

## Report snapshot<sup>1</sup>

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 in Chapters 1 and 2.

### Bills

#### Chapter 1: New and continuing matters

Bills introduced 6 November to 27 November 2023	20
Bills commented on in report <sup>2</sup>	4
Private members or senators' bills that may engage and limit human rights	1

#### Chapter 2: Concluded

Bills committee has concluded its examination of following receipt of ministerial response	0
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#### Attorney-General's Portfolio Miscellaneous Measures Bill 2023

No comment

#### Australian Human Rights Commission Amendment (Costs Protection) Bill 2023

No comment

#### Bankruptcy Amendment (Discharge From Bankruptcy) Bill 2023

No comment

<sup>1</sup> This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 13 of 2023*; [2023] AUPJCHR 121.

<sup>2</sup> The committee has deferred its consideration of the following bills: Australian Naval Nuclear Power Safety Bill 2023; Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023; Migration Amendment (Limits on Immigration Detention) Bill 2023; Online Safety Amendment (Protecting Australian Children from Online Harm) Bill 2023. 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.

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**Commonwealth Electoral Amendment (Voter Protections in Political Advertising) Bill 2023**

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No comment

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**Crimes and Other Legislation Amendment (Omnibus No. 2) Bill 2023**

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*Advice to Parliament*

**Retrospective validation of actions by the Australian Crime Commission***Right to an effective remedy*

The Board of the Australian Crime Commission has the power to make a written determination authorising an intelligence operation or an investigation relating to a federally relevant crime. If such an authorisation or determination is made, this grants coercive powers to officers within the Australian Crime Commission, enabling them to compel people to give evidence, attend before an examiner and produce documents or things. This bill (now Act) retrospectively validates all things done in reliance on, or in relation to, an authorisation given or determination made by the Board on or after 4 September 2013 and before 10 December 2019. This also has the effect of validating any further derivative uses of any information or intelligence obtained by the Australian Crime Commission in reliance on these authorisations and determinations.

The committee considers the existing coercive powers limits the right to privacy, and the existing abrogation of the privilege against self-incrimination limits the right to a fair trial. The committee has not undertaken an examination of whether these powers are a permissible limitation on rights, and notes that much would depend on how the powers are exercised in practice. However, by retrospectively validating all things done by a person in reliance on an authorisation or determination made by the Board over a six-year period the committee considers this engages the right to an effective remedy. As the bill makes all things valid and effective that may otherwise be invalid, this would appear to remove any remedy that a person whose privacy or fair trial rights may have been affected would otherwise have. Therefore, the committee considers there is a significant risk that Schedule 3 of the bill is incompatible with the right to an effective remedy.

The committee draws its human rights concerns to the attention of the Attorney-General and the Parliament, but as this bill has already passed, makes no further comment.

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**Fair Work Legislation Amendment (Asbestos Safety and Eradication Agency) Bill 2023**

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No comment

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**Fair Work Legislation Amendment (First Responders) Bill 2023**

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No comment

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**Fair Work Legislation Amendment (Small Business Redundancy Exemption) Bill 2023**

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No comment

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**Fair Work Legislation Amendment (Strengthening Protections Against Discrimination) Bill 2023**

No comment

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**Federal Courts Legislation Amendment (Judicial Immunity) Bill 2023**

No comment

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**Lobbying (Improving Government Honesty and Trust) Bill 2023**

The committee notes that this non-government 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 legislation proponent as to the human rights compatibility of the bill.

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**Migration Amendment (Bridging Visa Conditions) Bill 2023**

**Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023**

*Seeking Information*

**Criminalisation of breach of mandatory bridging visa conditions**

*Criminal process rights; right to a fair trial; freedom of expression, movement and association; right to privacy; right to liberty; and right to work*

The Migration Amendment (Bridging Visa Conditions) Bill 2023 (now Act) ('first bill') amended the *Migration Act 1958* and the Migration Regulations 1994 to grant non-citizens for whom there is no real prospect of their removal from Australia becoming practicable in the reasonably foreseeable future (the NZYQ cohort) a bridging visa subject to specified mandatory visa conditions. The mandatory conditions that are subject to a criminal offence for non-compliance include monitoring conditions (which require the person to either notify, report or attend); conditions requiring the person to remain at a notified address between certain times of a day; and conditions relating to electronic monitoring devices. Non-compliance with these conditions is a criminal offence carrying a mandatory minimum sentence of at least one year imprisonment and a maximum sentence of five years imprisonment. The Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 ('second bill') seeks to introduce additional criminal offences with mandatory minimum sentences for non-compliance with visa conditions relating to not performing certain work, not going within certain distance of a school or childcare or day care centre and not contacting the victim of the offence.

By requiring the visa holder to provide certain personal information, be electronically monitored at all times, remain at a particular address, notify Immigration of any travel and contact and association with certain persons, and not go within a certain distance of specified places, not perform certain work and not contact certain persons, the measure engages and limits the right to privacy, the right to work and

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the rights to freedom of expression, movement and association. By imposing a mandatory minimum sentence of imprisonment for non-compliance with a condition, the measure engages and limits the rights to liberty and a fair trial. Further, questions arise as to whether the cumulative impact of all these conditions may be construed as an imposition of a criminal penalty for the purposes of international human rights law.

The committee considers that as the legislation engages multiple and significant human rights and noting its functions of examining Acts for compatibility with human rights, the committee is seeking further information from the Minister for Home Affairs to assess the human rights compatibility of the measure.

