The purpose of the Environment Protection and Biodiversity Conservation Amendment (Standing) Bill 2015 is to bring the arrangements for standing to make a judicial review application for a decision made under the EPBC Act in-line with the broad Commonwealth standing provisions. This will ensure that those people, organisations or community groups who have a genuine and direct interest in a matter are able to challenge EPBC Act administrative decisions as provided for under the *Administrative Decisions (Judicial Review) Act 1977* and the *Judiciary Act 1903*. This is consistent with the majority of Commonwealth legislation.

Yours sincerely

Greg Hunt



Senator the Hon Michaelia Cash
Minister for Employment
Minister for Women
Minister Assisting the Prime Minister for the Public Service

Reference: MC16-000587

The Hon Phillip Ruddock MP
Chair
Parliamentary Joint Committee on Human Rights
S1.111
Parliament House
CANBERRA ACT 2600

Dear Chair

***Building Code (Fitness for Work/Alcohol and Other Drugs in the Workplace) Amendment
Instrument 2015 [F2015L01462]***

This letter is in response to your letter of 23 February 2016 concerning the *Building Code (Fitness for Work/Alcohol and Other Drugs in the Workplace) Amendment Instrument 2015*.

The Parliamentary Joint Committee on Human Rights (the Committee) sought my further advice about the human rights compatibility of this instrument. I consider the measures are proportional and it is in the public interest to take steps to ensure that construction workers are not affected by drugs or alcohol in the workplace.

Should the Committee require further information, please contact my office on (02) 6277 7320.

Yours sincerely

Senator the Hon Michaelia Cash

 / 2016



THE HON DR PETER HENDY MP
ASSISTANT CABINET SECRETARY
ASSISTANT MINISTER FOR FINANCE

Reference: MC16-040820

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

Dear Mr Ruddock

Thank you for your letter dated 16 March 2016 regarding the Parliamentary Joint Committee on Human Rights' *Thirty-sixth Report of the 44th Parliament* and the Committee's request for advice on the Royal Commissions Amendment Regulation 2016 (No.1) (the Regulation).

The Regulation gives custody of the records of the Royal Commission into Trade Union Governance and Corruption to the Secretary of the Department of the Prime Minister and Cabinet. It also authorises the Secretary, in part, to give records to a person or body that performs a law enforcement function or is responsible for advising a Minister on the administration of a Commonwealth or State or Territory law.

I note the Committee considers that this transfer of information engages the right to privacy and the rights to a fair trial and fair hearing. These rights are said to be engaged because when a witness gives evidence to a Royal Commission they are not able to invoke the privilege against self-incrimination (unless there are offence charges on foot). The Committee acknowledges that the information transfer is 'rationally connected' to the legitimate objective of expediting the prosecution of criminal and civil wrongdoing. However, the Committee has requested more information to support that the transfer of information authorised by the Regulation is a proportionate limitation on the right to a fair trial and fair hearing rights in pursuit of that legitimate objective.

The partial abrogation of the privilege against self-incrimination in the *Royal Commissions Act 1901* supports a Commissioner's function to inquire into matters of public importance. To the extent any records contain incriminating evidence given by a witness, the Royal Commission Act also gives some protection to the witness through the engagement of 'use' immunity (section 6DD). In this way, the evidence cannot be used against the person in any civil or criminal proceeding but may be used to obtain further evidence against the person. The Regulation does not abrogate that protection.

The Letters Patent expressly commissioned Commissioner John Dyson Heydon AC QC to inquire, in part, into any conduct which may amount to a breach of any law, regulation or professional standard by any officers of an employee association, in relation to that entity.

When the Royal Commission was operating, the Commissioner had power to communicate information that may relate to a contravention of a law to certain persons and bodies, including to Attorneys-General, the Director of Public Prosecutions, police and a person or authority responsible for the administration or enforcement of the law. Now that the Commission has ceased, the Regulation appropriately complements that power by enabling the Secretary to continue to give records, upon request, to a person or body that has law enforcement functions or a responsibility to advise a Minister about the administration of a law. The records would need to be relevant to the performance of those functions.

As further safeguards to privacy, fair trial and hearing rights, the receiving person or body will be obliged to ensure the 'use' immunity is not infringed, as well as to comply with any other obligations affecting a person's rights when discharging duties in connection with law enforcement or the administration of the law.

In so far as the statement of compatibility states that 'provision of access to the Commission's records is the only way by which criminal and civil offences can be further investigated and prosecuted', I also note that statement is intended to clarify that while a Royal Commission has strong information gathering powers it does not have power to enforce a law.

I trust that this information addresses your inquiries.

Yours sincerely

DR PETER HENDY

18 / 4 / 2016