

Chapter 2

Concluded matters

2.1 The committee considers a response to matters raised previously by the committee.

2.2 Correspondence relating to these matters is available on the committee's website.¹

Legislative instrument

Work Health and Safety (Operation Sovereign Borders) Declaration 2024²

FRL No.	F2024L00425
Purpose	This legislative instrument declares that certain provisions of the <i>Work Health and Safety Act 2011</i> do not apply to specified activities undertaken under Operation Sovereign Borders
Portfolio	Department of Employment and Workplace Relations
Authorising legislation	<i>Work Health and Safety Act 2011</i>
Disallowance	15 sitting days after tabling (tabled in the House of Representatives and the Senate on 14 May 2024). Notice of motion to disallow must be given by 19 August 2024 in the Senate ³
Rights	Life; security of person; work

2.3 The committee requested a response from the minister in relation to the instrument in [Report 4 of 2024](#).⁴

¹ See https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports

² This entry can be cited as: Parliamentary Joint Committee on Human Rights, Work Health and Safety (Operation Sovereign Borders) Declaration 2024, *Report 5 of 2024*; [2024] AUPJCHR 60.

³ A motion to disallow was placed on this legislative instrument in the Senate on 19 August 2024, extending the period subject to disallowance to 18 November 2024. In the event of any change to the Senate's sitting days, this period would change accordingly.

⁴ Parliamentary Joint Committee on Human Rights, *Report 4 of 2024* (15 May 2024), pp. 80–86.

Disapplication of work health and safety provisions

2.4 This legislative instrument declares that certain provisions of the *Work Health and Safety Act 2011* (WHS Act) do not apply to specified activities undertaken under Operation Sovereign Borders. Operation Sovereign Borders is a military-led, whole-of-government border security operation established in 2013.⁵ The instrument disapplies the duties of a worker (or other person at the workplace) to take reasonable care for their own health and safety, and to take reasonable care ‘that his or her acts or omissions do not adversely affect the health and safety of other persons’.⁶ It also disapplies the duty of a person with management or control of a workplace to preserve an incident site where a ‘notifiable incident has occurred’.⁷ It provides that these requirements do not apply to:

- the interception, boarding, control or movement, under Operation Sovereign Borders, of a vessel suspected of carrying an illegal maritime arrival as part of deciding whether to move the vessel to a place outside Australia, or moving the vessel to a place outside Australia; or
- the control or movement at sea, under Operation Sovereign Borders, of a person suspected of being an illegal maritime arrival as part of:
 - deciding whether to move the person to a place outside Australia; or
 - moving the person to a place outside Australia; or
 - moving the person to or from a vessel in the course of either of those activities (and not including the transfer or movement of a person to an offshore regional processing centre).

2.5 The declaration repeals and remakes the previous version of the declaration, which was made in 2013.⁸ This declaration is made pursuant to subsection 12D(2) of the WHS Act. Section 12D provides that nothing in the WHS Act requires or permits a person to take any action, or to refrain from taking any action, that would be, or could reasonably be expected to be, prejudicial to Australia’s defence. Subsection 12D(2)

⁵ Explanatory statement, p. 1.

⁶ Section 5 in relation to *Work Health and Safety Act 2011*, subsections 28(a) and (b), and 29(a) and (b).

⁷ Section 5 in relation to *Work Health and Safety Act 2011*, section 39.

⁸ Item 1 of Schedule 1 to the instrument repeals the Work Health and Safety (Operation Sovereign Borders) Declaration 2013 [F2013L02166].

empowers the Chief of the Defence Force to declare that specified provisions of the WHS Act do not apply in relation to specified activities.⁹

Summary of initial assessment

Preliminary international human rights legal advice

Rights to just and favourable conditions of work; life and security of the person

2.6 By disapplying specified provisions of the WHS Act to certain activities undertaken pursuant to Operation Sovereign Borders on boats, the legislative instrument engages and may limit the right to just and favourable conditions of work for those employed to carry out Operation Sovereign Borders. Further, as the activities specified would involve circumstances in which people on boats who are suspected of not having a valid Australian visa may be intercepted and turned back, it may also engage the right to life and security of the person, if the turn-back of boats occurs in circumstances that are unsafe.¹⁰

2.7 The right to just and favourable conditions of work includes the right of all workers to safe working conditions.¹¹ The right to life imposes an obligation on the state to protect people from being killed by others or identified risks.¹² The right to security of the person requires the state to take steps to protect people against interference with personal integrity by others.¹³

2.8 These rights may be subject to permissible limitations where the limitation pursues a legitimate objective, is rationally connected to that objective and is a proportionate means of achieving that objective.

