Parliamentary Joint Committee on Human Rights

Human rights scrutiny report

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Committee information

Under the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Act), the committee's functions are to examine bills, Acts and legislative instruments for compatibility with human rights, and report to both Houses of the Parliament. The committee may also inquire into and report on any human rights matters referred to it by the Attorney-General.

The committee assesses legislation for compatibility with the human rights set out in seven international treaties to which Australia is a party.[1] The committee's *Guide to Human Rights* provides a short and accessible overview of the key rights contained in these treaties which the committee commonly applies when assessing legislation.[2]

The establishment of the committee builds on Parliament's tradition of legislative scrutiny. The committee's scrutiny of legislation seeks to enhance understanding of, and respect for, human rights in Australia and ensure attention is given to human rights issues in legislative and policy development.

Some human rights obligations are absolute under international law. However, most rights may be limited as long as it meets certain standards. Accordingly, a focus of the committee's reports is to determine whether any limitation on rights is permissible. In general, any measure that limits a human right must comply with the following limitation criteria: be prescribed by law; be in pursuit of a legitimate objective; be rationally connected to (that is, effective to achieve) its stated objective; and be a proportionate way of achieving that objective.

Chapter 1 of the reports include new and continuing matters. Where the committee considers it requires further information to complete its human rights assessment it will seek a response from the relevant minister, or otherwise draw any human rights concerns to the attention of the relevant minister and the Parliament. Chapter 2 of the committee's reports examine responses received in relation to the committee's requests for information, on the basis of which the committee has concluded its examination of the legislation.

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1 International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; Convention on the Rights of the Child; and Convention on the Rights of Persons with Disabilities.

2 See the committee's *Guide to Human Rights*. See also the committee's guidance notes, in particular *Guidance Note 1 – Drafting Statements of Compatibility*.

Report snapshot[1]

In this report the committee has examined the following bills and legislative instruments for compatibility with human rights. The committee's full consideration of legislation commented on in the report is set out in Chapters 1 and 2.

Bills

Chapter 1: New and continuing matters	
Bills introduced 27 October to 6 November 2025	21
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Australian Centre for Disease Control Bill 2025 and Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025

Advice to Parliament	**Multiple measures relating to the collection, use and disclosure of information** *Rights to health, privacy and effective remedy*

1 This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 7 of 2025*; [2025] AUPJCHR 52.

2 Freedom of Information Amendment Bill 2025, which was previously deferred in *Report 5 of 2025* (2 October 2025).

3 The committee makes no comment on the remaining bills on the basis that they do not engage, or only marginally engage, human rights; promote human rights; and/permissibly limit human rights. This is based on an assessment of the bill and relevant information provided in the statement of compatibility accompanying the bill. The committee may have determined not to comment on a bill notwithstanding that the statement of compatibility accompanying the bill may be inadequate.

4 In relation to the Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, the committee has concluded its examination of one measure following receipt of a ministerial response but is seeking further information in relation to another measure.

These bills (now Acts) seek to establish the Australian Centre for Disease Control, as well as the office of the Director-General and the Advisory Council of the Australian Centre for Disease Control. The Australian Centre for Disease Control Bill 2025 contains numerous measures which enable the Director-General of the Australian Centre for Disease Control to collect, use and disclose information, including: the requirement to publish public health advice, the power to request information, the power to direct people to give information, the requirement to publish a register of directions, authorising the collection, use and disclosure of information in various circumstances and the power to make data-sharing declarations for serious threats to public health. While the committee notes that these measures may promote the right to health to the extent that they would improve access to public health information and advice, the committee considers that by providing for the collection, use and disclosure of information, the various measures engage and limit the right to privacy. The committee sought further information from the minister in relation to the bills in *Report 5 of 2025*.

In regard to the requirement to publish public health advice, the committee welcomes the minister's advice that the requirement to publish public health advice would not permit personal information to be published. The committee considers that its concerns have therefore been addressed and makes no further comment in relation to this measure.

In regard to the power to request information, the committee notes the minister's advice that individuals will only be requested to provide information in urgent and specific public health circumstances and that the measure is accompanied by a number of safeguards, including the *Privacy Act 1988* (Privacy Act) and non-legislated procedural frameworks. While the committee considers that the Privacy Act and equivalent state or territory privacy legislation do not themselves represent adequate safeguards, the comprehensive framework of safeguards as a whole assist with proportionality and on balance it appears the measure may constitute a proportionate limit on the right to privacy.

