

SPEECH

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Questioner	Responder
Speaker Henderson, Sen Sarah	Question No.

Senator HENDERSON (Victoria) (17:02): I'm pleased to speak to the Parliamentary Joint Committee on Human Rights sixth scrutiny report of 2020, which was tabled out of session on 20 May. This report contains a technical examination of legislation with Australia's obligations under international human rights law.

During this COVID-19 pandemic, the committee has continued to meet regularly via teleconference so that it can fulfil its important role in scrutinising legislation. In addition to report 6, the committee has also tabled two earlier scrutiny reports out of session—on 4 and 29 April 2020. In producing these three reports, the committee has considered 69 bills and 477 legislative instruments, including 13 bills and 136 legislative instruments which were COVID-19 related. The committee has also written to ministers advising them of the committee's ongoing work at this time. The committee has also reached out to a range of non-government organisations, inviting correspondence as to the human rights impacts of federal COVID-19 related legislation. That correspondence is published on the committee's web page, together with a list of all federal legislation related to COVID-19. In addition, the committee has liaised with the United Kingdom Joint Committee on Human Rights on the way in which human rights committees can consider the human rights implications of legislative responses to the COVID-19 crisis.

This pandemic has required governments across the globe to introduce legislative measures seeking to contain the outbreak and respond to its impacts. In Australia the government has implemented vital measures to control the entry, establishment and spread of COVID-19 as well as help to manage the impact of the pandemic on jobs and the economy. The committee considers that such measures promote a number of human rights, and I might add also that I am incredibly proud of the way in which our government has responded to this pandemic—as I've already put on the record—and, in particular, measures taken to control the entry, establishment and spread of COVID-19, and promote and protect the rights to life and health.

The right to life requires the state to take positive measures to protect life. The United Nations Human Rights Committee has stated that the duty to protect life implies that state parties should take appropriate measures to address conditions in society that may give rise to direct threats to life, including life-threatening diseases. The right to health is the right to enjoy the highest attainable standard of physical and mental health. Australia is required to take steps to prevent, treat and control epidemic diseases.

As chair of the human rights committee, I commend the government on its efforts to promote the right to life and to health by controlling the entry, establishment and spread of COVID-19 in Australia and, of course, in relation to many other measures. The committee also recognises that legislative measures taken in response to this pandemic may limit human rights, including, for example, the freedom of movement and liberty, privacy, equality and nondiscrimination. This is a natural consequence of the need to control and limit the spread of a highly contagious and potentially deadly disease.

International human rights law recognises that reasonable limits may be placed on most rights and freedoms, even in such times of emergency. Such rights may be subject to permissible limitations where the limitation pursues a legitimate objective, is rationally connected to that objective and is a proportionate means of achieving that objective. In assessing the COVID-19 related legislation, the committee considers these matters, and where it does not have sufficient information to make this assessment it seeks further information from ministers.

I do wish to address in this contribution some comments raised by some other committee members in various contributions they have made in the parliament, in particular Senator McKim; and the deputy chair of the committee, the member for Moreton, Mr Perrett. I want to state very clearly for the record that I reject any suggestion that the committee has been politicised under my chairmanship.

Keen observers of the committee's work will notice some significant differences in the way we report. No longer is the legal advice to the committee blended or integrated with the view or assessment of committee members. In

this respect there is now far greater transparency, and it is clear on the face of the report the legal advice provided to the committee and the consequent view taken by committee members. There will, at times, be different views and they are properly expressed through dissenting reports.

Assessing whether legislation complies with Australia's obligations under human rights law sometimes requires a difficult and delicate balancing act between whether a human right is limited and whether this can be appropriately justified by way of a permissible limitation. This will invariably lead to different views and, in a democracy such as ours, so it should.

No member of this committee is a rubber stamp and, under my chairmanship, I celebrate the fact that committee members may and will have different views. I have also been concerned that there has not been in the past enough focus on positive human rights, meaning the positive rights which flow from new or amended laws or regulations. The committee has worked hard to recognise positive human rights in its reports such as the rationale which underpins so much of the COVID-19 legislation, including the right to life and the right to health.

I am pleased to report to the Senate that the committee will continue to meet regularly throughout this pandemic and progress its vital work of considering the human rights implications of all new legislation. I encourage all parliamentarians to carefully consider the committee's analysis of COVID-19 related legislation and other legislation in each of its reports. With these comments, I commend the committee's report No. 6 of 2020 to the chamber.