Report snapshot[1]

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 8 October to 11 November 2024	24
Bills commented on in report[2]	1
Private members or senators' bills that may engage and limit human rights	0
Chapter 2: Concluded	
Bills committee has concluded its examination of following receipt of ministerial response	2

Accountability of Grants, Investment Mandates and Use of Public Resources Amendment (End Pork Barrelling) Bill 2024 [No. 2]

No comment

Aged Care Bill 2024

Advice to Parliament

Commonwealth aged care system (including statement of rights, restrictive practices, supporters and guardians, publication of banning orders and information sharing)

Multiple rights

The committee thanks the minister for the provision of a response and reiterates the recommendations it made in *Report 9 of 2024*.

With respect to the proposed statement of rights, the committee reiterates that, in view of the direct connection between several of

1 This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 10 of 2024*; [2024] AUPJCHR 78.

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 rights contained in the statement of rights, and key human rights contained in the International Covenant on Civil and Political Rights, it would be appropriate for the bill to be amended to identify that the bill gives effect to Australia's obligations under the International Covenant on Civil and Political Rights. The committee recommends that subclause 5(a) of the bill be amended to include reference to Australia's obligations under the International Covenant on Civil and Political Rights.

Aged Care Legislation Amendment Bill 2024

No comment

Better and Fairer Schools (Funding and Reform) Bill 2024

No comment

Communications Legislation Amendment (Combatting Misinformation and Disinformation) Bill 2024

Advice to Parliament

Regulating digital content

Multiple rights

The committee thanks the minister for the provision of a response and reiterates the recommendations it made in *Report 9 of 2024*.

The committee further considers that, having regard to the additional information provided with respect to the right to an effective remedy, there appear to be insufficient remedies available with respect to breaches of human rights (including the right to freedom of expression and privacy), which raises questions as to whether there is an effective remedy. The committee recommends that consideration be given to amending the bill to require the Australia Communications and Media Authority (ACMA) to establish a complaints mechanism to handle complaints with respect to breaches of human rights arising from the proposed scheme.

Competition and Consumer Amendment (Tougher Penalties for Supermarket and Hardware Businesses) Bill 2024

No comment

Corporations Amendment (Streamlining Advice Process) Bill 2024

No comment

Customs Amendment (ASEAN-Australia-New Zealand Free Trade Area Second Protocol Implementation and Other Measures) Bill 2024

No comment

Customs Tariff Amendment (Incorporation of Proposals and Other Measures) Bill 2024

No comment

Cyber Security Bill 2024

No comment

Environment Protection and Biodiversity Conservation Amendment (Reconsideration of Decisions) Bill 2024

No comment

Food and Grocery (Mandatory) Code of Conduct Bill 2024

No comment

Free TAFE Bill 2024

No comment

Help to Buy (Consequential Provisions) Bill 2023 [No. 2]

No comment

Help to Buy Bill 2023 [No. 2]

No comment

Higher Education Support Amendment (Fair Study and Opportunity) Bill 2024

No comment

Intelligence Services and Other Legislation Amendment (Cyber Security) Bill 2024

No comment

Interactive Gambling Amendment (Ban Gambling Ads) Bill 2024

No comment

Migration Amendment Bill 2024 and related instrument[3]

Seeking Information	**Visa cancellation, bridging visa conditions and associated measures** *Multiple human rights* The bill seeks to amend the *Migration Act 1958* to provide for the cessation of certain bridging visas, enable protection findings to be

[3] Migration Amendment (Bridging Visa Conditions) Regulations 2024

reversed, permit the disclosure of criminal history information (both domestically and to foreign countries), and enable Australia to establish third country reception arrangements, enabling people who have had their visa ceased to be removed to those countries. The bill also seeks to alter the test by which the minister may remove certain bridging visa conditions (relating to electronic monitoring and curfews). The Migration Amendment (Bridging Visa Conditions) Regulations 2024 (which took effect from 10.13am on 7 November 2024) changed the test for where the minister may impose visa conditions, including curfews or electronic monitoring, on a bridging visa.