#### **Additional mandatory visa conditions**

*Rights to privacy, work, adequate standard of living, health and social security; freedom of assembly, association and expression; and prohibition on inhuman or degrading treatment*

The bridging visas granted to the NZYQ cohort are subject to additional mandatory conditions that do not appear to engage the offence provisions. For example, a visa holder is required to not become involved in activities disruptive to the Australian community. As this condition is neither a monitoring condition nor a condition relating to remaining at a notified address or wearing a monitoring device, it does not appear to be captured by the offence provisions. In order to assess whether these mandatory conditions would, in practice, limit human rights it is necessary to consider whether the conditions are enforceable and subject to legal consequences for non-compliance. If the conditions are not subject to the criminal offence provisions and noting that immigration detention is not a possible consequence for non-compliance (because of the recent High Court decision), it appears that the consequence for breaching one or more of the visa conditions is potential visa cancellation action. This may result in the person being denied the right to work and access to social security and Medicare.

Depending on the consequence of non-compliance with the additional mandatory conditions, the measure may engage and limit a number of human rights, including the rights to privacy, work, an adequate standard of living, health and social security and the rights to freedom of assembly, association and expression. If, as a consequence of visa cancellation action, a person was denied the necessary resources to meet their basic needs, such as housing, food and healthcare, to a seriously detrimental extent, the measure may also engage the prohibition against inhuman or degrading treatment.

The committee previously considered several of these visa conditions when they were first introduced in 2021 and concluded that there may be a significant risk that the conditions impermissibly limit multiple human rights. Given the committee's previous concerns and noting the insufficient information contained in the explanatory materials, the committee is seeking further information

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from the Minister for Home Affairs to assess the compatibility of the measure with human rights.

#### **Powers of authorised officers**

##### *Rights to privacy, life and security of person, and effective remedy*

The second bill seeks to introduce two new powers relating to monitoring devices and the collection, use and disclosure of information by 'authorised officers'. In particular, an authorised officer may do all things necessary or convenient to be done to, among other things, install, fit or remove a person's monitoring device or determine or monitor the location of the person through the monitoring device. An authorised officer may collect, use or disclose to 'any other person' personal information for a variety of purposes, including protecting the community in relation to persons subject to monitoring. These powers may be exercised despite any provision of any law of the Commonwealth, State or Territory.

These new powers engage and limit the right to privacy and potentially the rights to life and security of person, noting that personal information may be shared with 'any other person', including possibly the media or general public, for the broad purpose of 'protecting the community'. As the powers may be exercised despite any other law, the measure also engages the right to an effective remedy. The committee is seeking further information from the Minister for Home Affairs to assess the compatibility of this measure with these rights.

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### **National Redress Scheme for Institutional Child Sexual Abuse Amendment Bill 2023**

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#### *Advice to Parliament*

#### **Limiting entitlement to seek redress**

##### *Rights to an effective remedy; equality and non-discrimination*

This bill seeks to reduce the circumstances in which people who are, or have been, incarcerated may be prevented from applying for redress for institutional child sexual abuse. However, the committee notes that some people with some serious criminal convictions may still be precluded from accessing redress, and considers that the restrictions on the entitlement of survivors to claim redress itself engages and may impermissibly limit the right to an effective remedy and may also engage and limit the right to equality and non-discrimination. The committee draws its prior comments in relation to this to the attention of the Minister for Social Services and the Parliament.

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### **Superannuation (Objective) Bill 2023**

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No comment

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### **Treasury Laws Amendment (Tax Accountability and Fairness) Bill 2023**

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No comment

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## Legislative instruments

### Chapter 1: New and continuing matters

Legislative instruments registered on the [Federal Register of Legislation](#) between 7 November to 20 November 2023<sup>3</sup> 59

Legislative instruments commented on in report<sup>4</sup> 0

### Chapter 2: Concluded

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

## Migration Amendment (Resolution of Status Visa) Regulations 2023

### *Advice to Parliament*

### **Refusal of permanent visas on identity grounds**

*Right to protection of the family, equality and non-discrimination, liberty*

This measure requires that an application for a permanent 'Resolution of Status' visa must be refused where the person does not satisfy identity requirements. This applies to people who claimed asylum in Australia after travelling by boat without a valid visa before July 2013 and who are currently on a temporary protection visa.

This measure engages and may limit the right to protection of the family as it may separate family members, the right to equality and non-discrimination as it may have a disproportionate impact on people of certain nationalities, and the right to liberty as refusal of the visa may lead to mandatory immigration detention.

While the committee acknowledges that the measure aims to facilitate the visa applicant's cooperation in attempting to establish their identity, and not necessarily impose a requirement that identity be confirmed, the committee is concerned that in practice this may

<sup>3</sup> 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](#).

<sup>4</sup> 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.

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operate to the significant detriment of certain applicants. Based on the information provided by the minister, it is not clear that this measure is directed towards an objective that would be regarded as legitimate under international human rights law. The committee considers that, in practice, were people to engage with the department, there may be sufficient legal and social supports in place to ensure that their individual circumstances are considered. However, the extent to which this measure may impermissibly limit human rights in practice will largely depend on the social and legal supports that are provided to persons with respect to the visa application process. The committee has made a number of recommendations that may assist somewhat with the proportionality of this measure, and draws its human rights concerns to the attention of the minister and the Parliament.

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