In regard to the power to direct people to give information, the committee notes the minister's advice that the Director-General would weigh the urgency and severity of the public health threat against the potential consequences of issuing a direction, and that the Director-General is expected to genuinely consider the views of the Advisory Council. The committee considers that these factors may operate as safeguards, but the strength of these safeguards will depend on how they are interpreted and applied in practice. If the Director-General's power to issue directions is exercised in the

manner suggested by the minister, namely that individuals and medical practitioners will rarely be subject to a direction and personal information requested will be primarily provided as high-level public health data, the committee considers that the potential limitation on privacy may be proportionate.

In regard to the requirement to publish a register of directions, the committee considers that if personal information is excluded from the register, as advised by the minister, the measure would not impermissibly limit the right to privacy.

In regard to authorising the collection, use and disclosure of information in various circumstances, the committee notes that the bill authorises disclosure of a broad range of personal information that is drawn from a wide range of sources and the safeguards that accompany the authorisations are not embedded in the bill itself. The committee considers that it is not clear that the existing safeguards will be adequate to ensure that any interference with the right to privacy is proportionate with respect to each of the authorisations. The committee further notes that in circumstances where the collection, use and disclosure of personal information is authorised under the bill but the authorisation does not constitute a permissible limitation on the right to privacy under international human rights law, an individual may not have access to an effective remedy.

In regard to the power to make data-sharing declarations for serious threats to public health, the committee considers that it is not clear whether the safeguards identified by the minister would be adequate, as the detail of the measure and its potential limitation on the right to privacy will be contained in a future exempt legislative instrument. As such it is not possible to conclude whether the measure would constitute a permissible limit on the right to privacy in practice.

The committee draws these human rights concerns to the attention of the minister and the Parliament.

Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2025

No comment

Commonwealth Electoral Amendment (Protecting Voters) Bill 2025

No comment

Communications Legislation Amendment (Australian Content Requirement for Subscription Video On Demand (Streaming) Services) Bill 2025

No comment

Copyright Amendment Bill 2025

No comment

Crimes Amendment (Mandatory Minimum Sentences for Child Sexual Abuse) Bill 2025

The committee notes that this non-government bill appears to engage and may limit human rights. Should this bill proceed to further stages of debate, the committee may request further information from the legislation proponent as to the human rights compatibility of the bill.

Customs Tariff Amendment (Geelong Treaty Implementation) Bill 2025

No comment

Environment and Other Legislation Amendment (Low Emissions Future) Bill 2025

No comment

Environment Information Australia Bill 2025

No comment

Environment Protection and Biodiversity Conservation (Customs Charges Imposition) Bill 2025

No comment

Environment Protection and Biodiversity Conservation (Excise Charges Imposition) Bill 2025

No comment

Environment Protection and Biodiversity Conservation (General Charges Imposition) Bill 2025

No comment

Environment Protection and Biodiversity Conservation (Restoration Charge Imposition) Bill 2025

No comment

Environment Protection Reform Bill 2025 and National Environmental Protection Agency Bill 2025

The Environment Protection Reform Bill 2025 seeks to amend the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Specifically, the bill seeks to amend the national interest exemption in the EPBC Act to allow the minister to, on application or on their own initiative, exempt a proposed action from requirements for environmental approvals and environmental assessments in the national interest. The 'national interest' is not defined, but the bill includes a

non-exhaustive list of the matters the minister may consider in determining the national interest, including Australia's defence or security, or a national emergency, including an emergency to which a national emergency declaration relates. The minister would also be able to consider any other matters the minister considers relevant. The bill also seeks to provide that the minister can exercise discretion to make a decision inconsistent with the national environment standards in certain circumstances where the minister considers the project to be in the national interest. While various measures in the bill operate to protect the environment, such as requiring that an action does not have an unacceptable impact on the environment and passes the net gain test, providing for broad discretionary exemptions for actions that are in the national interest could limit multiple human rights, depending on the projects approved as national interest projects. In particular, if the approved projects caused damage or destruction to the environment or cultural sites, or led to increased emissions that exacerbated climate change, multiple human rights may be engaged and limited, including the right to culture, the right to privacy, the right to life, the right to equality and non-discrimination, the right to an adequate standard of living, the rights of the child and the right to a clean, healthy and sustainable environment (which draws on substantive rights in the core international human rights law treaties). International human rights law jurisprudence has recognised that serious environmental degradation and adverse climate change impacts can interfere with individuals' human rights and states have a positive obligation to implement adequate climate adaptation and mitigation measures to protect human rights (see, for example, *Billy and Others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2022)).