The measures in this bill and legislative instrument engage and may limit multiple human rights, including: criminal process rights; effective remedy; expulsion of aliens; freedom of movement; health; liberty; non-refoulement; privacy; protection of the family; and the prohibition on torture and cruel, inhuman or degrading punishment. The committee is seeking further information from the minister in order to assess the compatibility of these measures with these human rights.

National Broadband Network Companies Amendment (Commitment to Public Ownership) Bill 2024

No comment

Navigation Amendment Bill 2024

No comment

Oversight Legislation Amendment (Robodebt Royal Commission Response and Other Measures) Bill 2024

No comment

Scams Prevention Framework Bill 2024

This bill seeks to establish a framework for the prevention of scams, the detail of which would be set out in delegated legislation. The scheme would provide for the sharing of personal information 'where appropriate', however the statement of compatibility provides no detail as to: what types of personal information may be shared (to whom or when) and subject to what (if any) privacy safeguards. No information is provided as to whether or how such disclosure would be subject to oversight and review, or whether a person whose privacy was breached as a result would have access to an effective remedy to address the breach (particularly in light of the proposed immunity from liability in the bill). The committee has authorised its secretariat to notify departments where statements of compatibility appear to be inadequate. As such, the committee's secretariat has written to the department in relation to this matter.

Security of Critical Infrastructure and Other Legislation Amendment (Enhanced Response and Prevention) Bill 2024

No comment

Sydney Airport Demand Management Amendment Bill 2024

No comment

Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024

The committee notes that this bill would engage and limit the privilege against self-incrimination and the right to privacy. While the statement of compatibility accompanying this bill identified the engagement of these rights, it did not provide sufficient information to demonstrate that the proposed limitations would likely be permissible under international human rights law. The committee considers that while the proposed limitations on rights would likely be permissible, having regard in particular to the regulatory context of the measures, the statement of compatibility should nevertheless have provide a detailed, reasoned and evidence-based assessment of each of the measures that would limit these rights. The committee has authorised its secretariat to notify departments where statements of compatibility appear to be inadequate. As such, the committee's secretariat has written to the department in relation to this matter.

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the Federal Register of Legislation between 7 September to 10 October 2024 and one further legislative instrument[4]	162
Legislative instruments commented on in report[5]	1

Chapter 2: Concluded

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

Legislation (Deferral of Sunsetting—Aged Care Instruments) Certificate 2024

This instrument defers sunsetting of a number of legislative instruments, including the Quality of Care Principles 2014, which set out the circumstances and requirements for the use of restrictive practices on persons receiving aged care services. The committee has commented on the significant human rights issues relating to the use of restrictive practices on persons in aged care, particularly in the context of legislation that amended the Quality of Care Principles 2014, such as the Quality of Care Amendment (Restrictive Practices) Principles 2022 (*Reports 1* and *3 of 2023*) and the Quality of Care Amendment (Minimising the Use of Restraints) Principles 2019 (*Inquiry Report 2019*). Most recently, in its consideration of the Aged Care Bill 2024 (in *Report 9 of 2024*), the committee considered that to the extent that requirements relating to the use of restrictive practices would strengthen the responsibilities of providers by enhancing safeguards around the use of restrictive practices, they may assist to ensure that rights are not impermissibly limited. However, allowing for the requirements to not apply in an emergency and authorising substitute decision-makers to consent to the restrictive practice on behalf of an individual who is considered to lack capacity (as is the case currently under the Quality of Care Principles 2014), would likely weaken the safeguard value of the requirements and may in practice increase the risk of human rights violations. The

[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, use the advanced search function on the Federal Register of Legislation, and select 'Collections' to be 'legislative instruments'; 'type' to be 'as made'; and date to be 'registered' and 'between' the date range listed above. This report includes consideration of the Migration Amendment (Bridging Visa Conditions) Regulations 2024 [F2024L01410], registered on 7 November 2024.