⁹ Sections 12C, 12D and 12E provide for several exceptions to be made to the *Work Health and Safety Act 2011* relating to national security, defence, and certain police operations. The only other exception which has been made pursuant to these provisions relates to defence force personnel. See, *Work Health and Safety Act 2011 (application to Defence activities and Defence members) Declaration 2023* [F2023L00399].

¹⁰ Further, Australia's policy of boat interceptions and turn-backs has been subject to sustained criticism from the United Nations, including in relation to its inconsistency with the international principle of non-refoulement and with Australia's search and rescue obligations arising under international maritime law. See, for example, Special Rapporteur on the human rights of migrants, Felipe González Morales, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea* (12 May 2021) [A/HRC/47/30](#).

¹¹ See, UN Committee on Economic, Social and Cultural Rights, *General Comment No. 18: the right to work (article 6)* (2005) [2].

¹² International Covenant on Civil and Political Rights, article 6(1) and Second Optional Protocol to the International Covenant on Civil and Political Rights, article 1. UN Human Rights Committee, *General Comment No. 36: article 6 (right to life)* (2019) [3]: the right should not be interpreted narrowly and it 'concerns the entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity'.

¹³ International Covenant on Civil and Political Rights, article 9(1).

2.9 The statement of compatibility with human rights identifies that the measure engages and limits the right to just and favourable working conditions.¹⁴ The stated objective of the measure is to protect Australia's defence and security through the control of Australia's maritime borders as part of Operation Sovereign Borders. Protecting national security is a legitimate objective for the purposes of international human rights law. However, questions arise as to whether this measure is rationally connected to, that is, effective to achieve that objective.

2.10 As to the proportionality of the measure, it is not clear that the physical environment of a boat justifies excluding the duty to take reasonable care that acts or omissions do not adversely affect the health and safety of other persons insofar as that duty would protect workers from bullying, harassment or related activities.¹⁵ It is not clear whether the disapplication of these laws is subject to independent oversight and review.

2.11 As to the rights of people on boats being intercepted to life and security of the person, the statement of compatibility does not address this issue. It is unclear whether the legislative instrument may limit the rights to life and security of the person in practice, and if so, whether such a limit would be permissible.

Committee's initial view

2.12 The committee noted that disapplying certain provisions of the *Work Health and Safety Act 2011* in relation to specified activities by Operation Sovereign Borders engages and may limit the rights to just and favourable conditions of work, life and security of the person. The committee considered further information was required to assess the compatibility of this measure with these rights.

2.13 The committee therefore sought the advice of the Minister for Employment and Workplace Relations.

2.14 The full initial analysis is set out in [Report 4 of 2024](#).

Minister's response¹⁶

2.15 The minister advised:

- a) **whether and how the legislative instrument is compatible with the rights to life and security of the person?**

¹⁴ Statement of compatibility, pp. 7-9.

¹⁵ In this regard, it is noted that recent media reports have indicated that a report by the Australian Human Rights Commission has raised significant concerns regarding inappropriate workplace behaviours including sexual harassment and bullying, and indicated that 100 per cent of women in the 'marine unit' had witnessed sex discrimination and harassment. See, The Guardian Australia, [Secret report warns Australian Border Force's marine unit is 'not safe for women'](#) (Wednesday, 24 April 2024).

¹⁶ The minister's response to the committee's inquiries was received on 21 August 2024. This is an extract of the response. The response is available in full on the committee's [website](#).

The instrument provides that certain provisions in the *Work Health and Safety Act 2011* (WHS Act) do not apply to Operation Sovereign Borders (OSB) activities: the interception, boarding, control or movement of a vessel suspected of carrying an Unauthorised Maritime Arrival (as defined in the *Migration Act 1958*), or of a person suspected of being an Unauthorised Maritime Arrival. These are inherently dangerous activities, requiring OSB personnel to make decisions and act quickly in a uniquely challenging environment; where there are risks to their own safety as well as the safety of people on board vessels seeking to arrive in Australia that cannot be completely mitigated.

The effect of the instrument is that individual workers cannot be prosecuted under the WHS Act for failing to take reasonable care of their own and others' safety, in these dangerous circumstances. This ensures these personnel can act quickly, including to protect themselves or others, without second-guessing whether their actions may be perceived as failing to take reasonable care in the aftermath.

