



PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S STATEMENT TO THE HOUSE OF REPRESENTATIVES

Sixth Report of 2012

31 October 2012

On behalf of the Parliamentary Joint Committee on Human Rights I draw the attention of the House to the committee's sixth report of 2012.

This report reflects the committee's consideration of ten bills introduced during the period 9 to 11 October and 129 legislative instruments registered between 20 September and 16 October 2012.

In tabling this sixth report of the Parliamentary Joint Committee on Human Rights I would like to draw the attention of the House to the approach the committee has taken to limitations on the right to privacy in bills considered in this report.

Article 17 of the International Covenant on Civil and Political Rights, the ICCPR, provides that no-one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. It provides that everyone has the right to the protection of the law against such interference or attacks.

The right to privacy is one of the rights most commonly engaged in the bills considered by the committee to date. It may therefore be helpful if I outline some of the factors the committee has considered in determining whether provisions that limit this right are compatible with the right.

A wide range of government legislation, policies and programs have the potential to limit the right to privacy, including measures that:

- involve the collection, storage, disclosure or publication of personal information;
- provide for sharing of personal information across or within agencies;
- authorise powers of entry to premises or search of persons or premises; and/or
- provide for mandatory disclosure or reporting of information.

Such measures all amount to an interference with the right to privacy.

In order for any interference with an individual's privacy to be lawful and not to be 'arbitrary', the interference can only take place on the basis of law and must be for a legitimate objective and be reasonable, necessary and proportionate to that objective.

The relevant legislation must specify the precise circumstances in which interferences with the right to privacy may be permitted and should not give decision makers too much discretion in authorising interferences with privacy.

The legislation should provide proper safeguards against arbitrary interference.

In this sixth report the committee considers three bills that engage the right to privacy. The committee's comments on each of these bills highlight some key considerations that the committee applies to provisions that seek to limit this right.

The Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Bill 2012 includes a range of measures that seek to strengthen the Commonwealth's serious drug offences framework and ensure this framework remains up to date and effective in combating the illicit drug trade.

The bill creates new offences and police powers relating to the use of false identities for the purposes of travelling by air and gives police new powers to request identity information at airports.

The statement of compatibility for the bill acknowledges that this requirement engages the right to privacy and sets out a detailed justification for the necessity of the powers. The statement points to the inclusion of appropriate safeguards to ensure that the powers are connected to the objective and are no more restrictive than necessary.

In this case, the committee concurs that these powers are unlikely to raise issues of incompatibility with the right to privacy, and any interference with privacy would appear to be necessary to achieve the legitimate objective of investigating specific offences under the bill. The committee has noted in its report that the provisions appear to be drafted with sufficient precision and contain appropriate safeguards to ensure that the degree of interference in this case is proportionate to that objective.

The Fair Entitlements Guarantee Bill 2012 provides a scheme for the provision of financial assistance to former employees whose employment has ended as a result of the winding up or bankruptcy of their employer and who have not been fully paid for work done.

This bill provides for the sharing of personal information about an employer or employee between the department and other parties who have a need for the information in relation to the administration of the bill.

The committee considers that the information-sharing provisions in this case appear to be broadly consistent with article 17 of the ICCPR, as the proposed interference with the right to privacy is likely to be necessary to achieve the aim of administering this scheme and the provisions appear to be drafted with sufficient precision to ensure that the degree of interference is proportionate to that objective.

However, the committee notes that information may be disclosed under the bill to persons who are contracted by the Commonwealth for the purposes of passing an advance made under the scheme on to a recipient. The statement of compatibility notes that each specified party or agency to which information will be disclosed has its own legal and professional obligations about the collection, storage and use of personal information under privacy laws.

In addition, the statement claims that persons who are contracted by the Commonwealth will be bound by relevant privacy clauses in their contract. However, the committee notes that this requirement does not appear to be prescribed in the bill. The committee notes that there is no provision for an offence for the unauthorised disclosure of personal information, as is a common feature in legislation that permits the disclosure of personal information for certain purposes.

The committee has therefore written to the relevant minister seeking his advice regarding the desirability of including express privacy obligations for contractors in the legislation and seeking clarification for the decision not to explicitly prohibit the unauthorised disclosure of personal information.

The final bill I draw the attention of the House to today is the Regulatory Powers (Standard Provisions) Bill 2012.

This bill establishes a framework of standard regulatory powers exercised by Commonwealth agencies. The key features of the bill include monitoring and investigation powers as well as enforcement provisions through use of civil penalty, infringement notices, enforcement undertakings and injunctions.

The explanatory statement to the bill states that the investigation powers contained in the bill are commonly found across the statute book. The investigation powers provided in the bill include powers to search and seize evidential material as well as inspect, examine, measure and test anything on the premises. The bill provides for the use of civil penalties, infringement notices and injunctions to enforce provisions and the acceptance and enforcement of undertakings relating to compliance with provisions.

To activate the bill's provisions, new or existing Commonwealth laws must expressly apply the relevant provisions and specify other requisite information such as persons who are authorised to exercise the applicable powers.

While the committee appreciates the significance of this bill in potentially simplifying and streamlining the statute book, the committee has found it difficult to determine the operation of the individual provisions and how they may impact on human rights from the level of detail provided in the statement of compatibility.

Because the bill is one of general application, the committee considers that it would be difficult to reach a definitive view on the bill's human rights compatibility. The committee considers that each application of the bill's provisions would need to be assessed on a case-by-case basis. Indeed the explanatory memorandum to the bill notes that future legislation incorporating provisions in this bill will be subject to parliamentary scrutiny and that this ensures that distinct assessments of human rights engagement and compatibility will be apparent in the drafting and scrutiny process.

Nevertheless, the committee considers that the overall compatibility of this bill with the right to privacy might be improved by the inclusion of adequate safeguards to ensure that the relevant powers are, as far as possible, appropriately targeted and circumscribed to minimise the risk that they could be exercised inconsistently with human rights.

In this regard, the committee notes that the bill would appear to apply the full range of powers to each triggering law regardless of their necessity to the particular regulatory scheme.

The committee has therefore written to the Attorney-General to seek further clarification regarding the intended operation of the bill and, in particular, whether consideration has been given in drafting the bill to including safeguards to ensure that the powers will be exercised in a manner that is proportionate to its purpose and whether safeguards for the storage, use and disclosure of any personal information collected through the exercise of these powers have been considered.

My intention in drawing these three examples to the attention of the House today is merely to illustrate how the committee approaches the question of compatibility with the right to privacy and the circumstances in which the committee may determine that further information or clarification from a minister may assist the committee's deliberations. I hope this insight into the committee's approach will be of assistance to the parliament in making use of the committee's reports. I hope that it will be of assistance to ministers and their departments and to members and senators in the consideration of the human rights implications when drafting legislation and preparing statements of compatibility.

I commend the report to the House.