

## 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 Chapter 1.

### Bills

#### Chapter 1: New and continuing matters

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| Bills introduced <sup>2</sup> 28 November to 7 December 2023              | 20 |
| Bills previously deferred <sup>3</sup>                                    | 4  |
| Bills commented on in report <sup>4</sup>                                 | 2  |
| Private members or senators' bills that may engage and limit human rights | 1  |

#### Chapter 2: Concluded

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| Bills committee has concluded its examination of following receipt of ministerial response | 0 |
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#### Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Bill 2023

The committee has deferred consideration of this bill.

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- <sup>1</sup> This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 14 of 2023*; [2023] AUPJCHR 129.
- <sup>2</sup> Substantial amendments were made to the Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Bill 2023 on 5 December 2023. These amendments are commented on below but are not included in the number of bills introduced in this period.
- <sup>3</sup> 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, which were previously deferred in *Report 13 of 2023* (29 November 2023).
- <sup>4</sup> 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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**Administrative Review Tribunal Bill 2023**

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The committee has deferred consideration of this bill.

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**Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023**

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*Seeking Information***Cessation of Australian citizenship***Multiple rights*

This bill (now Act) amended the *Australian Citizenship Act 2007* to repeal and replace provisions providing for the cessation of Australian citizenship in certain circumstances following High Court decisions that ruled the previous laws, by which the minister may cease a person's Australian citizenship, were unconstitutional. By permitting the cessation of Australian citizenship this bill engages and limits a number of human rights.

The committee notes that if the cessation of citizenship could be regarded as the imposition of a penalty under international human rights law, the absolute prohibition against retrospective criminal law would be engaged and as the bill permits the cessation of a person's citizenship for conduct prior to the commencement of this measure, there is a risk this measure is not compatible with the absolute prohibition against retrospective criminal law.

The committee also notes that the measure engages and limits a number of other rights, including the right to equality and non-discrimination (as this measure would operate only in relation to persons who have, or may be eligible for, a second citizenship or nationality), the rights of children (as children aged 14 years and above may be subject to citizenship cessation or be dependent on someone subject to such an order), and the rights to liberty, protection of the family, freedom of movement and privacy (as a person who has their citizenship ceased would likely become an unlawful non-citizen and be subject to mandatory immigration detention and removal from Australia). These human rights may be subject to permissible limitations, provided it is demonstrated that those limitations are prescribed by law, pursue a legitimate objective, are rationally connected to (that is, effective to achieve) that objective and are a proportionate means of achieving that objective.

The committee considers it has not been established that all aspects of this bill (notably when a person has 'repudiated their allegiance') would satisfy the 'prescribed by law' criteria under international law. The committee further considers that questions remain as to whether the bill sought to achieve a legitimate objective as defined under international human rights law or if it was rationally connected to the stated objective. As to proportionality, the committee considers that the fact it is now a court determining whether a person's citizenship should be ceased may be a very important safeguard. In this regard, the committee notes that a decision to cease a person's citizenship would, in the context of sentencing

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procedures, be subject to appeal in the normal course. However, questions remain as to whether there are sufficient safeguards to ensure adequate protection of rights, in circumstances where the limitation on rights is likely to be significant. As such, the committee considers it has not been established that this bill is compatible with multiple human rights.

The committee draws its human rights concerns to the attention of the Attorney-General and the Parliament, but as the bill has now passed, makes no further comment. The committee makes itself available to assist with the review by the Independent National Security Legislation Monitor in three years' time, and stands ready to provide suggestions to assist with the proportionality of this scheme, and notes that had the committee been given the opportunity to comment on this bill prior to it passing, it would have raised these concerns.