The National Environmental Protection Agency Bill 2025 seeks to establish the new statutory Commonwealth entity, known as National Environmental Protection Agency (NEPA), and confer on the CEO of the NEPA various functions and powers, including those that exist under the EPBC Act and a range of other federal environmental laws. Schedule 2 of the Environment Protection Reform Bill 2025 seeks to substitute the minister or secretary for the CEO of the NEPA in relation to various powers and functions under the EPBC Act. Some of these existing functions and powers engage and may limit a number of human rights, for example measures which provide for the use and disclosure of information, including personal information, would engage and limit the right to privacy. As the EPBC Act and other environmental legislation were introduced prior to the establishment of this committee, a foundational human rights assessment of this legislation has not been undertaken. The committee considers that such a foundational assessment is required in order to fully assess the compatibility of the legislation with human rights. The committee has previously commented on these measures when they were introduced in the Nature Positive (Environment Protection Australia) Bill 2024 in *Report 5 of 2024*. The committee notes the statement of compatibility has not engaged with the committee's previous comments.

The committee draws these concerns to the attention of the minister and the Parliament.

Fair Work Amendment (Right to Work from Home) Bill 2025

No comment

Freedom of Information Amendment Bill 2025

Seeking Information

Restricting access to information

Right to freedom of expression

This bill seeks to amend the *Freedom of Information Act 1982* (FOI Act) to reform the operation of the Freedom of Information framework (FOI framework). The FOI framework provides for

processes for requesting information held by government agencies and for review of decisions to refuse access to information. The committee notes that by limiting disclosure of information through FOI requests and thereby restricting individuals' access to information held by government, many of the measures in the bill engage and limit the right to access information, a component of the right to freedom of expression.

The committee considers that, to the extent that the measures aim to improve the timely processing of requests for information, many of the measures may be capable of pursuing a legitimate objective for the purposes of international human rights law, although further information is sought to understand the current inefficiencies with the FOI framework. The committee considers that the measures may encourage greater non-disclosure of documents and this may lead to increased requests for review, which may undermine the intent of improving efficiency and timely processing of requests.

The committee is seeking further information from the minister in relation to the compatibility of these measures with the right to freedom of expression.

Lobbying (Improving Government Honesty and Trust) Bill 2025 (No. 2)

The committee notes that this non-government bill appears to engage and may limit human rights. Should this bill proceed to further stages of debate, the committee may request further information from the legislation proponent as to the human rights compatibility of the bill.

Mandatory Regulation Impact Statement Bill 2025

No comment

Migration Amendment (Combatting Migrant Exploitation) Bill 2025

No comment

Regulatory Reform Omnibus Bill 2025

Advice to Parliament

Authorising the collection, use and disclosure of personal information

Right to privacy

This bill seeks to amend 30 primary Acts relating to regulatory settings and performance. Several provisions in the bill would authorise the sharing, use and disclosure of information, including personal information. The committee had previously concluded its consideration of the human rights compatibility of this bill and recommended that the Government consider undertaking a foundational review of the Acts which the bill seeks to amend for their compatibility with human rights. The committee also recommended that the statement of compatibility be updated to

provide a more fulsome assessment of the compatibility of these measures with the right to privacy.

The Minister for Finance advised the committee that the government will consider a foundational review of the Acts that are sought to be amended for their compatibility with the right to privacy. The committee also welcomes the minister's explanation of the safeguards that Services Australia has in place for disclosure of information.

Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025

Seeking Information

Validation of income apportionment method

Rights to social security and effective remedy

This bill retrospectively validates income apportionment as a lawful method of assessing employment income during the period from 1 July 1998 to 6 December 2020 for the purpose of certain social security entitlements. This bill also seeks to establish the Income Apportionment Resolution Scheme (Resolution Scheme). The committee considers that as this bill has the effect of validating debt decisions that limited a person's entitlement to social security, the measure engages and may limit the right to social security. The committee also considers that effective remedies should be available to individuals whose right to social security is violated by the measures in this bill. The committee sought further information from the minister in *Report 5 of 2025* in order to assess the compatibility of the measure with these rights.

While the committee notes that the validation of income apportionment may promote the general welfare to the extent that it facilitates the recovery of a substantial amount of debt owed to the Commonwealth, the committee considers that it is unclear whether the safeguards accompanying the measure would be adequate in practice such that the measure is likely to constitute a proportionate limit on the right to social security in all circumstances. The committee considers that the remedies available, namely pursuing an action against the Commonwealth or accepting a Resolution Scheme payment, are limited and their effectiveness will be depend on the ability of vulnerable individuals to be adequately informed of the legal implications of the Resolution Scheme. The committee has made a recommendation to amend the bill and update the statement of compatibility, and otherwise draws its human rights concerns to the attention of the minister and the Parliament.

