

Report snapshot¹

In this report the committee has examined the following bills and legislative instruments for compatibility with human rights. The committee's full consideration of legislation commented on in the report is set out at the page numbers indicated.

Bills

Chapter 1: New and continuing matters

Bills introduced 25 to 27 October and 7 to 10 November 2022	23
Bills previously deferred ²	1
Bills commented on in report ³	8

Chapter 2: Concluded

Bills committee has concluded its examination of following receipt of ministerial response	1
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Aboriginal Land Grant (Jervis Bay Territory) Amendment (Strengthening Land and Governance Provisions) Bill 2022

No comment

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- 1 This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 6 of 2022*; [2022] AUPJCHR 45.
 - 2 Biosecurity Amendment (Strengthening Biosecurity) Bill 2022, which was previously deferred in *Report 5 of 2022* (20 October 2022).
 - 3 The committee makes no comment on the remaining bills on the basis that they do not engage, or only marginally engage, human rights; promote human rights; and/permissibly limit human rights. This is based on an assessment of the bill and relevant information provided in the statement of compatibility accompanying the bill. The committee may have determined not to comment on a bill notwithstanding that the statement of compatibility accompanying the bill may be inadequate.

Appropriation Bill (No. 1) 2022-2023
Appropriation Bill (No. 2) 2022-2023
Appropriation (Parliamentary Departments) Bill (No. 1) 2022-2023

*Advice to
Parliament*

Appropriation of money to fund public services

Multiple rights

[pp. 11-15](#)

Proposed government expenditure to give effect to particular policies may engage and limit, or promote, a range of human rights, including civil and political rights and economic, social and cultural rights (such as the rights to housing, health, education and social security). The rights of people with disability, children and women may also be engaged where policies have a particular impact on vulnerable groups. The statements of compatibility accompanying these bills do not identify that any rights are engaged by the bills.

The committee acknowledges that appropriations bills may present particular difficulties given their technical and high-level nature, and as such it may not be appropriate to assess human rights compatibility for each individual measure. However, the committee considers the allocation of funds via appropriations bills is susceptible to a human rights assessment directed at broader questions of compatibility, namely, their impact on progressive realisation obligations and on vulnerable minorities or specific groups. The committee considers that statements of compatibility for future appropriations bills should contain an assessment of human rights compatibility, that it would benefit from a statement of compatibility if budget measures directly impact human rights and the measures are not addressed elsewhere in legislation, and draws this to the attention of the Minister for Finance and Parliament.

Australian Crime Commission Amendment (Special Operations and Special Investigations) Bill 2022

No comment

Biosecurity Amendment (Strengthening Biosecurity) Bill 2022

*Seeking
further
information*

Entry requirements

Rights to health, privacy, freedom of movement, liberty and equality and non-discrimination

[pp. 16-33](#)

This bill would empower the Agriculture Minister to make entry requirements for people entering Australia in order to prevent the entry or spread of diseases or pests. This could require people to provide personal information, be screened, or moved to locations to carry out biosecurity risk assessments.

The committee considers that to the extent the measure would prevent the spread of diseases or pests that may pose a risk to human health, this would promote the right to health, but also engages and may limit the rights to privacy, freedom of movement and liberty and the right to equality and non-discrimination. Questions remain as to whether the measure is proportionate, including what other methods (apart from equipment) may be used to screen an individual; what a biosecurity risk assessment of an individual would involve; how long people may be subject to

administrative detention and in what conditions; and whether decisions are reviewable. The committee is therefore seeking further information from the Minister for Agriculture, Fisheries and Forestry to assess the compatibility of this measure with these rights.

Preventative biosecurity measures

Rights to health, privacy, equality and non-discrimination, culture and freedom of movement

This bill would empower the Agriculture Minister to determine certain other biosecurity measures for the purposes of preventing a specified behaviour or practice that causes or contributes to the entry or spread into Australia of certain diseases or pests. This may include banning, restricting, or requiring certain behaviours or practices or requiring the provision of a specified information.

