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HOUSE OF REPRESENTATIVES

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COMMITTEES

Human Rights Joint Committee

Report

SPEECH

Wednesday, 26 March 2025

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

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Questioner	Responder
Speaker Burns, Josh MP	Question No.

Mr BURNS (Macnamara) (17:04): On behalf of the Parliamentary Joint Committee on Human Rights, I present the following reports: *Human rights scrutiny report: report 2 of 2025*; *Human rights scrutiny report: report 3 of 2025*, incorporating a dissenting report; and the annual report 2024.

Report made a parliamentary paper in accordance with standing order 39(e).

Mr BURNS: by leave—I'm pleased to present the Parliamentary Joint Committee on Human Rights's second scrutiny report of 2025 and table its third scrutiny report of 2025 and the annual report for 2024.

In our second and third scrutiny reports, the committee has considered 26 new bills and 477 new legislative instruments, commenting on one bill and five instruments. In our second scrutiny report, the committee commented on the Extradition Legislation Amendment (Commonwealth Countries) Regulations 2024. These regulations amend the definition of an 'extradition country' in the Extradition (Commonwealth Countries) Regulations 2010. The effect is to establish new extradition relationships with Cameroon, Gabon, Mozambique, Rwanda and Togo and continue extradition relationships with all other Commonwealth countries and British overseas territories that were previously listed in extradition regulations. The regulations also amend requirements relating to documents that must be produced by the Commonwealth country seeking extradition.

The committee notes that facilitating the extradition of persons in Australia to various Commonwealth countries and British overseas territories to face proceedings pursuant to the Extradition Act engages and may limit multiple human rights. The committee has considered the human rights capability of the Extradition Act and related legislative instruments on a number of previous occasions. The committee has concluded that such legislation risks being incompatible with multiple rights, including the prohibition against cruel, inhuman or degrading treatment or punishment and the rights to a fair hearing, equality and nondiscrimination, liberty and effective remedy. The committee has previously recommended amendments to the Extradition Act to improve its human rights capability. However, noting these recommendations have not yet been implemented, the committee's previous human rights concerns in relation to the Extradition Act remain applicable to these regulations.

In particular, the committee is concerned that many of the safeguards in the Extradition Act are discretionary, relying on the Attorney-General to exercise their general discretion not to surrender a person for extradition in various circumstances where there is a risk of human rights violations. The committee is concerned that discretionary safeguards in these circumstances are insufficient to adequately protect human rights. The committee also considers that the presumption against bail in the Extradition Act and the lack of any ability to challenge the lawfulness of such continued detention is incompatible with the rights to liberty and effective remedy. As such, the committee considers that the regulations also risk incompatibility with these rights. The committee reiterates its previous recommendation to amend the Extradition Act to improve human rights compatibility.

In our third scrutiny report, the committee commented on the Migration (Public Interest Criterion 4022—Code of Behaviour) Instrument 2025, and this requires certain visa holders to sign an enforceable code of behaviour, where breach of the code could lead to visa cancellation, immigration detention or reduction in income support. The code of behaviour was introduced in 2013 and then extended in 2024. This code of behaviour replicates the 2024 version of the code. The committee raised human rights concerns in relation to the code of behaviour when it was introduced in 2013 and again in 2024 when its operation was extended pending consultation and review.

In 2024, the committee recommended that a review of the code, which was noted as the reason for its extension, should closely consider the committee's previous comments. However, the committee notes with concern that this instrument replicates the 2024 code without any consultation or apparent review, contrary to the government's prior commitment. Further, the explanatory statement accompanying the instrument makes no reference to the committee's previous human rights concerns. As such, the committee reiterates our prior comments on the code

of behaviour as they remain relevant to this instrument. The committee does make recommendations based on legal advice and the human rights considerations of this instrument, and we hope that they are taken seriously. The committee would again stress that the government take these on board and consider them in the future.

In particular, the committee considers that it is not clear that the code satisfies the quality of law test or pursues a legitimate objective, noting that the code is drafted in vague terms and it has not yet been demonstrated that the visa holders subject to the code present a particular risk to community safety. It is not yet clear to the committee that the code remains necessary, having regard to the numerous powers under the Migration Act to cancel visas and monitor the behaviour of visa holders and the fact that the migration legislation framework has undergone significant amendments since the code was introduced in 2013.

In 2024, the committee recommended that, in the event that the code was enforced, the committee's concerns and human rights implications be considered. The committee also recommended that a statement of compatibility with human rights be prepared in relation to this instrument. The committee expects that legislative instruments that are exempt from disallowance include a statement of compatibility where the measure engages and limits human rights, particularly where the committee has previously raised concerns in relation to the measure. The committee reiterates those recommendations in this report and recommends that the code of behaviour be reviewed, including an evaluation of the effectiveness of the code in achieving the stated objective. Such a review should closely consider committee's comments and be made publicly available on completion.

I also table the committee's 2024 annual report, which details the work of the committee for the 2024 calendar year. In 2024, our committee tabled 11 scrutiny reports examining 175 bills and around 1,300 legislative instruments. The committee substantively commented on approximately 23 per cent of the bills and three per cent of instruments. During this reporting period, the committee concluded its consideration on the vast majority of bills prior to their passage. A human rights analysis was available to inform members of parliament prior to the passage of 93 per cent of bills. This took a lot of work. The committee concluded its examination of all legislative instruments subject to disallowance within the disallowance timeframe. While the committee's scrutiny reports continue to be timely in 2024, there was decline in the timeliness of ministerial responses to requests for information, and in 2024 only 43 per cent of requests for information were received within the requested timeframe.

