

## 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 at the page numbers indicated.

### Bills

#### Chapter 1: New and continuing matters

Bills introduced 9 to 11 May 2023	10
Bills commented on in report <sup>2</sup>	6
Private members or senators' bills that may engage and limit human rights	1
Bills committee is seeking further information following receipt of ministerial response	1

#### Chapter 2: Concluded

Bills committee has concluded its examination of following receipt of ministerial response	1
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#### Acts Interpretation Amendment (Aboriginality) Bill 2023

The committee makes no comment on this bill on the basis that the first reading was negated and will therefore not proceed to further stages of debate.

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- 1 This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 6 of 2023*; [2023] AUPJCHR 50.
  - 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.

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### Appropriation Bills 2023-2024<sup>3</sup>

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*Advice to*            **Appropriation of money to fund public services**

*Parliament*        *Multiple rights*

[\*pp. 9-15\*](#)

These bills seek to appropriate money from the Consolidated Revenue Fund for a range of services. Proposed government expenditure to give effect to particular policies may engage, limit or promote multiple human rights, including civil and political rights and economic, social and cultural rights. The rights of vulnerable groups, including women, Aboriginal and Torres Strait Islander people, people with disability, children and ethnic minorities, may be engaged where policies have a particular, direct impact on these groups. However, the statements of compatibility accompanying these bills state that no rights are engaged.

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 that the allocation of funds via appropriations bills is susceptible to a human rights assessment that is directed at broader questions of compatibility. The committee notes the inclusion of a 'Women's Budget Statement' demonstrates that it is possible to assess the impact of appropriations on the rights of specific groups. The committee also considers that a statement of compatibility with human rights should address the compatibility of measures which directly impact human rights and which are not addressed elsewhere in legislation, as the appropriation bills may be a key opportunity for the Parliament to consider the compatibility of the measure with human rights. The committee considers that further information is required to fully assess the compatibility of the measure, and is seeking further information from the minister.

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### Crimes and Other Legislation Amendment (Omnibus) Bill 2023

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*Advice to*            **Suspension of witness protection and assistance**

*Parliament*        *Rights to life and security of person*

[\*pp. 45-53\*](#)

This bill, among other things, seeks to enable the temporary suspension of a participant's protection and assistance provided under the National Witness Protection Program, either at the request of the participant or at the discretion of the Australian Federal Police (AFP) Commissioner or a delegate.

Suspending witness protection or assistance for a participant may expose the participant to possible harm. As a result, the measure engages and may limit the rights to life and security of person.

The committee considers that while the measure likely pursues a legitimate objective and is accompanied by some important safeguards, some concerns remain as to whether the measure is sufficiently circumscribed, given the broad scope of the Commissioner's powers and the potentially low basis for suspending

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3      Appropriation Bill (No. 1) 2023-2024; Appropriation Bill (No. 2) 2023-2024; Appropriation Bill (No. 3) 2022-2023; Appropriation Bill (No. 4) 2022-2023; Appropriation (Parliamentary Departments) Bill (No. 1) 2022-2023; and Appropriation (Parliamentary Departments) Bill (No. 2) 2022-2023.

protection or assistance. Depending on how the suspension powers are exercised in practice, the committee considers there may be a risk that the proposed limitations on the rights to life and security of person would not, in all circumstances, be proportionate.

The committee [recommends](#) a number of amendments to the bill to assist with proportionality and that the statement of compatibility be updated, and otherwise draws these human rights concerns to the attention of the Attorney-General and the Parliament.

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### Defence Legislation Amendment (Naval Nuclear Propulsion) Bill 2023

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No comment

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### Defence Capability Assurance and Oversight Bill 2023

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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.

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### Social Services Legislation Amendment (Child Support Measures) Bill 2023

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*Seeking  
further  
information*

[pp. 16-25](#)

#### **Departure authorisation certificates**

#### *Right to freedom of movement*

This bill would expand the circumstances in which a child support debtor who is subject to a departure prohibition order (restricting them from leaving Australia) may be refused a departure authorisation certificate (which would allow them to leave Australia for a foreign country). It would provide that a certificate cannot be issued solely where a person has given a security for their return (as the law currently provides). The bill would require that a person must have given a security for their return and have satisfied the Child Support Registrar that they will wholly or substantially discharge the outstanding child support or carer liability (or the debt is irrecoverable or they will likely no longer have such a debt).

This limits the right to freedom of movement. The Minister for Social Services provided the committee with information in relation to the compatibility of the measure with this right. However, the committee considers that further information is required to fully assess the compatibility of the measure, and is seeking further information from the minister.

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### Treasury Laws Amendment (2023 Measures No. 2) 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 29 March and 2 April 2023<sup>4</sup> 37

Legislative instruments commented on in report<sup>5</sup> 3

### Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response 2

### Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) Amendment (No. 4) Instrument 2023 [[F2023L00383](#)]

This legislative instrument imposes 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.<sup>6</sup> However, as this legislative instrument does not appear to designate or declare any individuals who are currently within Australia's jurisdiction, the committee makes no comment in relation to this instrument at this stage.

### Family Law (Bilateral Arrangements – Intercountry Adoption) Regulations 2023 [[F2023L00309](#)]

*Advice to Parliament*      **Intercountry adoption with prescribed overseas jurisdictions**  
*Rights of the child and right to protection of the family*

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

[pp. 54-64](#)

These regulations declare the Republic of Korea and Taiwan as 'prescribed overseas jurisdictions' for the purposes of bilateral arrangements between Australia and these overseas jurisdictions with respect to intercountry adoptions. The regulations also specify when an intercountry adoption will be recognised and effective under Australian law.