[5] Unless otherwise indicated, 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.

committee further considered that allowing substitute decision-makers to consent to the use of restrictive practices and granting complete immunity to persons who use restrictive practices in reliance of the consent of substitute decision-makers risks being incompatible with a range of human rights, particularly the rights of persons with disability.

By deferring the sunsetting of the Quality of Care Principles 2014, this instrument, in effect, remakes the legislation. As such, the committee's previous comments on the specific measures in the Quality of Care Principles 2014 relating to use of restrictive practices as well as the committee's comments on related aged care legislation, remain relevant. The committee draws these human rights concerns to the attention of the Attorney-General and the Parliament.

Legislation (Deferral of Sunsetting—Airport Instruments) Amendment Certificate 2024

The committee notes that this legislative instrument defers sunsetting of the Airports (Protection of Airspace) Regulations 1996 (regulations), which establish a system for the protection of airspace at, and around, airports. The committee notes that this is the first time a statement of compatibility has been prepared with respect to the regulations as a whole (noting that the regulations were initially made prior to this committee's establishment and the previous sunsetting certificate was exempt from disallowance). In such circumstances, the committee expects the statement of compatibility to provide a detailed, reasoned and evidence-based assessment of each measure that may engage and limit a right. The statement of compatibility accompanying this instrument did not meet the committee's expectations in this regard. The committee has authorised its secretariat to notify departments where statements of compatibility appear to be inadequate. As such, the committee's secretariat has written to the department in relation to this matter.

Legislation (Deferral of Sunsetting—National Security Information (Criminal and Civil Proceedings) Regulation) Certificate 2024

The committee notes that this legislative instrument defers sunsetting for 24 months of the National Security Information (Criminal and Civil Proceedings) Regulation 2015 (the regulation), which establishes obligations for the protection of national security information in federal criminal and civil proceedings to which the *National Security Information (Criminal and Civil Proceedings) Act 2004* (the NSI Act) applies. The committee has previously commented on the NSI Act in *Report 13 of 2020*, in relation to the right to a fair hearing and the withholding of certain evidence from a defendant in criminal proceedings and access to a special advocate. The committee notes that the Independent National Security Legislation Monitor conducted a review of the NSI Act in 2023 and Recommendation 12 recommends that the regulation expressly provide for the powers and obligations of special advocates in this context. The committee reiterates its concerns regarding the scheme for restricting access to national security information in criminal proceedings and special advocates and draws these human rights concerns to the attention of the Parliament.

Migration Amendment (Bridging Visa Conditions) Regulations 2024

Seeking Information	See summary above regarding the Migration Amendment Bill 2024

National Disability Insurance Scheme (Getting the NDIS Back on Track No. 1) (NDIS Supports) Transitional Rules 2024

This instrument sets out what supports are NDIS supports and what supports are *not* NDIS supports for the purposes of section 10 of the *National Disability Insurance Scheme Act 2013* (NDIS Act). It also sets out the transitional rule for participants' plans that commenced before schedule 1 of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024.* In effect, the transitional rule will ensure that participants who have a support stated in their plan or participants who have received a decision from the Administrative Appeals Tribunal that identifies a particular support as reasonable and necessary, can continue to access that support for the duration of their plan even if it is not declared to be an NDIS support under this instrument. Finally, the instrument prescribes the supports and conditions for the purposes of the CEO of the National Disability Insurance Agency (NDIA) making a replacement support determination under subsection 10(6) of the NDIS Act. Subsection 10(6) of the NDIS Act allows the CEO to declare in relation to a participant that a support is taken to *not* be declared as a support that is not an NDIS support if certain criteria are met, including that the support is prescribed by the NDIS rules and the CEO is satisfied that any other conditions specified in the NDIS rules are met. The effect of a replacement support determination is that a support that has been declared to not be an NDIS support may nonetheless be considered to be an NDIS support for a particular participant and the participant can use their funding to purchase the support without contravening the requirements of their plan.

