

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

Tuesday 1 December 2015

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Thirty-second Report of the 44th Parliament.

The committee's report examines the compatibility of bills and legislative instruments with Australia's human rights obligations. This report considers bills introduced into the Parliament from 23 November to 26 November 2015 and legislative instruments received from 30 October to 12 November 2015. The report also includes the committee's consideration of six responses to matters raised in previous reports.

Two new bills are assessed as not raising human rights concerns and the committee will seek a response from the legislation proponents in relation to two bills and two legislative instruments. The committee has also concluded its examination of seven bills.

This report considers the Counter-Terrorism Legislation Amendment Bill (No. 1) 2015. The committee recognises the importance of ensuring that national security and law enforcement agencies have the necessary powers to protect the security of all Australians. Moreover, the committee recognises the specific importance of protecting Australians from terrorism. The Australian government has the responsibility to ensure that laws and operational frameworks support

the protection of life and security of the person. In addition, Australia has specific international obligations to detect, arrest and punish terrorists.

Legislative responses to issues of national security are likely to engage a range of human rights. For example, legislative schemes aimed at the prevention of terrorist acts may seek to do so through measures that limit a number of traditional freedoms and protections that are characteristic of Australian society and its system of government.

Human rights principles and norms are not inherently opposed to national security objectives or outcomes. Rather, international human rights law allows for the balancing of human rights considerations with responses to national security concerns.

In this regard, the committee has assessed 11 of the 17 schedules in the bill as not raising human rights concerns. In relation to the remaining six schedules, the committee considers that further information is required from the Attorney-General to fully explain how those measures are compatible with Australia's human rights obligations.

As one example, the bill includes provisions lowering the age at which control orders may apply to 14 and 15 year olds. This is in direct response to a terrorist attack by a 15 year old this year in Parramatta. There has been much debate and contest around the

compatibility of control orders with Australia's human rights obligations, because control orders engage and limit a number of human rights. The control orders regime is necessarily coercive in nature, allowing controls to be placed on individuals to protect others against the threat of terrorism. Control orders pursue the legitimate objective of protecting Australians from such threats.

For those aged under 18, the bill includes additional requirements and safeguards before a control order may be issued on a child. For example, a control order may be only issued for 3 months as opposed to 12 months for adults. In addition, the court must appoint an individual advocate for the child to act in proceedings in the best interests of the child.

Notwithstanding these additional safeguards, the committee has requested more information from the Attorney-General to explain how these safeguards will fully ensure that the control orders regime imposes only proportionate limitations on the range of human rights engaged by control orders. This includes more information about how the child's best interests will be taken into account in applying a control order, and how the policy intent that control orders be used only rarely is reflected in the legislation.

The committee has also considered the Social Security Legislation Amendment (Further Strengthening Job Seeker Compliance) Bill 2015 in this report. The committee's report recognises that mutual

obligations are an appropriate feature of Australia's social welfare safety net, and that imposing reasonable requirements on those receiving welfare is compatible with our human rights obligations. However, the committee has made two recommendations to best ensure the human rights compatibility of the bill.

The first relates to a measure which provides that a penalty may be deducted from a job seeker's social security payment where a job seeker acts in an inappropriate manner, without a reasonable excuse, during an appointment such that the purpose of the appointment is not achieved. The committee has recommended that the term 'inappropriate behaviour' be defined based on objective standards. Some committee members thought this should be by amendment to the bill, while others thought it was sufficient to do so by way of a legislative instrument.

Some committee members also considered additional safeguards should be applied to ensure that those with legitimate mental health concerns are not unfairly or harshly affected by the provision.

Lastly, the committee has made a recommendation in relation to a measure which would remove Centrelink's ability to waive a penalty for not accepting a suitable job without a reasonable excuse. The minister has advised that this measure responds to the fact that the high waiver rate is caused by job seekers avoiding a penalty by undertaking additional compliance activities. While recognising this

important objective, the committee considers that maintaining a waiver in genuinely exceptional circumstances would better protect individuals who, for a range of genuine reasons, refuse suitable work yet fail to meet the reasonable excuse test.

As always, I encourage my fellow members and others to examine the committee's report to better inform their understanding of the committee's deliberations.

With these comments, I commend the committee's Thirty-second Report of the 44th Parliament to the House.