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**Australian Naval Nuclear Power Safety (Transitional Provisions) Bill 2023**

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No comment

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**Australian Naval Nuclear Power Safety Bill 2023**

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No comment

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**Australian Research Council Amendment (Review Response) Bill 2023**

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No comment

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**COAG Legislation Amendment Bill 2023**

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No comment

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**Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2023**

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No comment

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**Customs Amendment (Preventing Child Labour) Bill 2023**

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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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**Customs Tariff Amendment (Incorporation of Proposals) Bill (No. 2) 2023**

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No comment

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**Defence Trade Controls Amendment Bill 2023**

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No comment

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**Digital ID (Transitional and Consequential Provisions) Bill 2023**

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No comment

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### Digital ID Bill 2023

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This bill, in seeking to establish an Australian Government Digital ID System, engages and limits the right to privacy, insofar as it would involve the collection, use, disclosure and retention of personal information. However, as individuals cannot be required to create or use a digital ID to access government services, and noting the numerous safeguards in the bill, the committee considers the proposed limitation on the right to privacy may be reasonable, necessary and proportionate. However, the committee notes much will depend on how securely the personal information and data is held within the system and by accredited entities in practice.

With respect to the sharing of personal information for law enforcement purposes, the committee reiterates its previous concerns regarding the sharing of personal information for secondary purposes, as recently set out in [Report 12 of 2023](#) in relation to the Identity Verification Services Bills. The committee further notes that much of the operational detail of the measures are to be set out in delegated legislation. The committee will closely scrutinise any such legislative instruments if made for compatibility with human rights. As such, the committee makes no further comment on this bill at this stage.

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### Help to Buy (Consequential Provisions) Bill 2023

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No comment

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### Help to Buy Bill 2023

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No comment

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### Human Rights (Parliamentary Scrutiny) Amendment (Consideration of UNDRIP) Bill 2023

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No comment

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### Migration Amendment (Limits on Immigration Detention) Bill 2023

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No comment

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### Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Bill 2023 and related instrument<sup>5</sup>

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*Advice to Parliament*

**Preventative detention and supervision of serious non-citizen criminals**

*Multiple rights*

The Senate amendments to the Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 (as it then was called) made amendments to introduce a scheme for the making of Community Safety Orders. Under this scheme, the minister may apply to a Supreme Court for a detention order which would cause a person to be detained in prison, or a supervision order, which would cause a person to be subject to a number of conditions, breach of which would be a criminal offence.

The committee considers that the scheme generally limits the right to equality and non-discrimination, as it applies only to non-citizens

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<sup>5</sup> Crimes Legislation Amendment (Community Safety Orders and Other Measures) Regulations 2023.

and only to those who cannot be removed from Australia. The committee considers it has not been established that these measures are compatible with this right.

The committee also considers that, in relation to those measures which may be regarded as applying an additional penalty under international human rights law to people who have already been convicted and sentenced for past criminal conduct, this risks breaching the absolute prohibition on retrospective criminal penalties and limits criminal process rights. The committee notes that the United Nations Human Rights Committee has, in cases involving Australia, held that continued detention on the basis of predicted future criminal conduct is incompatible with the prohibition against retrospective criminal law, describing the concept of feared or predicted dangerousness as inherently problematic.

#### *Detention orders*

A detention order would limit the right to liberty, which may be subject to permissible limitations. However, the United Nations Human Rights Committee has, in previous decisions about Australia, determined that detention orders of this nature are incompatible with the prohibition against arbitrary detention. As such, a detention order would breach the right to liberty.

The committee notes that detention orders limit the right not to be arbitrarily detained. The committee notes that the United Nations Human Rights Committee has previously found that substantially similar existing preventative detention schemes were incompatible with the right to be free from arbitrary detention and lacked sufficient safeguards. The committee notes that the court would need to be satisfied to a high degree of probability that an order was necessary, and that these orders would be appealable and subject to review, which may address some aspects of whether a continuing detention order is necessary, reasonable and proportionate in an individual case. However, the committee considers that, as it has previously concluded in relation to the existing continuing detention orders scheme, this measure is likely to be incompatible with the right to liberty.