Benefit restriction notices

Rights to social security and effective remedy, and criminal process rights

A government amendment to the bill seeks to amend the *Social Security Act 1991* to introduce a broader power to cancel a person's social security payments or concession cards if persons are the subject of an arrest warrant in respect of a serious violent or sexual offence or may prejudice the security of Australia or a foreign country.

The committee considers that as this measure results in social security payments not being payable to a person wanted for a serious offence, this engages and limits the right to social security. While the committee acknowledges the importance of ensuring individuals charged with serious offences are arrested, the committee notes that under international human rights law any limit on the right to social security must solely be for the purpose of promoting the general welfare in a democratic society and must be compatible with the nature of this right. The committee considers that it is unclear whether this measure pursues a legitimate objective and is rationally connected to the stated objective, as the supplementary explanatory materials do not provide any information or evidence that cancelling a person's social security benefits would facilitate their arrest. The committee notes that there is not an avenue for an individual to review the decision to issue a benefit restriction notice and there may not be adequate safeguards to ensure any limitation on the right to social security is proportionate. If the measure results in the deprivation of the minimum essential level of benefits, the measure would constitute an impermissible limit on the right to social security. It would also limit other human rights, including the rights of the child, right to an adequate standard of living, right to health and may have implications for the right to life. Further, the committee notes there is a risk that the measure may result in the minimum core obligation not being fulfilled if the measure results in the deprivation of the minimum essential level of benefits.

The committee considers that in the absence of access to review or the ability to seek backpay or compensation, there do not appear to be effective remedies available to individuals whose right to social security has been limited. Further, the committee notes that if the cancellation of social security payments were to be considered a criminal punishment, criminal process rights should be afforded.

The committee is seeking further information from the minister in order to assess the compatibility of this measure with human rights.

Stopping Wind Farms in State Forests Bill 2025

No comment

Telecommunications and Other Legislation Amendment Bill 2025

Advice to Parliament

Accessing communications for developing and testing interception capabilities

Right to privacy and effective remedy

The bill (now Act) amends the *Telecommunications (Interception and Access) Act 1979* (TIA Act) to provide that authorisations of interception of communications for developing and testing interception capabilities includes access to stored communications. By expanding the power of an agency to access stored communications under authorisations for developing and testing interception capabilities, rather than just live communications, this measure engages and limits the right to privacy. The committee sought further information from the minister in *Report 5 of 2025* in order to assess the compatibility of the measure with these rights.

The committee considers that the measure is accompanied by useful safeguards, however notes that it is difficult to fully assess the sufficiency of these safeguards and the impact of this measure on the right to privacy without a foundational human rights assessment of the TIA Act. The committee further notes that if an individual's right to privacy was violated under an interception authorisation, an individual has the right to an effective remedy. The committee considers that while there are some mechanisms for compensation in both the TIA Act and the *Inspector-General of Intelligence and Security Act 1986*, these mechanisms do not appear likely to constitute an effective remedy in practice, as the individual would not be made aware of the interception and would therefore be unlikely to seek remedial relief, and the Inspector-General of Intelligence and Security's power to recommend compensation for an individual is discretionary and does not have to be actioned.

As the bill has now passed, the committee makes no further comment in relation to this measure.

Sharing personal telecommunications data under International Production Orders

Rights to privacy, effective remedy and life

The bill broadens the scope of private telecommunications data that can be intercepted through an interception International Production Order (IPO), and provides for prescribed communications providers to copy stored communications. In doing so this measure engages and limits the right to privacy. Were an individual's right to privacy violated under an interception authorisation, this may engage the right to an effective remedy. Further, where information is shared with a foreign country where that country has the death penalty, as is the case with the United States, this measure may engage and limit the right to life. The committee sought further information from the

minister in *Report 5 of 2025* in order to assess the compatibility of the measure with these rights.

The committee considers that there are a number of safeguards around the issuing and use of IPOs in the AUS-US CLOUD Act Agreement, however it is not possible to conclude that it is compatible with the right to privacy. The committee notes that were an individual's privacy violated under an interception authorisation, the individual would not be aware of the interception of their communications or that their stored communications had been accessed, and therefore they would not be able to pursue a civil remedy under the framework in the TIA Act. Additionally, it is unclear whether the remedies in the TIA Act and recommendations for compensation by oversight bodies would be an effective remedy in practice. The committee also considers there is a risk of an impermissible limit on the right to life under the AUS-US CLOUD Act Agreement.

The committee recommends that the government consider the committee's comments in relation to the International Production Order framework, and other legislation engaging surveillance powers, in its comprehensive reforms to the electronic surveillance framework.