The committee considers that to the extent that the measure prevents behaviour or practices that may pose a risk to human health, it promotes the right to health. However, the committee notes that it also engages and may limit other human rights, including the rights to privacy and equality and non-discrimination, culture and freedom of movement. Questions remain as to whether the measure is proportionate, including what types of behaviours and practices would likely be specified in a determination, and if it likely that a determination would ban or restrict traditional trading or other cultural practices among Aboriginal and Torres Strait Islander persons, or movement between particular locations, and whether decisions made pursuant to a determination will be reviewable. The committee is therefore seeking further information from the Minister for Agriculture, Fisheries and Forestry to assess the compatibility of this measure with these rights.

Information management framework

Right to privacy

This bill seeks to amend the management of information obtained or generated under the Biosecurity Act, in particular to enable greater sharing of information with government agencies and other bodies.

The committee considers that authorising the use and disclosure of personal information engages and limits the right to privacy. Questions remain as to whether the measure is proportionate, including who relevant information may be disclosed to in certain circumstances, why all information obtained under the Biosecurity Act can be shared for law enforcement purposes, why information sharing agreements are not generally required, and what other safeguards accompany the measure. The committee is therefore seeking further information from the Minister for Agriculture, Fisheries and Forestry to assess the compatibility of this measure with the right to privacy.

Broadcasting Services Amendment (Community Radio) Bill 2022

No comment

Crimes Amendment (Penalty Unit) Bill 2022

*Advice to
Parliament*

Increasing penalty units*Criminal process rights*

[pp. 34-37](#)

This bill seeks to increase the amount of one Commonwealth penalty unit from \$222 to \$275 from 1 January 2023 (an increase of 24 per cent) and to be further indexed every three years to the Consumer Price Index (CPI). This would increase the maximum available penalty for every Commonwealth civil penalty provision expressed in terms of penalty units across the Commonwealth statute book.

The committee considers that this may engage criminal process rights in some instances, because civil penalties may be considered criminal in nature under international human rights law in certain circumstances, including based on the severity of the penalty. In such instances, the provisions must be shown to be consistent with international human rights law criminal process guarantees, including the right to be presumed innocent until proven guilty according to law (in accordance with the criminal standard of proof). Civil penalty provisions, which require proof of the conduct on the balance of probabilities, do not meet this guarantee. The committee also cautions that it cannot comprehensively quantify the total level of risk given the number of civil penalty provisions this bill would amend.

The committee recommends that the statement of compatibility with human rights be updated to reflect the potential engagement and limitation of criminal process rights by this bill.

Customs Amendment (Australia-United Kingdom Free Trade Agreement Implementation) Bill 2022

No comment

Customs Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Bill 2022

No comment

Customs Tariff Amendment (Australia-United Kingdom Free Trade Agreement Implementation) Bill 2022

No comment

Customs Tariff Amendment (India-Australia Economic Cooperation and Trade Agreement Implementation) Bill 2022

No comment

Defence Home Ownership Assistance Scheme Amendment Bill

No comment

Education Legislation Amendment (2022 Measures No. 1) Bill 2022

No comment

Fair Work Legislation Amendment (Secure Jobs, Better Pay) Bill 2022

<p><i>Advice to Parliament</i></p> <p><u>pp. 38-49</u></p>	<p>Restrictions on industrial action relating to cooperative workplace agreements</p> <p><i>Rights to freedom of association and just and favourable conditions of work</i></p> <p>The committee considers that many of the measures in this bill would promote human rights, including the rights to work, just and favourable conditions of work, and equality and non-discrimination. If removing current restrictions on industrial action would protect more employees to take industrial action, in circumstances which are currently prohibited by the Fair Work Act, the committee considers this would help to better protect the right to strike.</p> <p>However, by excluding cooperative workplace agreements from protected industrial action, so that employees covered by these agreements would be prohibited from organising or engaging in any industrial action, this limits the rights to strike and just and favourable working conditions. This could cover multiple businesses and their employees, with such agreements expected to be particularly attractive to small business employers.</p> <p>The committee notes that the general objectives of the bill, including to increase wages and address gender inequality, are important and are likely legitimate objectives for the purposes of international human rights law.</p> <p>However, it remains unclear what is the specific objective behind restricting industrial action for cooperative workplace agreements. Further, the committee notes that the measure applies a general prohibition on industrial action, without any exceptions or flexibility to treat different cases differently. Noting that the measure does not appear to fall into any recognised exceptions to the international human law right to strike, the committee considers that this specific measure does not appear to be a proportionate limitation on the rights to freedom of association and just and favourable conditions of work. The committee recommends the statement of compatibility with human rights be updated and draws these human rights concerns to the attention of the minister and the Parliament.</p> <p>Compulsory mediation or conciliation before industrial action is protected</p> <p><i>Rights to freedom of association and just and favourable conditions of work</i></p> <p>The bill seeks to introduce compulsory mediation or conciliation between bargaining representatives before industrial action is taken to be protected. If industrial action is taken without complying with this provision, the Fair Work Commission can order it to stop and failure to do so by any worker could result in a civil penalty.</p> <p>By proposing additional requirements that must be met in order for industrial action to be protected, the measure engages and limits the right to freedom of association,</p>
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particularly the right to strike, and the associated right to just and favourable conditions of work. The committee considers that the measure pursues the legitimate objective of de-escalating disputes and encouraging negotiation and resolution of disputes before industrial action commences. While the measure is accompanied by some safeguards, including that the conference would be conducted by the Fair Work Commission, the committee notes that the consequences of failing to attend the conference would constitute a significant interference with the right to strike, and draws these human rights concerns to the attention of the minister and the Parliament.