Importantly, the instrument only excludes very limited aspects of the WHS Act. For example, the Commonwealth's primary duty of care to ensure, so far as is reasonably practicable, the health and safety of workers and other persons, remains. Officers' duties to exercise due diligence to ensure that duty is met are unchanged. Workers are still required to comply with reasonable instructions. Deaths, serious injuries and dangerous incidents must be notified to Comcare, which can investigate and prosecute breaches of these duties.

Other frameworks also apply. For example, under the *Maritime Powers Act 2013*, a maritime officer (including ADF members) must not place or keep a person in a place unless the officer is satisfied, on reasonable grounds, that it is safe for the person to be in that place. ADF members are also subject to service offences under the *Defence Force Discipline Act 1982*, including offences for negligence in performance of a duty and dangerous conduct.

This instrument engages the rights to life and security of the person, as the actions (and inaction) of OSB personnel can have an impact on their own and others' safety. However, the instrument is compatible with these rights, noting that the Commonwealth's primary duty to ensure the health and safety of workers and other people is not affected, and is supported by other duties in the WHS Act and other frameworks.

- b) whether and how the legislative instrument is rationally connected (that is, effective to achieve) the stated objective. In particular:**
- i. how disapplying parts of the WHS Act would be effective to protect national security (including evidence which has demonstrated that the disapplication of these duties to these boat interception activities has changed the behaviour of workers, impacted the frequency of safety incidents during boat interceptions, or otherwise influenced the overall outcomes of the activities);**

Australia's security and prosperity depend on robust border policies, including activities under OSB to combat people smuggling and irregular migration. This is essential to save lives, ensure the integrity of our borders and maintain public confidence in Australia's migration program. The primary deterrent to any resumption of significant people smuggling networks is robust border policies, including boat turn-backs and other activities under OSB.

This instrument is intended to ensure that personnel can conduct the full range of activities necessary to achieve this national security outcome, while protecting their own and others' safety in a uniquely dangerous environment, including:

- boarding operations on wood, metal and fibreglass vessels ranging in size from 10m–50m, in day and night, in a wide variety of sea states and weather conditions
- operations which consist of holding individuals securely on board a Defence vessel or on the vessel that was boarded
- boarding operations on vessels whose crew may be belligerent
- holding operations on a vessel, where the people on board may be belligerent
- transferring people, inexperienced in the maritime environment, between a vessel (small foreign fishing type), to a tender (rigid hull inflatable boat), to a Defence vessel (patrol boat) and possibly back to a smaller vessel (similar to a small foreign fishing vessel)
- directing/assisting people to move to a location on a boarded vessel, for safety and/or security reasons
- intervening in situations where violence is used against ADF members or against other people for whom the ADF members have a duty of care
- boarding and transferring operations in sea states that are challenging
- operations wearing protective equipment such as body armour, increasing the possibility of heat related injuries
- being embarked in a ship's tender while being launched or recovered from the ship, while wearing and carrying equipment required for personal safety during a boarding operation
- working extended hours to facilitate a boarding, search, making safe and follow on security requirements of the boarded vessel
- vessel destruction where the crew or passengers deliberately set fire to the foreign vessels, which may then lead to retrieving persons from the water.

ii. how turning back people seeking asylum in Australia is effective to protect national security

It is axiomatic that a nation's security is fundamentally linked to its capacity to effectively control its own borders, including the flow of people and goods across those borders. The activities of OSB are essential to this by combatting maritime people smuggling and irregular migration. The OSB model has effectively suppressed – for a decade – maritime people smuggling targeting Australia. The primary deterrent remains robust border policies, which are demonstrated through turn-backs (to the country of departure where safe to do so), take backs (to the country of origin with the cooperation of the government of that country), and transfer to regional processing (for the consideration of any protection claims) an integral element of that response. This layered effect denies an irregular maritime pathway to settlement in Australia, and prevents people smugglers from generating business.

OSB policies have achieved a significant and sustained reduction in maritime people smuggling activity targeting Australia since 2013, and the Joint Agency Task Force has remained in place continuously since then with ongoing support from successive Australian Governments. It has now been 10 years since the last known death at sea (December 2013) from maritime people smuggling ventures en-route to Australia.

