

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

SENATE TABLING STATEMENT

Tuesday 23 February 2016

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Thirty-fourth 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 2 February to 11 February 2016 and legislative instruments received from 11 December 2015 to 21 January 2016. The report also includes the committee's consideration of twelve responses to matters raised in previous reports.

Thirteen new bills are assessed as not raising human rights concerns and the committee will seek a further response from the legislation proponents in relation to two bills. The committee has also concluded its examination of four bills and eight regulations.

As members would be aware, the committee's reports generally only include matters that raise human rights concerns and the committee is typically silent on bills and instruments that are compatible with human rights. This means that the often good work of ministers in ensuring the compatibility of legislation with human rights goes unnoticed. In that context, I draw members' attention to an instrument recently made by the Minister for Employment, Senator Cash, titled

Social Security (parenting payment participation requirements – classes of persons) Specification 2016 (No. 1).

This instrument limits certain parenting payments to particular classes of persons, with the objective of encouraging them to progress towards and achieve beneficial education and employment outcomes. The statement of compatibility for the instrument identifies the limits this places on the right to social security and other rights, and provides an informative and evidence-based analysis that clearly addresses each element of the committee's analytical framework.

A statement of this quality allows the committee to accept the conclusion that the instrument is compatible with human rights without the need to write to the minister seeking further information. I encourage ministers and legislation proponents to consult this statement of compatibility as a fine example of how to use the committee's analytical framework to assess and provide justifications for measures that limit human rights. I commend the minister and her department for their engagement with human rights considerations and the work of the committee.

The report includes the committee's final consideration of a number of pieces of migration legislation. These are: the Migration and Maritime Powers Amendment Bill (No. 1) 2015, the Migration Amendment (Complementary Protection and Other Measures) Bill 2015, and the Migration Amendment (Conversion of Protection Visa Applications)

Regulation 2015. This legislation makes a number of technical changes to clarify the extent to which various protection claims will be allowed to be made under the *Migration Act*. While recognising the importance of Australia's border protection policy and the humanitarian imperative of saving lives at sea, the committee makes a number of findings of incompatibility with human rights in relation to these pieces of legislation. One of the central issues is the extent to which it is compatible with Australia's human rights obligations to remove statutory protections and replace them with administrative safeguards and the minister's non-compellable powers. The legal advice to the committee is that administrative processes alone are insufficient to meet international human rights standards.

I must say that I think it is important to distinguish between the powers and obligations of a minister accountable to parliament and that of a minister in a government without the robust democratic system and standards of governance that exist in Australia. However, human rights law does not make those distinctions, and this is reflected in the report's conclusions. Where those conclusions do identify concerns, the report usefully provides suggestions as to how the migration bills may be improved to better meet Australia's international human rights obligations.

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-fourth Report of the 44th Parliament to the chamber.