

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

TUESDAY 11 FEBRUARY 2014

This Second Report of the Parliamentary Joint Committee on Human Rights in the 44th Parliament sets out the committee's consideration of twelve bills introduced during the period 9 to 12 December 2013, 315 legislative instruments received between 23 November 2013 and 31 January 2014 and six responses to the committee's comments in previous reports. The committee considers that the majority of the bills and instruments it has considered do not give rise to human rights concerns. Some of these bills and instruments do not engage human rights, some engage and promote rights and some engage and limit rights, but are accompanied by statements of compatibility that set out an adequate justification for each limitation.

The committee has identified nine bills, 12 legislative instruments and two responses for which it will seek further information before forming a view on compatibility with human rights.

The committee has deferred its consideration of three instruments to allow time for consideration of recommendations for review of certain legislative schemes made by the committee in the 43rd Parliament.

The committee has identified six instruments that do not appear to raise any human rights concerns but are accompanied by statements of compatibility that do not fully meet the committee's expectations. The committee has written to the relevant Ministers in a purely

advisory capacity providing guidance on the preparation of statements of compatibility.

In my statement at the tabling of the committee's First Report of the 44th Parliament I set out the committee's expectations of statements of compatibility. I emphasised the importance of a statement of compatibility setting out the objective of the legislation and the manner in which human rights have been considered in framing the legislation to achieve this objective. I noted that this is particularly important when, in order to achieve a particular objective, certain rights are to be limited. I stressed the committee's expectation that the statement of compatibility will demonstrate that there is a rational connection between the limitation and the objective and how the limitation is proportionate to that objective.

I also stated that the committee expects statements of compatibility to set out the safeguards that will be applied to ensure that any limitations are implemented in the least restrictive form.

Regrettably, the committee notes that some of the statements of compatibility accompanying bills and instruments considered in this Second Report have fallen short of the committee's expectations.

The committee is particularly concerned to note that some statements of compatibility provide assertions with no supporting evidence. The committee wishes to emphasise that it is not enough for a statement of compatibility to merely claim that a measure will contribute to the achievement of a particular objective or that a measure is 'necessary,

reasonable and proportionate'. The committee considers that the sponsor of a bill or instrument bears the onus of demonstrating that this is the case. Where the matter is capable of evaluation in light of empirical evidence, the statement of compatibility should set this evidence out in sufficient detail to facilitate the committee's consideration of the compatibility of the measure with human rights.

Where further information is required to determine these questions, the committee will write to the sponsor of the legislation, in a spirit of constructive dialogue, to request clarification.

I commend the report to the Senate.