Higher Education Support Amendment (2022 Measures No. 1) Bill 2022

No comment

National Anti-Corruption Commission Bill 2022

National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022

Concluded

Investigative and reporting powers; contempt of Commission; journalist search warrants; and covert investigative powers

[*pp. 75-84*](#)

Multiple rights

These two bills seek to establish the National Anti-Corruption Commission, as an independent agency to investigate and report on serious or systemic corruption in the Commonwealth public sector. The committee published its advice to Parliament in relation to these bills in [Report 5 of 2022](#). The committee did not request the provision of a response from the minister but did make several recommendations. The minister provided a response to the committee's recommendations on 23 November 2022. The committee welcomes the Attorney-General's commitment to amend the bill in line with the majority of its recommendations.

Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022

Seeking further information

Increasing civil penalties

Criminal process rights

[*pp. 50-55*](#)

The committee notes that the bill overall seeks to provide the Australian Information Commissioner with greater enforcement and information sharing powers, and the Australian Communications and Media Authority with greater information sharing powers. In general, the committee considers these proposed powers will likely promote the right to privacy by strengthening the capacity of these oversight bodies. The committee notes that these powers also engage and limit the rights to privacy and fair hearing, and having considered the statement of compatibility provided, makes no further comment in relation to this.

The bill also seeks to increase the penalty for serious or repeated interferences with the privacy of an individual for 'a person other than a body corporate' to \$2.5 million. It is unclear whether this penalty may apply to individuals, and whether the increased penalty may risk being regarded as criminal for the

purposes of international human rights law. Were this the case, the penalty would need to be shown to be consistent with criminal process rights, including the right to be presumed innocent until proven guilty according to the criminal standard of proof. The committee is seeking further information from the Attorney-General in relation to this matter.

Supply Bill (No. 3) 2022-2023

No comment

Supply Bill (No. 4) 2022-2023

No comment

Supply Bill (Parliamentary Departments) Bill (No. 2) 2022-2023

No comment

Telecommunications Legislation Amendment (Information Disclosure, National Interest and Other Measures) Bill 2022

Seeking further information

[pp. 56-67](#)

Access to unlisted numbers on the Integrated Public Number Database

Right to privacy

While the committee notes the important objective of the bill, it notes that permitting the disclosure of information relating to unlisted phone numbers (such as mobile phone numbers) on the Integrated Public Number Database in dealing with matters raised by a call to an emergency service number, limits the right to privacy. The committee is seeking further information from the Minister for Communications to assess the compatibility of the measure with this right. The committee also reiterates its expectations in respect of statements of compatibility with human rights.

Sharing of information in the case of a threat to a person's life or health

Right to privacy

While the committee notes the important objective of the bill, the committee notes that allowing a carrier or carriage service provider to disclose personal information or documents if necessary to prevent or lessen a serious threat to life or health (and not a serious and imminent threat, as is currently required), engages and limits the right to privacy. The committee is seeking further information from the Minister for Communications in relation to this.

