

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 21 November to 15 December 2022	28
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Private members or senators' bills that may engage and limit human rights	3

Chapter 2: Concluded

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Biosecurity Amendment (Strengthening Biosecurity) Bill 2022

<i>Concluded</i>	Entry requirements
<i>pp. 61-93</i>	<i>Rights to health, privacy, freedom of movement, liberty and equality and non-discrimination</i>
	This bill (now Act) empowers 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, this measure promotes 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.

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- 1 This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 1 of 2023*; [2023] AUPJCHR 2.
 - 2 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.

The committee considers that the measure pursues a legitimate objective and, in many cases, the use of entry requirements would constitute a proportionate limitation on human rights. However, noting the breadth of the measure, there remains a risk that the power to make these entry requirements could be used in a way that may not be compatible with human rights. In particular, the committee notes that there may be a risk that individuals could be detained for the purpose of a biosecurity risk assessment for longer than is absolutely necessary, noting there is no maximum length of detention or access to merits review. The proportionality of limitations on other human rights will depend on the specific entry requirements and the consequent extent of any interference with rights.

Preventative biosecurity measures

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

This bill empowers 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 this promotes the right to health, but also engages and may limit other human rights, including the rights to privacy, equality and non-discrimination, culture and freedom of movement.

The committee considers the measure pursues a legitimate objective and is accompanied by some important safeguards. In many cases, the types of behaviours or practices required will represent a proportionate limit on human rights. However, given the breadth and flexibility of the power, there remains a risk that, in other cases, the existing safeguards may not be sufficient to safeguard rights.

Information management framework

Right to privacy

This bill amends 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.

This engages and limits the right to privacy. The committee considers that the measure pursues a legitimate objective and is accompanied by some important safeguards. However, the committee notes that given the breadth of the measure, there is a risk that these safeguards may not be adequate in all circumstances so as to ensure that any limitation on the right to privacy will be proportionate in practice.

Classification (Publications, Films and Computer Games) Amendment (Loot Boxes) Bill 2022

No comment

Commonwealth Electoral Amendment (Banning Dirty Donations) Bill 2022

The committee notes that this private senator's bill appears to engage and may limit human rights. Should this bill proceed to further stages of debate, the committee may request further information from the senator as to the human rights compatibility of the bill.

Commonwealth Electoral Amendment (Stop the Lies) Bill 2022

No comment

COVID-19 Vaccination Status (Prevention of Discrimination) Bill 2022

The committee notes that this private senator's bill appears to engage and may limit human rights. Should this bill proceed to further stages of debate, the committee may request further information from the senator as to the human rights compatibility of the bill.

Customs Amendment (Banning Goods Produced By Forced Labour) Bill 2022

No comment

Customs Legislation Amendment (Controlled Trials and Other Measures) Bill 2022

No comment

Education and Other Legislation Amendment (Abolishing Indexation and Raising the Minimum Repayment Income for Education and Training Loans) Bill 2022

No comment

Export Control Amendment (Streamlining Administrative Processes) Bill 2022

*Seeking
information*

Information-sharing between government agencies and other bodies
Right to privacy

[pp. 13-17](#)

This bill seeks to amend the *Export Control Act 2020* to alter information-sharing provisions relating to government agencies and other bodies, by authorising 'entrusted persons' (which would include any level of departmental officer and certain contractors) to use and disclose 'relevant information' (which may include personal information) in a range of circumstances and for a variety of purposes.

By facilitating the use and disclosure of personal information this measure engages and limits the right to privacy. The committee seeks further information from the Minister for Agriculture, Fisheries and Forestry in order to assess the proportionality of the measure with the right to privacy.

Fuel and Vehicle Standards Legislation Amendment (Reducing Vehicle Pollution) Bill 2022

No comment

Higher Education Support Amendment (Australia's Economic Accelerator) Bill 2022

No comment

Human Rights (Children Born Alive Protection) Bill 2022

The committee notes that this private senators' bill appears to engage and may limit human rights. Should this bill proceed to further stages of debate, the committee may request further information from the senators as to the human rights compatibility of the bill.

Inspector-General of Intelligence and Security and Other Legislation Amendment (Modernisation) Bill 2022

No comment

Ministers of State Amendment Bill 2022

No comment

National Reconstruction Fund Corporation Bill 2022

Seeking information **Disclosure of official information**
Right to privacy

[pp. 18-21](#)

This bill seeks to establish a National Reconstruction Fund Corporation to provide finance to projects across priority areas. It provides that a Corporation official may disclose 'official information' (namely, information relating to the affairs of a person other than a Corporation official) to an agency, body or person, including if the disclosure will assist these persons to perform or exercise any of their functions or powers.

Permitting the disclosure of official information may engage the right to privacy if 'official information' includes personal information and the committee seeks further information from the Minister for Industry, Science and Resources to assess the compatibility of this measure with the right to privacy.