Despite the success of the OSB mission, it is imperative that all OSB contributing agencies remain vigilant. Any significant changes to push and pull factors for irregular migration in the Indo-Pacific region can trigger a rapid deterioration in the threat and risk environment.

c) whether the measure is a proportionate means by which to achieve the stated objective;

As outlined above, the effect of the instrument is that individual workers cannot be prosecuted under the WHS Act for failing to take reasonable care of their own and others' safety, in dangerous circumstances. This ensures these personnel can act quickly, including to protect themselves or others, without second-guessing whether their actions may be perceived as failing to take reasonable care in the aftermath.

The exemptions contained in the instrument are not novel, but rather continue existing exemptions that have been in force since 2013. Other obligations in the WHS Act are not affected, and other frameworks also operate to protect the safety of OSB personnel and others. In this context, the instrument is a proportionate means to achieve the objective.

i. what specific safeguards apply to ensure that reasonable care is taken to protect the safety of operational personnel involved in Operation Sovereign Borders;

The instrument only excludes very limited aspects of the WHS Act, and other frameworks also apply (detailed above). In addition, all Defence personnel

are trained in WHS from initial training through to mandatory annual awareness training. As part of the induction process of personnel into OSB, they are required to undertake extensive Reception, Staging, Onward Movement and Integration training. This specialised training deals directly with matters related to the safety of personnel and the people they engage with.

- ii. **what safeguards apply to ensure that operational personnel take reasonable care to ensure their acts or omissions do not adversely affect the health and safety of other persons, particularly those on the vessels being turned back;**

The training outlined above covers not just Defence personnel but obligations and duties to the health and safety of others. Personnel involved in OSB primarily operate under the *Maritime Powers Act 2013*. As outlined above, under this Act, a maritime officer (including ADF members) must not place or keep a person in a place unless the officer is satisfied, on reasonable grounds, that it is safe for the person to be in that place. Other domestic legal frameworks also apply. ADF members are subject to service offences under the *Defence Force Discipline Act 1982*, including offences for negligence in performance of a duty and dangerous conduct. Under the WHS Act, operational personnel are also required to comply with reasonable instructions.

- iii. **noting that it appears likely that boat interceptions occur on the high seas, what legal and regulatory frameworks would apply in relation to actions undertaken on and in relation to intercepted boats, including where a person's right to safe working conditions, or the rights of persons to life and security of the person, have been affected during these activities;**

The central legislation governing maritime operations is the *Maritime Powers Act 2013*. The *Maritime Powers Act 2013* represents an amalgamation of powers previously found in several different Acts. The maritime powers can be used by maritime officers to give effect to Australian laws. The exercise of maritime powers is appropriately constrained by international law (such as that contained in the United Nations Convention on Law of the Sea (UNCLOS)).

OSB operates in compliance with domestic law and international obligations in their interactions with people smuggling vessels and people who undertake irregular maritime journeys. For matters related to international human rights law, refugee law and the law of the sea, the Department of Home Affairs relies on advice of the Attorney-General's Department (AGD) and the Australian Government Solicitor (AGS), consistent with the *Legal Services Directions 2017*. In relation to on-water activities, OSB utilises the *Maritime Powers Act 2013* for the interception, boarding and searching of vessels. OSB operates under various other legislation, primarily the

Migration Act 1958 and the *Customs Act 1901*, within the geographic and jurisdictional boundaries that apply.

iv. whether the exercise of Operation Sovereign Borders powers is subject to independent oversight and review; and

As outlined above, any notifiable incident under the WHS Act is notified to Comcare, who is the Commonwealth safety regulator.

Operational efforts in support of OSB are subject to ministerial oversight and scrutiny, and measures and safeguards are in place to ensure actions and activities are undertaken in a manner consistent with Australian domestic law and Australia's obligations under international law.

v. why other less rights restrictive alternatives (including not disapplying these provisions in relation to all activities during boat interceptions, or giving workers guidance so they know how to apply their training within the confines of being required to exercise reasonable care) would be ineffective to achieve the stated objective of the declaration.

As outlined above, there are a range of duties, offences, frameworks and training that apply to OSB, notwithstanding this instrument. They are sufficient to ensure safety, as far as possible, in this dangerous environment. The instrument should be considered in that broader context. The exemptions set out in the instrument are necessary to ensure that individuals can act confidently and quickly in the diverse and unpredictable circumstances that might arise in the operational environment. It is not preferable for there to be any uncertainty in the mind of an individual regarding whether they may incur individual liability as a result of discharging their duties when performing these activities.