In *Reports 4* and *5 of 2024*, the committee considered that to the extent that the new definition of an NDIS support would have the effect of reducing the type of supports that will be funded by the NDIS and thus available for participants, it would engage and limit the rights of persons with disability as well as the rights to an adequate standard of living, health and social security. Additionally, to the extent that the measure applied to children, the rights of the child would be engaged and possibly limited. The committee considered that while the measure pursued a legitimate objective, there was a risk that, depending on how the NDIS rules were drafted, the measure may not be sufficiently flexible to ensure that any limitation on rights would be proportionate in each case. It recommended that future NDIS rules made for the purposes of section 10 of the NDIS Act contain sufficient flexibility such that where a support is either not declared to be an NDIS support or is declared to not be an NDIS support, the NDIA may nevertheless exercise discretion to approve the provision of that support through the NDIS if the participant has demonstrated a need for the support as a result of their disability.

Subsequently to the committee's concluding comments in *Report 5 of 2024* (tabled on 26 June 2024), there were numerous amendments to the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024, including amendments to the definition of NDIS support. In particular, subsection 10(6) of the NDIS Act was introduced, which as noted above, provides some flexibility to consider the individual needs of participants. In explaining subsection 10(6), the Revised Supplementary Explanatory Memorandum referenced the committee's recommendation that the NDIS rules should allow the NDIA to exercise discretion regarding supports that are declared to not be NDIS supports. The committee welcomes these subsequent amendments that responded to the committee's recommendation.

In relation to this instrument, the committee considers that to the extent that declaring certain supports to not be NDIS supports results in fewer supports being funded by the NDIS and thus available for participants, the committee considers that a number of rights may be limited, including the rights of persons with disability; the rights to an adequate standard of living, health and social

security; and the rights of the child (to the extent that the instrument applies to children). However, consistent with the committee's previous findings in *Report 5 of 2024*, the committee considers that clarifying what supports are and are not to be funded by the NDIS is a legitimate objective. The committee considers that the inclusion of subsection 10(6) of the NDIS Act assists with proportionality insofar as it provides some flexibility for participants to apply to the CEO for a determination that a support is an NDIS support even if it is declared not to be by this instrument. The transitional rule for current participants also assists with proportionality and mitigates the risk that the measure may be retrogressive, as it will ensure that supports that are currently funded under a participants' plan will continue to be funded until the plan expires (with some exceptions in relation to sexual services, alcohol and unlawful drugs). However, the committee considers that whether these safeguards will be sufficient will depend on how this instrument operates in practice (as much will depend on the extent to which it results in fewer supports being funded).

National Disability Insurance Scheme (Old Framework Plans) Determination 2024

This instrument sets out the methodology for funding NDIS participant supports under the 'old' framework plans, by way of categorising reasonable and necessary supports into groups of supports, specifying funding amounts for groups of supports and the total funding amount available, and specifying the periods in which the funding can be used. In *Reports 4* and *5 of 2024*, the committee commented on the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024 (now Act) as it was originally introduced on 27 March 2024 and as amended on 5 June 2024. The committee commented on sections 32E-32G which provide for the entitlement to flexible funding or stated supports in an NDIS participant's budget under the new framework plans and section 32K which provides for rules to be made to provide a method for how the total funding amount for flexible funding and/or funding for a stated support in a participant's plan must be worked out. The committee considered that, to the extent that the measure may result in fewer supports being approved and funded for participants and has an adverse impact on participants' independence and quality of life, the measures would engage and may limit several human rights. The committee notes that this instrument is concerned with the funding methodology for supports rather than determining which supports are available. As such, the committee considers it likely does not raise the same concerns. However, to the extent that this instrument does result in less funding for some NDIS participants, it may engage and limit similar rights. The committee therefore reiterates its previous comments and draws its broader concerns with the NDIS scheme to the attention of the Parliament.