Immunity from civil liability

Right to an effective remedy

The committee notes that extending the immunity of carriers and carriage service providers (such as mobile phone providers) from civil liability engages the right to an effective remedy. The committee notes that the statement of compatibility does not identify the engagement of this right and is therefore seeking the

Minister for Communications' advice as to the compatibility of the measure and recommends the statement of compatibility be updated.

Records relating to authorised disclosures of information or documents

Right to privacy

The committee notes that expanding the requirement to record where an authorised disclosure of information, including personal information, has occurred engages and may limit the right to privacy. The committee notes that the statement of compatibility does not identify the engagement and limitation of the right to privacy in respect of this measure, and is therefore seeking the Minister for Communications' advice as to the compatibility of the measure and recommends that the statement of compatibility be updated.

Veterans' Affairs Legislation Amendment (Budget Measures) Bill 2022

No comment

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the [Federal Register of Legislation](#) between 28 September and 10 November 2022⁴ 188

Legislative instruments commented on in report⁵ 1

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response 0

Data Availability and Transparency (Consequential Amendments) Transitional Rules 2022 [F2022L01260]

Seeking further information

[pp. 68-73](#)

Facilitating access to Australian Government data

Right to privacy

This legislative instrument authorises the provision of controlled access to Australian Government data by prescribing six entities as transitional Australian Data Service Providers.

The committee notes that this engages and limits the right to privacy, and is seeking further information from the Minister for Finance to assess its compatibility.

The committee further notes that it raised numerous concerns about the bill (now Act) which established this scheme, particularly with respect to the right to privacy, and that as 251 amendments were made to the bill after it had been considered by the committee, it is challenging to determine whether, and to what

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- 4 The committee examines all legislative instruments registered in the relevant period, as listed on the Federal Register of Legislation. To identify all of the legislative instruments scrutinised by the committee during this period, select 'legislative instruments' as the relevant type of legislation, select the event as 'assent/making', and input the relevant registration date range in the Federal Register of Legislation's advanced search function, available at: <https://www.legislation.gov.au/AdvancedSearch>.
 - 5 The committee makes no comment on the remaining legislative instruments on the basis that they do not engage, or only marginally engage, human rights; promote human rights; and/permissibly limit human rights. This is based on an assessment of the instrument and relevant information provided in the statement of compatibility (where applicable). The committee may have determined not to comment on an instrument notwithstanding that the statement of compatibility accompanying the instrument may be inadequate.

extent, the data-sharing scheme, as implemented, reflects the committee's previous concerns. The committee intends to write to the Minister for Finance asking departmental officials to provide a briefing to the committee secretariat about how the scheme as a whole (and as amended) operates.

Legislation (Deferral of Sunsetting—Social Security (Administration) Instruments) Certificate 2022 [F2022L01267]

This legislative instrument defers by 12 months the date by which six legislative instruments, relating to the administration of the income management regime, will sunset. The explanatory statement states that these instruments are expected to be reviewed and remade within 12 months as a result of consultation with communities to develop long term arrangements in abolishing the Cashless Debit Card and reforming compulsory income management arrangements. The committee draws the Attorney-General and the Parliament's attention to its recent comments on the abolition of the Cashless Debit Card scheme and the continuation of income management.⁶

Instruments imposing sanctions on individuals⁷

A number of legislative instruments impose sanctions on individuals. The committee has considered the human rights compatibility of similar instruments on a number of occasions and retains scrutiny concerns about the compatibility of the sanctions regime with human rights.⁸ However, as these legislative instruments do not appear to designate or declare any individuals who are currently within Australia's jurisdiction, the committee makes no comment in relation to these instruments at this stage.

6 See Parliamentary Joint Committee on Human Rights, [Report 3 of 2022](#) (7 September 2022) at pp. 15-26 and [Report 5 of 2022](#) (20 October 2022) at pp. 39-55.

7 See Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 21) Instrument 2022 [F2022L01281]; Charter of the United Nations (Listed Persons and Entities) Amendment (No. 3) Instrument 2022 [F2022L01426]; Charter of the United Nations (Listed Persons and Entities) Amendment (No. 4) Instrument 2022 [F2022L01429].

8 See, most recently, Parliamentary Joint Committee on Human Rights, [Report 15 of 2021](#) (8 December 2021) pp. 2-11 and [Report 10 of 2021](#) (25 August 2021) pp. 117-128.