Paid Parental Leave Amendment (Improvements for Families and Gender Equality) Bill 2022

No comment

Public Interest Disclosure Amendment (Review) Bill 2022

No comment

Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022

Concluded **Increasing civil penalties**

pp. 94-99

Criminal process rights

This bill (now Act) amended the *Privacy Act 1988* 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.

The committee considers, based on the Attorney-General's advice, that these amendments to significantly increase civil penalties, are unlikely to engage criminal process rights under international human rights law, noting the limited applicability of these penalties to individuals.

Private Health Insurance Legislation Amendment (Medical Device and Human Tissue Product List and Cost Recovery) Bill 2022

No comment

Private Health Insurance (Prostheses Application and Listing Fees) Amendment (Cost Recovery) Bill 2022

No comment

Private Health Insurance (National Joint Replacement Register Levy) Amendment (Consequential Amendments) Bill 2022

No comment

Referendum (Machinery Provisions) Amendment Bill 2022

Seeking information

pp. 22-31

Prohibition on foreign campaigners engaging in certain referendum conduct

Rights to freedom of expression, freedom of association, privacy, and equality and non-discrimination

This bill seeks to prohibit foreign campaigners (including people in Australia who are neither citizens nor permanent residents) from engaging in certain referendum conduct, including restricting forms of expression and fundraising or donating to referendum entities. The bill would also empower the Electoral Commissioner to obtain information and documents from persons to assess compliance.

Prohibiting foreign campaigners from engaging in certain referendum conduct engages and limits the rights to freedom of expression, freedom of association, privacy and equality and non-discrimination. The committee seeks further information from the Minister for Finance to assess the compatibility of this measure with these rights.

The committee has also sought advice on whether the temporary removal of the requirement relating to the distribution of an official pamphlet to households has any human rights implications and reserves the right to report further on this bill.

Safeguard Mechanism (Crediting) Amendment Bill 2022

No comment

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

Concluded **Increased access to unlisted numbers on the Integrated Public Number Database**

[*pp. 100-124*](#)

Right to privacy

This bill would permit 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. In doing so, this engages and limits the right to privacy.

Based on the additional information provided by the Minister for Communications, the committee considers that allowing disclosure of information related to unlisted (and listed) phone numbers, in the case of calls to emergency services numbers, would likely constitute a proportionate limit on the right to privacy.

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

Right to privacy

This bill would allow 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). In doing so, the bill engages and limits the right to privacy.

Based on the additional information provided by the Minister for Communications, the committee considers there are, on the whole, sufficient safeguards built into the existing processes to ensure that the limit on the right to privacy is likely to be proportionate. However, the committee considers there is some risk that the type of information that might be disclosed using these powers is overly broad.

The committee recommends making publicly available guidance as to the process to be followed before requests are made to access personal information held by carriers. The committee also considers that the proportionality of this measure may be assisted were the bill to be amended to reflect the limited type of information or documents that the minister advised may be disclosed, noting that any definition should not restrict or frustrate the important intention of this provision.

Immunity from civil liability*Right to an effective remedy*

The bill seeks to extend the immunity of carriers and carriage service providers (such as mobile phone providers) from civil liability. This engages the right to an effective remedy.

Based on the additional information provided by the Minister for Communication, the committee considers that extending the immunity is compatible with the right to an effective remedy.

Records relating to authorised disclosures of information or documents*Right to privacy*

The bill seeks to expand the requirement to record where an authorised disclosure of information, including personal information, has occurred. The committee notes the advice of the Minister for Communication that the additional record-keeping requirement would not lead to the creation of a new record that includes any personal information. As such, the committee considers that this measure does not limit the right to privacy.

Therapeutic Goods Amendment (2022 Measures No. 1) Bill 2022

No comment

Treasury Laws Amendment (Modernising Business Communications and Other Measures) Bill 2022

*Advice to
Parliament*

[pp.32-36](#)

Extending the application of civil penalty provisions*Criminal process rights*

This bill seeks to extend the application of certain civil penalty provisions in the *Foreign Acquisitions and Takeovers Act 1975* to actions taken by foreign persons, including a provision carrying a civil penalty of up to \$687.5 million for individuals.

While the committee considers the measure to be important for deterring non-compliance with the Act, given the substantial pecuniary sanctions that could apply to individuals, there is a risk that the penalties may be so severe as to constitute a 'criminal' sanction under international human rights law.

The committee recommends that when civil penalties are so severe such that there is a risk that they may be regarded as 'criminal' under international human rights law, consideration should be given to applying a higher standard of proof in the related civil penalty proceedings, and draws its concerns to the attention of the Assistant Minister and the Parliament.