#### *Supervision orders*

A court may impose any conditions on a person subject to a supervision order that it is satisfied, and which it is satisfied the combined effect of which, on the balance of probabilities, are reasonably necessary, and reasonably appropriate and adapted, for the purpose of protecting the community from serious harm by addressing the unacceptable risk of the offender committing a serious violent or sexual offence. As such, such an order may engage and limit numerous rights, including the rights to work, privacy, education, protection of the family, freedom of movement, freedom of expression, freedom of association, and freedom of religion. The committee considers that the measures seek to achieve the

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legitimate objective of seeking to address any risk of future harm to the community posed by persons convicted of serious violent or sexual offences. The committee considers protection of community safety to be an extremely important objective. The committee notes the public reporting of alleged serious matters relating to some members of this cohort of people and understands the objective of wanting to keep the community safe, however the committee understands the inherent difficulty in predicting future criminal conduct, including by reference to expert opinion. The committee also considers that some questions remain as to whether these measures are accompanied by sufficient safeguards such that this would constitute a proportionate limit on these human rights, noting that a court would be empowered to impose any conditions on a person where it considers they have satisfied the statutory threshold necessary. As such, the committee considers it has not been established that these amendments are compatible with multiple human rights.

#### *Surveillance powers and information-sharing*

The measure also enables law enforcement agencies to obtain surveillance device or computer access warrants, or use less intrusive surveillance devices with no warrant, to monitor people subject to orders, and to permit monitoring of conditions, including by allowing agencies to apply for telecommunications services warrants, named person warrants, and warrants for entry to premises. As the legislation establishing these powers was enacted prior the commencement of the Human Rights (Parliamentary Scrutiny) Act 2011, it has not been subject to a foundational human rights assessment. The committee reiterates that a foundational human rights assessment of this legislation is necessary in order to establish whether any limitation of human rights stemming from the application of these laws would be permissible.

Finally, a legislative instrument made pursuant to these measures was registered, permitting the minister to share an unspecified range of personal information about people who are (or may be) subject to a community safety order with a wide range of persons. There may be a risk that a significant amount of personal information is shared, which is particularly concerning noting that these information sharing powers apply despite any other law. As such, the committee considers this information sharing power in the bill, and the range of persons set out in the legislative instrument, risks impermissibly limiting the right to privacy.

The committee draws these human rights concerns to the attention of the minister and the Parliament, but as the bill has already passed it makes no further comment.

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### **Modern Slavery Amendment (Australian Anti-Slavery Commissioner) Bill 2023**

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No comment

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**National Security Legislation Amendment (Comprehensive Review and Other Measures No. 3) Bill 2023**

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Schedule 2 of this bill seeks to consolidate a number of existing secrecy offences with respect to the communication of information relating to various intelligence agencies. The committee notes that these secrecy offences engage and limit the right to freedom of expression. However, noting the proposed amendments do not expand the scope of existing secrecy offences and the government's recent agreement to implement the [recommendations](#) of the Attorney-General's Department's Review of Secrecy Provisions Final Report, the committee makes no comment on these proposed amendments at this stage.

In relation to Schedule 3 of the bill, the committee reiterates its comments regarding the human rights compatibility of ministerial authorisations for intelligence activities, as set out in *Report 2 of 2022* (in relation to the National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Bill 2021).

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**Online Safety Amendment (Protecting Australian Children from Online Harm) Bill 2023**

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No comment

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**Superannuation (Better Targeted Superannuation Concessions) Imposition Bill 2023**

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No comment

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**Telecommunications Legislation Amendment (Enhancing Consumer Safeguards and Other Measures) Bill 2023**

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No comment

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**Treasury Laws Amendment (Better Targeted Superannuation Concessions and Other Measures) Bill 2023**

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No comment

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**Treasury Laws Amendment (Reserve Bank Reforms) 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 21 November to 7 December 2023<sup>6</sup> 100

Legislative instruments commented on in report<sup>7</sup> 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 (Transitional Entity) Amendment Rule 2023

By authorising the provision of controlled access to Australian government data to the prescribed entity until 30 July 2025, this measure engages and limits the right to privacy and in this regard the committee refers to its advice in *Report 1 of 2023* (in relation to the Data Availability and Transparency (Consequential Amendments) Transitional Rules 2022).

### Extradition (Czech Republic) Regulations 2023

The committee reiterates its comments in *Report 8 of 2023* (in relation to the Extradition (Republic of North Macedonia) Regulations 2023) regarding the human rights compatibility of the *Extradition Act 1988*.

<sup>6</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>7</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.