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Rights threatened

SIR: A disturbing feature of legislation to ban tobacco advertising, which has been presented to Australian parliaments in the past year, is the denial of the basic right of any citizen to be presumed innocent until proved guilty.

The onus of proof, which traditionally lies with the prosecution, was reversed in a bill defeated in the West Australian Parliament and another which lapsed in South Australia. It remains within bills currently before the Legislative Council in Tasmania and before the Senate.

Each of these bills deemed that mention of a tobacco name by any person in any way is promoting the buying and smoking of tobacco and would be an offence. The only defence for the accused is to produce credible evidence that in mentioning a tobacco name there was no intention to encourage smoking.

Legal advice sought from Sir Maurice Byers, QC, the former Commonwealth Solicitor General, indicates that the determining factor as to whether evidence is credible is whether it is accepted by the court. As the bills in question require the defendant to produce credible evidence, then the accused also carries the onus of proving his innocence.

Sir Maurice advises that this reversal of the onus of proof clearly contravenes the International Covenant for Civil and Political Rights and the Australian Government's obligations under this covenant.

We are not alone in our concern. The Human Rights Commission and two Senate standing committees have drawn attention to the threat to this basic tenet of justice from laws which reverse the onus of proof.

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