National Redress Scheme for Institutional Child Sexual Abuse Amendment (2024 Measures No. 1) Rules 2024

Following changes made in the *National Redress Scheme for Institutional Child Sexual Abuse Amendment Act 2024* (amending Act) to remove the prohibition on persons in gaol applying for redress, this instrument amends the National Redress Scheme for Institutional Child Sexual Abuse Rules 2018 to give effect to these changes and provide for notice requirements to funders of last resort about the total amount of redress a person is to receive. While the committee notes this instrument gives effect to changes in the amending Act, the committee has previously commented on human rights issues in relation to this scheme on a number of occasions (see *Report 13 of 2017*, *Report 2 of 2018*, *Report 9 of 2018* and *Report 13 of 2023*). Most recently in *Report 13 of 2023*, the committee noted that the amending Act 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. To the extent that the prohibition is removed, this appears to promote the right to an effective remedy. However, the committee noted that some people with 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. As such, the committee reiterates its previous concerns in relation to the legislative framework in which this instrument operates.

Parliamentary Service Determination 2024

This instrument prescribes matters required or permitted by the *Parliamentary Service Act 1999* and repeals the Parliamentary Service Determination 2013. The instrument contains a number of measures relating to employment matters. The committee considers that many of these measures promote human rights, including the right to work and the right to equality and non-discrimination, but other measures may engage and limit human rights.

The instrument requires the Secretary to publish on the Public Service Gazette decisions relating to the termination of the employment of an ongoing Parliamentary Service employee on the ground of breach of the Code of Conduct. The employee's name must be included on the gazette unless the Secretary decides that the name should not be included because of the person's work-related or personal circumstances, or because including the name is not necessary to ensure public confidence in the integrity of the Parliamentary Service. The committee has previously commented on the privacy implications of this measure, including in the context of the Parliamentary Service Determination 2013 and various iterations of the Australian Public Service Commissioner's Directions. In relation to this instrument, the committee considers that the inclusion of the exception so that an employee's name may not be included on the gazette in certain circumstances is a sufficient safeguard to ensure that the limitation on the right to privacy is proportionate. Noting that the previous iteration of this instrument (in 2013) did not include such a safeguard, the committee welcomes the inclusion of this safeguard in this instrument and considers that it largely addresses its previous privacy concerns.

The instrument allows the Secretary to direct an employee to attend a medical examination by a medical practitioner nominated by the Secretary to assess the employee's fitness for duty and direct the employee to give the Secretary the report of that examination. The committee commented on a similar measure contained in the Public Service Regulations 2023 in *Reports 6* and *8 of 2023*. As these two measures are drafted in equivalent terms, the committee's previous comments in *Reports 6* and *8 of 2023* are applicable to this instrument. Directing an employee to undergo a medical examination and provide the results of that examination to their employer engages and limits the right to privacy and, if it were to disproportionately impact people with disability, the right to equality and non-discrimination and the rights of people with disability. The committee considers that the measure pursues the legitimate objective of enabling departments to meet their duty of care to employees and general work, health and safety obligations, and if the Secretary's power to direct an employee to attend a medical examination were exercised in the manner set out in the statement of compatibility, it would likely be reasonable and proportionate. However, the committee is concerned that the measure is drafted in broad terms that could allow the power to be used in circumstances that may be an impermissible limit on the right to privacy and may unlawfully discriminate against persons with disabilities. The committee reiterates its previous recommendation that the circumstances as to when a Secretary may come to believe that the state of health of an employee may be a relevant workplace consideration be more precisely defined.

Instruments imposing sanctions on individuals[6]

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.[7] 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 Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment (No. 2) Instrument 2024 [F2024L01165]; Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Myanmar) Amendment (No. 2) Instrument 2024 [F2024L01183]; Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Thematic Sanctions) Amendment (No. 5) Instrument 2024 [F2024L01258].

7 See, most recently, Parliamentary Joint Committee on Human Rights: *Report 2 of 2024* (20 March 2024) pp. 14–20 and *Report 15 of 2021* (8 December 2021).