Concluding comments

International human rights legal advice

2.16 The minister stated that the instrument engages the rights to life and security of the person, 'as the actions (and inactions) of OSB personnel can have an impact on their own and others' safety'. However, he stated that the instrument is compatible with these rights, 'noting that the Commonwealth's primary duty to ensure the health and safety of workers and other people is not affected, and is supported by other duties in the WHS Act and other frameworks'. The minister stated that the Commonwealth has a primary duty of care to ensure, so far as is reasonably practicable, the health and safety of workers and other persons. A failure to comply with this duty is an offence.¹⁷ He stated that officers' duties to exercise due diligence to ensure that duty is met are also unchanged. He noted that workers are still required to comply with reasonable instructions and that deaths, serious injuries and dangerous incidents must be notified to Comcare. As to other frameworks, the minister noted

¹⁷ *Work, Health and Safety Act 2011*, section 32.

that under the *Maritime Powers Act 2013*, a maritime officer (including ADF members) must not place or keep a person in a place unless the officer is satisfied, on reasonable grounds, that it is safe for the person to be in that place. He also stated that ADF members are subject to service offences under the *Defence Force Discipline Act 1982*, including offences for negligence in performance of a duty and dangerous conduct. The minister stated that the *Maritime Powers Act 2013* is the central legislation governing maritime operation, and that the exercise of maritime powers 'is appropriately constrained by international law (such as that contained in the United Nations Convention on Law of the Sea)'. The minister stated that 'for matters related to international human rights law, refugee law and the law of the sea, the Department of Home Affairs relies on advice of the Attorney-General's Department (AGD) and the Australian Government Solicitor (AGS)', and noted that the *Migration Act 1958* and the *Customs Act 1901* may also apply within Australian territory. The minister stated that the duties, offences, frameworks and training that apply to Operation Sovereign Borders 'are sufficient to ensure safety, as far as possible, in this dangerous environment'.

2.17 The existence of an overarching duty of care, and of additional legal and regulatory frameworks, may assist with the compatibility of this measure with the rights to life and security of the person, and the right to just and favourable conditions of work. However, if those alternative mechanisms are indeed sufficient to ensure the safety of people engaged in or affected by boat push-backs at sea, it is unclear why these work health and safety duties therefore need to be disapplied. This raises the question of why this legislative instrument is necessary.

2.18 In this regard, the minister stated that this legislative instrument is intended to ensure that personnel can conduct the full range of activities necessary to achieve the national security outcome (of combatting people smuggling and irregular migration) while protecting their own and others' safety in a uniquely dangerous environment. However, the duties disapplied by this legislative instrument appear to apply in other workplace environments relating to Australia's defence,¹⁸ including workplaces on boats. It remains unclear why this precise context warrants the disapplication of these duties where others do not. The minister stated that controlling Australia's borders, including turning back people seeking asylum by boat, is fundamentally linked with its national security, and that Operation Sovereign Borders has achieved a significant reduction in maritime people smuggling and prevented deaths at sea related to people smuggling ventures en-route to Australia. However, the minister did not explain how disapplying specific parts of the Act is effective to

¹⁸ For example, while certain provisions of the *Work Health and Safety Act 2011* have been disapplied under section 12D in relation to the Australian Defence Force, including a requirement to preserve the site of a notifiable incident (see, Work Health and Safety Act 2011 (application to Defence activities and Defence members) Declaration 2023 F2023L00399]), the duties set out in sections 28 and 29 do not appear to have been disapplied.

achieve this, and in particular what evidence has demonstrated that the disapplication of these duties to these boat interception activities has changed the behaviour of workers, impacted the frequency of safety incidents, or otherwise influenced the overall outcomes of the activities. While the minister noted that it has been 10 years since a known death at sea from people smuggling ventures en-route to Australia, they did not state that there was a correlation between this legislative instrument and that outcome. Consequently, it remains unclear whether this legislative instrument is rationally connected to (that is, effective to achieve) the stated objective.

2.19 As to proportionality, the minister stated that, in addition to the legal and regulatory mechanisms outlined above, all Defence personnel are trained in work health and safety from initial training through to mandatory annual awareness training, including Reception, Staging, Onward Movement and Integration training. He stated that this specialised training ‘deals directly with matters related to the safety of personnel and the people they engage with’. As to oversight, the minister stated that any notifiable incident under the Act is notified to Comcare, and that ‘operational efforts in support of OSB’ are subject to ministerial oversight, and that this legislative instrument should be considered in that broader context. In this regard, in the 2022–23 financial year, the Department of Home Affairs indicated that 101 notifiable incidents had been reported to Comcare (including 3 deaths and 62 serious injuries or illnesses).¹⁹ However, it is not clear how many of those, if any, related to incidents during boat interceptions. The presence of these other legal and regulatory mechanisms, and the requirement to notify Comcare of safety incidents, may serve as important safeguards that assist with the proportionality of disapplying these specific duties under the Act. However, it is not clear precisely what safeguard value they have in practice.

