

***PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS***

***THIRD REPORT OF 2013***

**CHAIR'S TABLING STATEMENT**

**WEDNESDAY 13 MARCH 2013**

In this third report for 2013 of the Parliamentary Joint Committee on Human Rights, the committee has considered 29 bills introduced during the period 5 to 28 February 2013 and 300 legislative instruments registered between 5 January and 15 February 2013.

One bill and a number of instruments were introduced without statements of compatibility and the committee proposes to write to the relevant ministers seeking advice as to the reason for this.

The committee has decided that 17 bills require further examination and has written to the relevant ministers seeking further information. The remaining 12 bills do not appear to raise human rights compatibility concerns.

The committee has sought further information in relation to four legislative instruments before forming a view about their human rights compatibility. It has decided to consider one instrument as part of the package of legislation relating to the *Stronger Futures in the Northern Territory Act 2012*. The committee has also deferred its

consideration of another instrument to allow closer examination of the issues raised.

The committee will write to the relevant ministers in a purely advisory capacity in relation to 83 legislative instruments that do not appear to raise any human rights compatibility concerns but are accompanied by statements of compatibility that do not fully meet the committee's expectations providing guidance on the preparation of statements of compatibility.

The remaining 211 instruments do not appear to raise any human rights compatibility concerns and are accompanied by statements of compatibility that the committee considers to be adequate.

The committee has considered 16 ministerial responses to comments made in previous reports and has concluded its examination of seven of these pieces of legislation. In its comments on one bill the committee has suggested some modifications to the explanatory memorandum and has suggested the inclusion of safeguards for two bills.

Generally speaking, the responses received have been both timely and comprehensive. Unfortunately a few have not addressed the questions posed by the committee and two responses have been received well after the legislation in question has been passed. This is a source of some frustration to the committee as it would prefer to conclude its

examination of legislation while the legislation is still before the Parliament.

A number of the bills considered by the committee in this report have prompted it to reflect on some fundamental principles with regard to its role in the scrutiny of legislation.

The first of these is scrutiny of the human rights impacts of appropriation bills.

In commenting on Appropriation Bill (No. 3) 2012-2013 and Appropriation Bill (No. 4) 2012-2013 the committee has noted that it does not anticipate that it will generally be necessary for it to make substantive comments on such bills.

Nonetheless, the committee has set out its expectation that the incorporation of human rights considerations into the underlying budgetary processes, where appropriate, would provide the most practical approach to ensuring that human rights are taken into account in the development of policy and legislation. The committee has stated that it would find it helpful if the statements of compatibility that accompany appropriation bills identify any proposed cuts in expenditure that may amount to retrogression or limitations on human rights.

The next principle is the role of principal acts in the committee's scrutiny of bills and instruments.

The committee has noted that where an amending bill incorporates the provisions of an existing Act, there is a tendency for the proponent of the legislation to focus purely on the extent to which the amendments engage human rights, and not consider the human rights compatibility of provisions in the act that are to be applied or extended by the amending legislation.

In its comments in this report on the Royal Commissions Amendment Bill, the committee has set out its expectation that, in such circumstances, the statement of compatibility should include an analysis of the human rights implications and compatibility of the provisions of the existing or parent act as they are applied or extended by the amending legislation. The committee expects that this practice will be adopted even where the parent act commenced operation before the commencement of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

This approach is consistent with the committee's functions under that act in two respects. First, the operation of amendments have to be analysed in terms of their legal effect and practical impact, which can only be done by reviewing their operation in the statutory framework of which they form part. Second, such a review contributes to the committee's performance of its mandate 'to examine acts for

compatibility with human rights, and to report to both houses of the parliament on that issue'.

The committee has iterated this view in its comments on the Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2013, which amends the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, which was passed on 23 August 2012.

In the case of this bill, the committee has also taken the opportunity to set out its expectation regarding the human rights scrutiny of national cooperative or uniform schemes of legislation resulting from intergovernmental agreements.

While the minor amendments proposed by the Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2013 do not give rise to any human rights concerns of themselves, the committee considers that the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* does.

The bill for this Act was not subject to scrutiny by this committee as it was introduced before the committee had commenced its work examining bills. The committee has therefore taken the opportunity to consider the amending bill in the context of the principal Act.

In its discussion of the two pieces of legislation, the committee has noted the challenges for human rights scrutiny posed by national

cooperative schemes of legislation. In particular, the committee has noted that, as such legislation is formulated following the conclusion of an intergovernmental agreement, there may be very limited possibility or no possibility for a legislature which has the function of assessing human rights compatibility to do so at a time when such consideration may influence the final content of the legislation.

The committee has stated that, in its view, the issue of compatibility with human rights should be an integral part of the development of any national scheme legislation. The committee is concerned that this does not appear to have been the case on this occasion. The committee has stated its view that draft national scheme legislation should be accompanied by a human rights analysis, both during intergovernmental negotiations and during any public consultations undertaken. The committee intends to seek information on whether existing procedures or agreements relating to the negotiation of intergovernmental agreements ensure that compatibility with human rights is an integral and explicit part of the design of such schemes and implementing legislation.

I commend the report to the House.