The committee notes that the regulations could have a positive impact on these rights insofar as they facilitate legal recognition of intercountry adoptions. Noting that intercountry adoption may involve the separation of families and involves the placement of a child in alternative care outside their country of origin, the committee considers there may be risk that the rights of the child and the right to protection of the family are limited if the intercountry adoption is not undertaken in compliance with international human rights law, in particular, with the Hague Convention.

On the basis of the advice provided by the Minister for Social Services, the committee considers the country program review process – which found the intercountry adoption programs in the Republic of Korea and Taiwan to be in compliance with the Hague Convention – as well as the Commonwealth-State Agreement, to be important safeguards. These ensure intercountry adoptions facilitated under bilateral arrangements with overseas jurisdictions, that are not party to the Hague Convention, are nevertheless compliant with international human rights law.

The committee recommends that the statement of compatibility be updated to reflect the information provided by the minister and otherwise considers its concerns have been addressed and makes no further comment.

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### **Migration (Regional Processing Country – Republic of Nauru) Designation (LIN 23/017) [F2023L00093]**

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*Advice to  
Parliament*

**Designation of Nauru as a regional processing country**  
*Multiple rights*

[pp. 65-86](#)

This legislative instrument designates Nauru as a regional processing country, the effect of which is to enable the operation of section 198AD of the *Migration Act 1958*, which requires that an officer must, as soon as reasonably practicable, remove an unauthorised maritime arrival from Australia and take them to a regional processing country. By designating Nauru, this measure has the effect of requiring the removal of any future unauthorised maritime arrivals from Australia to Nauru, which engages and limits multiple human rights.

The committee notes that it has repeatedly raised serious concerns about the adequacy of protections against the risk of refoulement in the context of offshore refugee processing, and has raised a range of human rights concerns in relation to persons removed to Nauru. The committee considers that the re-designation of Nauru as a regional processing country enlivens these human rights concerns and, having regard to these concerns, there is a risk that this instrument is not consistent with Australia's absolute non-refoulement obligations and the prohibition against torture. The committee also considers that the remedies available do not meet the threshold required by the right to an effective remedy. While the committee welcomes the fact that no children have been transferred to Nauru since February 2019, it considers that there are not sufficient safeguards in place to adequately protect the rights of the child. The committee further considers that it

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is not clear that the differential treatment of persons based on their national origin would be permissible, meaning there is a risk that the measure breaches the right to equality and non-discrimination.

The committee draws these human rights concerns to the attention of the minister and the Parliament.

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### **Migration (Specification of evidentiary requirements – family violence) Instrument (LIN 23/026) 2023 [F2023L00382]**

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*Seeking  
information*

#### **Evidence of family violence**

*Right to equality and non-discrimination*

[pp. 26-29](#)

This legislative instrument specifies the items of acceptable evidence for a non-judicially determined claim of family violence for the purposes of the Migration Regulations 1994. If a person on a visa who was in a relationship with their sponsor can make out a claim of family violence they may be eligible for a permanent visa. If they are unable to make out such a claim, they may be required to leave Australia.

The committee notes that restricting the types of evidence which will be accepted as evidence of family violence to official sources of information, within the context of applications for a visa, engages and may limit the right to equality and non-discrimination, noting that applicants from non-English speaking backgrounds or certain cultural backgrounds may face more difficulties in obtaining such evidence. The committee is seeking further information from the Minister for Home Affairs to assess the human rights compatibility of this measure.

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### **Public Service Regulations 2023 [F2023L00368]**

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*Seeking  
information*

#### **Direction to attend medical examination**

*Rights to privacy, work and equality and non-discrimination and rights of people with disability*

[pp. 30-38](#)

These regulations allow an Agency Head to direct an APS employee to undergo a medical examination by a medical practitioner nominated by the Agency to assess the employee's fitness for duty and give the Agency Head a report of the examination within a specified period.

By directing an employee to undergo a medical examination and provide the results of that examination to their employer, the measure engages and limits the right to privacy. To the extent that the measure has a disproportionate impact on people with disability, it may engage and limit the rights of people with disability and the right to equality and non-discrimination. Depending on the outcome of the medical examination and any consequential action taken by the employer, the measure may also engage and limit the right to work.

The committee is seeking further information from the Minister for the Public Service to assess the compatibility of this measure with these rights.

#### **Use and disclosure of personal information**

*Right to privacy*

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The regulations authorise an Agency Head, the Australian Public Service Commissioner and the Merit Protection Commissioner to use and disclose personal information that is in their possession or under their control in certain circumstances. By authorising the use and disclosure of personal information, the measure engages and limits the right to privacy.

The committee is seeking further information from the Minister for the Public Service to assess the compatibility of the measure with this right.

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### **Telecommunications (Interception and Access) (Enforcement Agency – NSW Department of Communities and Justice) Declaration 2023 [F2023L00395]**

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*Seeking  
information*

#### **Access to telecommunications data by corrective service authorities**

*Right to privacy*

[pp. 39-43](#)

The *Telecommunications (Interception and Access) Act 1979* (TIA Act) provides that an authorised officer in an enforcement agency can authorise the disclosure of such data if it is for the purposes of enforcing the criminal law or a law imposing a pecuniary penalty, or for the protection of public revenue. This legislative instrument declares the NSW Department of Communities and Justice to be an enforcement agency, and each staff member of Corrective Services NSW to be an officer, for the purpose of the TIA Act.

The power to declare a corrective services authority as an enforcement body, meaning it may access telecommunications data, engages and limits the right to privacy. The committee is seeking further information from the Minister for Home Affairs to assess the compatibility of this measure with the right to privacy.

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