2.20 Further, boat turn-backs of asylum seekers raise other, broader human rights concerns.²⁰ While states are responsible for border government of their territory, they are required to ensure that any governance measures respect the prohibition of collective expulsions, the right to equality and non-discrimination, the principle of non-refoulement, the right to seek asylum, the right to life, and the rights and best interests

¹⁹ Department of Home Affairs, *Annual Report 2022–23*, p. 212.

²⁰ United Nations bodies have urged Australia to cease the practice of boat interception and turn-backs. See, for example, Human Rights Council, *Report of the Working Group on the Universal Periodic Review (Australia)* 13 January 2016 [A/HRC/31/14](#), at [136]. The UN Special Rapporteur on the human rights of migrants, Felipe González Morales, has stated that the practice ‘demonstrate[s] a denial of States’ international obligations to protect the human rights of migrants at international borders’, and ‘deny migrants their fundamental rights by depriving them of access to protection defined in international and national law, as well as procedural safeguards’. UN Special Rapporteur on the human rights of migrants, Felipe González Morales, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea* (12 May 2021) [A/HRC/47/30](#), [33] and [36].

of the child.²¹ While the minister noted that the Department of Home Affairs relies on the advice from other departments for matters relating to international human rights law, he did not particularise whether and how Australia's policy is consistent with the requirements of these legislative frameworks and regulatory mechanisms. To the extent that this legislative instrument would apply in circumstances where a boat contained asylum seekers, those broader human rights concerns may arise.

2.21 Consequently, there would appear to be a risk that this legislative instrument may not constitute a permissible limit on the rights to life, security of the person, and to just and favourable conditions of work in practice.

Committee view

2.22 The committee thanks the minister for this response, and notes that it was received well after the requested due date.

2.23 The committee notes that disapplying certain provisions of the *Work Health and Safety Act 2011* in relation to specified activities by Operation Sovereign Borders engages and may limit the rights to just and favourable conditions of work, life and security of the person.

2.24 The committee notes the minister's advice that this legislative instrument is intended to ensure that personnel can combat people smuggling and irregular migration while protecting their own and others' safety in a uniquely dangerous environment. The committee considers that the continued application of the Commonwealth's overarching duty of care, and the additional legal and regulatory frameworks which apply to workplace safety, may assist with the compatibility of this measure with the rights to life and security of the person, and the right to just and favourable conditions of work. However, the committee considers that if those alternative mechanisms can continue to be applied, to ensure the safety of people engaged in or affected by boat push-backs at sea, without affecting Australia's national security, it is unclear why the particular work health and safety duties addressed by this measure therefore need to be disapplied.

2.25 The committee considers that it remains unclear how disapplying specific parts of the Act is effective to achieve the stated objective of the measure, as no information was adduced to demonstrate that the disapplication of these duties to these boat interception activities has changed the behaviour of workers over 10 years, impacted the frequency of safety incidents, or otherwise influenced the overall outcomes of the activities. The committee considers that it is therefore unclear that this measure is rationally connected to (that is, effective to achieve) the stated objective.

²¹ UN Special Rapporteur on the human rights of migrants, Felipe González Morales, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea* (12 May 2021) [A/HRC/47/30](#) [39].

2.26 The committee considers that the existence of other legal and regulatory mechanisms, and the requirement to notify Comcare of safety incidents, may serve as important safeguards that assist with the proportionality of disapplying these specific duties under the Act. However, the committee considers that it is not clear precisely what safeguard value they have in practice.

2.27 The committee therefore considers that there is a risk that this legislative instrument does not constitute a permissible limit on the rights to life, security of the person, and to just and favourable conditions of work in practice.

Suggested action

2.28 The committee recommends that the statement of compatibility be updated to reflect the information provided by the minister, including to identify that the measure engages the rights to life and to security of the person.

2.29 The committee draws these human rights concerns to the attention of the minister and the Parliament.

Mr Josh Burns MP

Chair