Treasury Laws Amendment (2022 Measures No. 4) Bill 2022

No comment

Treasury Laws Amendment (2022 Measures No. 5) Bill 2022

No comment

Treasury Laws Amendment (Consumer Data Right) Bill 2022

No comment

Treasury Laws Amendment (Energy Price Relief Plan) Bill 2022

No comment

Work Health and Safety Amendment Bill 2022

No comment

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the [Federal Register of Legislation](#) between 11 November 2022 and 2 January 2023³ 329

Legislative instruments commented on in report⁴ 3

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response 1

Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022 [[F2022L01457](#)]

Seeking information **Information gathering powers and other compliance action powers**
Rights to health, privacy and rights of persons with disability

[pp. 37-45](#)

This legislative instrument establishes the Code of Conduct for Aged Care, which sets out minimum standards of conduct for approved providers and their aged care workers and governing persons. It provides that the Aged Care Quality and Safety Commissioner may take certain actions in relation to compliance with the Code, including requesting information or documents from any person.

Taking action to ensure compliance with the Code promotes the right to health and the rights of persons with disability. However, establishing broad information gathering and sharing powers also engages and limits the right to privacy. The committee seeks further information from the Minister for Health and Aged Care to assess the compatibility of this measure with the right to privacy.

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- 3 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>.
 - 4 The committee has deferred its consideration of the Australian Immunisation Register Amendment (Japanese Encephalitis Virus) Rules 2022 [[F2022L01712](#)]. 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.

Publication of a register of banning orders

Rights to health, rights of persons with disability and right to privacy and reputation

This legislative instrument provides for additional matters that must be included on the register of banning orders for current and former aged care workers, including an individual's last known place of residence and other information that the Commissioner considers is necessary to identify an individual. The instrument also provides that the register of banning orders may be published on the Commission's website, unless publication would be contrary to the public interest or the interests of one or more care recipients.

Publishing the register of banning orders to protect vulnerable older Australians promotes the right to health and the rights of persons with disability. However, publishing this data also engages and limits the right to privacy. The committee seeks further information from the Minister for Health and Aged Care to assess the compatibility of this measure with the right to privacy.

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

Concluded **Facilitating access to Australian Government data**

[*pp. 125-133*](#)

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. This engages and limits the right to privacy.

The committee is pleased to note that many of the amendments made to the legislation giving effect to this scheme were made in response to the committee's recommendations, and considers these amendments assists with the proportionality of the scheme, and therefore with the proportionality of this legislative instrument made for the purposes of the scheme.

However, the committee considers that, noting the breadth of the scheme and that no data has yet been shared under the scheme, much will depend on how the scheme is applied, and the strength of its safeguards, in practice, and draws its comments to the attention of the Minister for Finance and the Parliament.

Fair Entitlements Guarantee Regulations 2022 [F2022L01529]

Seeking information **Financial assistance scheme for textile, clothing and footwear industry contract outworkers**

[*pp. 46-52*](#)

Rights to just and favourable conditions of work and equality and non-discrimination

This legislative instrument continues the scheme of financial assistance for textile, clothing and footwear (TCF) industry contract outworkers in situations where their employer has become insolvent. It provides that an individual must be an Australian citizen or a holder of a permanent visa or a special category visa to be eligible for financial assistance.

Providing financial assistance for eligible TCF contract outworkers during an insolvency event would promote the right to just and favourable conditions of work, but by excluding workers on the basis of their visa status this measure may

also limit this right and the right to equality and non-discrimination. The committee seeks further information from the Minister for Employment and Workplace Relations regarding the compatibility of this measure with these rights.

Instruments imposing sanctions on individuals⁵

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.⁶ 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.

Quality of Care Amendment (Restrictive Practices) Principles 2022 [[F2022L01548](#)]

Seeking information **Consent to the use of restrictive practices in aged care**
Rights of persons with disability

[pp. 53-60](#)

This legislative instrument amends the Quality of Care Principles 2014 to specify a hierarchy of persons who can give consent on behalf of persons in aged care to the use of restrictive practices, if the care recipient lacks capacity to give consent.

Setting out who can consent to the use of restrictive practices on behalf of a care recipient engages and may promote and limit a number of human rights, limiting in particular the rights of persons with disabilities, including the right of persons with disabilities to consent to medical treatment. Further, specifying persons who may consent for the purposes of granting immunity from all civil and criminal liability to those who rely on that consent, engages and may limit the rights of persons with disabilities to equal recognition before the law, equality and non-discrimination, and access to justice and has implications for the right to an effective remedy.

The committee seeks further information from the Minister for Aged Care regarding the compatibility of this measure with these rights.

5 See Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People's Republic of Korea) Amendment (No. 3) Instrument 2022 [F2022L01537]; Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Thematic Sanctions) Amendment (No. 1) Instrument 2022 [F2022L01615]; and Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 22) Instrument 2022 [F2022L01616].

6 See, most recently, Parliamentary Joint Committee on Human Rights, [Report 15 of 2021](#) (8 December 2021), pp. 2-11.