

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

5 February 2020

I am very pleased to speak to the tabling of the Parliamentary Joint Committee on Human Rights first scrutiny report of 2020.

This report contains a technical examination of legislation with Australia's obligations under international human rights law, as required under the committee's statutory mandate. It sets out the committee's consideration of 79 bills introduced into the Parliament between 14 October and 5 December 2019, one bill previously deferred, and legislative instruments registered on the Federal Register of Legislation between 20 September and 3 December 2019.

In this report, the committee seeks further information in relation to 11 bills and four instruments. The process of requesting information from the legislation proponent reflects the committee's role in establishing and maintaining a dialogue regarding the human rights implications of legislative measures, which contributes to the broader respect for and recognition of human rights in Australia.

The committee has made concluding remarks in relation to four bills and one instrument.

For example, the committee has concluded its examination of the Australian Citizenship Amendment (Citizenship Cessation) Bill 2019. The measures proposed in this bill would provide that a person, who is a dual-national ceases to be an Australian citizen if they act inconsistently with their allegiance to Australia by engaging in certain terrorist conduct. The committee has noted the legal advice that these measures may engage and limit a number of human rights, including the rights to freedom of movement and liberty, and the rights of the child and protection of the family. However, limits on these rights may be permissible where a measure is prescribed by law, seeks to achieve a legitimate objective, is rationally connected to (that is effective to achieve) that objective, and is proportionate to that objective.

As the minister's discretion to cease citizenship is limited to those who engaged in specified terrorist conduct, the committee considers that whether a person has 'repudiated their allegiance to Australia' is sufficiently certain so as to meet the 'quality of law' test. The committee also considers that removing a person's citizenship seeks to achieve a legitimate objective in that it ensures that there is less prospect of a person engaging in conduct which harms the Australian community. It also considers the measures are effective

to achieve (that is, rationally connected) to those objectives based on the minister's advice, as supported by the Australian Federal Police and the Australian Security Intelligence Organisation, that the existing citizenship cessation provisions have been effective, in conjunction with other counter-terrorism tools and mechanisms, in protecting the integrity of Australian citizenship and the Australian community.

Finally, the committee considers the measures are proportionate as the ministerial decision-making model means that the minister will consider individual circumstances in assessing the public interest in whether a person should remain an Australian citizen, which is intended to ensure that any interference with the family, the right to re-enter one's own country, or the right to freedom of movement, is not arbitrary. As such, the committee considers the cessation of citizenship provisions are compatible with the rights to freedom of movement and liberty and the rights of the child and protection of the family.

The committee also considers that as the power to cease a person's citizenship, where the person is in Australia, will not directly result in them being liable for removal from Australia, these measures do not directly engage the obligations of non-refoulement and a right to an effective remedy. The

committee welcomes the minister's commitment to comply with Australia's non-refoulement obligations.

The committee has also concluded its examination of the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019, which seeks to expand the operation of the cashless debit card trial. The committee considers the bill seeks to achieve a number of legitimate objectives, including reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behaviour and reducing the likelihood that welfare payment recipients will remain on welfare and out of the workforce for extended periods of time. The committee believes it is important to reiterate the engagement of positive human rights in the bill, including the rights of the child, the right to protection of the family, the right to dignity and the right to health. These measures provide welfare payment recipients with the ability to ensure that a higher portion of their payments are directed to essential living costs such as food and household bills, while prohibiting expenditure on alcohol and gambling. The committee therefore considers that any limitations on human rights pursuant to this bill are justifiable.

Finally, the committee has concluded its examination of the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019. This bill provides for the

trialling of mandatory drug testing for new recipients of Newstart Allowance and Youth Allowance. The committee notes the legal advice that the bill engages a number of human rights, including the rights to privacy, social security, an adequate standard of living, and equality. The committee reiterates that this is a world first trial and as such the committee accepts that there is some inevitable uncertainty as to whether the measures are a proportionate means of achieving the legitimate objectives of the bill. However, the committee considers that the trial seeks to achieve the important objective of identifying and supporting individuals who may have drug dependency issues, and assisting them in securing employment.

With these comments, I commend the committee's *Report 1 of 2020* to the Senate.