

# **PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS**

## **CHAIR'S TABLING STATEMENT**

**WEDNESDAY 6 FEBRUARY 2013**

In this first report of the Parliamentary Joint Committee on Human Rights for 2013, the committee has considered 30 bills introduced during the period 19 to 29 November 2012 and 294 legislative instruments registered between 17 November 2012 and 4 January 2013. All bills were introduced with statements of compatibility. Some instruments were not accompanied by statements of compatibility and the committee proposes to write to the relevant ministers seeking advice as to the reasons for this.

The committee has decided that 14 bills require further examination and has written to the relevant ministers seeking further information. The committee deferred consideration of the Native Title Amendment Bill 2012 as it is currently the subject of inquiry by two other committees. The committee proposes to take account of evidence placed before these committees where it is relevant to the consideration of human rights concerns raised by the bill. The remaining 15 bills do not appear to raise human rights compatibility concerns. The committee has sought further information in relation to 13 legislative instruments before forming a view about their human rights compatibility. It is considering one instrument as part of a package of legislation relating to the Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012.

One hundred and sixteen instruments 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. The committee will write to the relevant ministers, in a purely advisory capacity, providing guidance on the preparation of statements of compatibility. The committee hopes that this approach will assist in the preparation of future statements. The remaining 164 instruments do not appear to raise any human rights compatibility concerns and are accompanied by statements of compatibility that the committee considers adequate. The committee has considered 11 ministerial responses to comments made in previous reports and has concluded its examination of these pieces of legislation.

I conclude by making some brief remarks regarding a common issue the committee has observed in the bills considered in this report. The committee notes that there has been a trend in recent bills towards creating standardised civil penalty regimes. This is given its clearest effect in the model provisions contained in the Regulatory Powers (Standard Provisions) Bill 2012, which the committee considered in its sixth report of 2012. Four bills considered by the committee in this report contain provisions of this nature and provide an opportunity to reflect on the effect of the Regulatory Powers (Standard Provisions) Bill 2012. These are the Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012, the Biosecurity Bill 2012, the Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Bill 2012 and the Superannuation Legislation Amendment (Reducing Illegal Early Release and Other Measures) Bill 2012.

The committee considers that civil penalty regimes raise concerns because there is a tendency for the consideration of the impact of such bills on human rights to focus on the description of the offences as civil penalties. However, as the committee remarked in its fifth report of 2012, it is possible for a civil penalty regime to constitute a criminal charge. The committee noted that the approach under international and 6 comparative human rights law has been to look at the substance and the effect of proceedings, not just their label. The committee notes that, in determining the question of whether an offence is a criminal offence, international jurisprudence has identified that the following factors are to be taken into account: the classification of the act in domestic law, the nature of the offence, the purpose of the penalty and the nature and severity of the penalty.

The committee is concerned that where the effect of such provisions has not been adequately considered there is a risk that the provisions will not have been tested against the criminal proceedings rights in article 14 of the International Covenant on Civil and Political Rights. This in turn can give rise to issues regarding the standard of proof for such offences and the potential for double jeopardy, where a person may be subject to two penalties in relation to the same conduct.

I draw the attention of the House to the committee's comments in relation to the civil penalties provided for in these four bills. I recommend the report to the House.