I want to make this point: I understand how difficult it can be to compile such detailed responses to the committee, and we do ask for a lot of detail. One of the things we looked at as part of one of our inquiries, which I will talk about in a second, is how the committee can better engage with the legislative process. Also, are there are ways in which the committee can be involved in the legislative process that would delay the passage of bills, at least ensure the committee is involved in the considerations of the passage of bills or potentially have greater powers to postpone? Obviously, we would put limits on that so that, if the government felt there were national security requirements or something that meant the passage of the bill was extremely important for the interests of the country, that would supersede the capabilities and powers of committee. But it is worth considering for future parliaments as well.

During the reporting period, the right to privacy continued to be the human right which the committee most frequently considered and commented on. The right to privacy includes the right to respect for private and confidential information, particularly the storing, use and sharing of such information. It also includes the right to control the dissemination of information about one's private life and prohibits arbitrary and unlawful interferences with an individual privacy, family, correspondence or home. The right to a private life is linked to notions of personal autonomy and human dignity. It includes the rights of individuals to enjoy a private sphere free from government intervention and excessive unsolicited intervention by others.

Over the years, the committee has observed an expansion in the scope of personal information that is collected by government agencies and private corporations. Such information is often highly sensitive, is increasingly being shared with a broad range of third parties and is often used for an array of purposes, many of which were not envisaged at the time the information or data was collected. The more frequent collection of personal information and the fusion of personal data from various sources makes it increasingly difficult for an individual to keep track of what personal information is collected about them and control the many ways in which that information is used and shared. Depending on how the information is used and shared, it may result in further human rights violations. For example, personal information could be shared with foreign governments, and that information

could lead to the arrest and prosecution of an individual for a crime that carries the death penalty. The right to life and the prohibition against torture and cruel, inhuman or degrading treatment may be violated in that instance.

In 2024, the committee continued to comment on numerous bills and legislative instruments that engaged and limited the right to privacy, including measures that collected, used and shared personal information measures that interfere with individuals' right to a private life. For example, legislation relating to online safety frequently engaged the right to privacy. The committee considered that much of this legislation was directed towards the important objective of protecting people, particularly children, from exposure to harms online. However, the committee considered that many of the measures, such as age verification measures and measures requiring internet providers to collect, use and share personal information and monitor communications, were not sufficiently circumscribed or accompanied by sufficient safeguards and were therefore not proportionate limits on the right to privacy.

Strong safeguards to protect the right to privacy in the digital age, especially where information is highly sensitive, have great importance. Given the expanding scope of personal information being collected and the rising number of major data breaches in Australia, it is critical robust safeguards are embedded within the specific legislation that deals with such personal information. Such safeguards should be complementary to the broader safeguards contained in the Privacy Act and the Australian Privacy Principles, both of which contain numerous exemptions.

In addition to the committee's usual scrutiny work, the committee also undertook three inquiries, two of which were concluded in 2024. I want to start with the inquiry into Australia's human rights framework. The committee received 335 public submissions, over 4,000 formal campaign letters and held six public hearings. It heard evidence from a range of community groups, religious organisations, government bodies and experts. The committee tabled its report on 30 May 2024, which made 17 detailed recommendations including that the government re-establish and significantly improve Australia's human rights framework and that that framework should include a comprehensive and effective protection of human rights in legislation through a human rights act, a significant and ongoing commitment to national human rights education, requirements for public servants to fully consider human rights in the development of legislation and policies, enhancements to human rights parliamentary scrutiny and the role of the Human Rights Commission, a review of Australia's legislation policies and practices for compliance with human rights, and measures to monitor progress on human rights.

As part of our report, the committee prepared an example draft of a human rights bill to promote understanding of its proposed model for a statutory federal human rights act. As overwhelmingly supported by submitters, Australia needs a statutory human rights act to make rights real in everyday decision-making. A key benefit of a federal human rights act will be to drive human rights culture within the Public Service so that those who serve us have a clear framework to consider and balance the rights and freedoms of everyday people when making decisions and developing laws and policies that affect us all. The committee is yet to receive a formal response from government on this report and to our recommendations.

We also completed our first review of compulsory enhanced income management and compulsory income management compatibility with human rights. We received 31 submissions and held two public hearings. The committee tabled its report on 3 September 2024, which made seven recommendations, including that the government amend the Social Security (Administration) Act to make income management voluntary over a period of time and to establish more pathways out of compulsory income management. We have not yet received a formal government response to this report and to our recommendations.

On that note, let me just say that, with what is likely to be the last report of the Human Rights Committee this parliament, I want to thank the secretariat and the whole team in the Parliamentary Joint Committee on Human Rights. They are outstanding public servants who have, like always, prepared a huge amount of work for the committee and done so diligently, respectfully and thoughtfully, and I'm very grateful for all of their support.

As the chair of the committee, it's been a great honour to be the chair of the Parliamentary Joint Committee on Human Rights. It is one of the finest and most important committees in this place. It is a work in progress. There are improvements that the committee itself has made recommendations on about the functioning of the committee but it is one that is essential to the checks and balances and the thoughtfulness of the way in which the chamber operates. It's been a great honour. I have really enjoyed working with the deputy chairs from the other side of parliament. I also want to particularly mention the current deputy chair, the member for Bowman,

for the way in which he has engaged on a number of difficult and dense policy issues but he has done so with great collaboration and professionalism, and I thank him for that. I thank all the members of the committee for their participation and I commend the reports to the House.