

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

Tuesday 22 November 2016

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Report 9 of 2016.

The committee's report examines the compatibility of recent bills and legislative instruments with Australia's human rights obligations. Twelve new bills are assessed as not raising human rights concerns and the committee has also concluded its consideration of a number of matters.

As can be seen in this report, much legislation either does not engage human rights or, if it engages with rights, either promotes rights or does not limit them. Under international human rights law most rights may be permissibly limited providing certain criteria are met. Where legislation does limit human rights, the committee's longstanding analytical framework allows it to focus on three key questions:

1. whether the measures are aimed at achieving a legitimate objective;
2. whether there is a rational connection between the measures and that objective; and
3. whether the measures are proportionate to that objective.

These questions are considered at the first stage of the committee's analysis of rights that can be subject to permissible limitations. If the statement of compatibility does not provide sufficient information and

analysis the committee seeks the advice of ministers to enable it to conclude its examination.

The report includes consideration of the Privacy Amendment (Re-identification Offence) Bill 2016 which seeks to amend the *Privacy Act 1988* to prohibit conduct related to the re-identification of de-identified personal information. On the one hand the bill engages and promotes the right to privacy. However, the bill raises human rights questions insofar as it creates retrospective criminal offences, which are absolutely prohibited under international human rights law. The committee is therefore seeking advice from the Attorney-General as to whether consideration has been given to introducing prospective, rather than retrospective, offences.

The report also includes consideration of two separate bills that seek to amend the *Migration Act 1958*.

The explanatory memorandum to the Migration Amendment (Visa Revalidation and Other Measures) Bill 2016 indicates that the measure introduced by the bill is intended to apply to only specific visa holders, but there is nothing on the face of the bill that constrains its application in this way. Consistent with its usual approach, the committee has sought further advice from the minister about the rights engaged by the measures in the bill.

The Migration Legislation Amendment (Regional Processing Cohort) Bill 2016 seeks to introduce a lifetime visa ban for asylum seekers in specified circumstances. The measure engages a number of human

rights including the right to equality and non-discrimination, the right to the protection of the family and the rights of the child. The committee is seeking advice from the minister in relation to whether the bill is compatible with these rights (including whether they are subject to permissible limitations).

Finally, I would also like to draw the chamber's attention to an inquiry recently referred to the committee by the Attorney-General, pursuant to the *Human Rights (Parliamentary Scrutiny) Act 2011*. This is the first such inquiry to be referred to the committee by the Attorney-General.

The inquiry includes examination of sections 18C and 18D of the *Racial Discrimination Act 1975*, and the complaints handling procedures of the Australian Human Rights Commission. I strongly encourage interested organisations and individuals to submit to the inquiry; the closing date for submissions is 9 December 2016. Details about the inquiry are available on the committee's website.

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

With these comments, I commend the committee's Report 9 of 2016 to the chamber.