Broadening immunity from liability in controlled operations

Right to privacy, right to an effective remedy and rights of the child

The bill clarifies the threshold for authorising and varying controlled operations in the *Crimes Act 1914* by providing that only direct and reasonably foreseeable consequences must be considered. The bill further provides that a participant in a relevant controlled operation is immune from criminal and civil liability in relation to dealing with sexual offence material. The committee notes that depending on the nature of the controlled operation, this may engage and limit multiple human rights. The committee further notes that as the conduct of a participant in a controlled operation may be protected by civil and criminal immunity, where an individual's human rights are violated in the course of a controlled operation, this may engage the right to an effective remedy. The committee sought further information from the minister in *Report 5 of 2025* in order to assess the compatibility of the measure with these rights.

The committee considers that while a participant in a controlled operation is not protected from criminal responsibility or civil liability where their conduct is likely to lead to death, serious injury or the commission of a sexual offence against a person, it does not appear that this would extend to remedies for other rights violations. Further, the committee notes that it does not appear an individual would be informed or have access to compensation if other rights were violated. As such, it appears unlikely that a person would have access to an effective remedy in all circumstances.

As the bill has now passed, the committee makes no further comment in relation to this measure.

VET Student Loans (Miscellaneous Measures) Bill 2025

No comment

Veterans' Affairs Legislation Amendment (Miscellaneous Measures No. 1) Bill 2025

No comment

Legislative instruments

Chapter 1: New and continuing matters

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Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response	0

Aboriginal and Torres Strait Islander Heritage Protection (Murujuga) Declaration 2025

Advice to Parliament

Protection and preservation of the Murujuga

Rights to culture, privacy, equality and non-discrimination, and effective remedy

This instrument makes it an offence to move, damage, deface or otherwise disturb an Aboriginal site or object in the Murujuga, Western Australia. The committee considers that by protecting and preserving this area from injury or desecration, the measure promotes multiple human rights, particularly the rights to culture, privacy and equality and non-discrimination. However, by providing

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5 The committee examines all legislative instruments registered in the relevant period, as listed on the Federal Register of Legislation. To identify all of the legislative instruments scrutinised by the committee during this period, use the advanced search function on the Federal Register of Legislation, and select 'Collections' to be 'legislative instruments'; 'type' to be 'as made'; and date to be 'registered' and 'between' the date range listed above.

6 Anti-Money Laundering and Counter-Terrorism Financing Rules 2025 [F2025L01026] and Anti-Money Laundering and Counter-Terrorism Financing Rules Amendment (Consequential Amendments) Instrument 2025 [F2025L01025], which were previously deferred in *Report 6 of 2025* (2 October 2025).

7 Unless otherwise indicated, the committee makes no comment on the remaining legislative instruments on the basis that they do not engage, or only marginally engage, human rights; promote human rights; and/permissibly limit human rights. This is based on an assessment of the instrument and relevant information provided in the statement of compatibility (where applicable). The committee may have determined not to comment on an instrument notwithstanding that the statement of compatibility accompanying the instrument may be inadequate.

that an Aboriginal site or object is taken not to be moved, damaged, defaced or otherwise disturbed by, or as a result of, industrial gaseous emissions, the measure may in effect facilitate injury to or desecration of Aboriginal sites or objects in the Murujuga and thereby limit the rights to culture and privacy.

The committee notes that the overall objective of the instrument is to preserve and protect the Murujuga. While this general objective is legitimate for the purposes of international human rights law, the committee notes that it is unclear what the specific objective is in relation to the measure to exclude damage caused by industrial gaseous emissions. In the absence of this information, the committee considers that it has not been demonstrated that the measure pursues a legitimate objective or is rationally connected to that objective. More generally, the committee notes that excluding damage or disturbance caused by, or as a result of, industrial gaseous emissions – a key threat to the petroglyphs in the Murujuga – would appear to frustrate the overall purpose of the instrument. Noting the profound cultural and spiritual significance of the petroglyphs, the committee considers that the measure represents a significant interference with rights and it is not clear that the measure is accompanied by any safeguards.

As such, the committee considers that to the extent that the measure excludes industrial gaseous emissions from the offence to preserve and protect the Murujuga, it is not clear that it is compatible with the rights to culture and privacy. The committee has suggested updating the statement of compatibility and otherwise draws these human rights concerns to the attention of the minister and the Parliament.

Anti-Money Laundering and Counter-Terrorism Financing Rules 2025

This legislative instrument operationalises the amendments made to the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* by the *Anti-Money Laundering and Counter-Terrorism Financing Amendment Act 2024* and forms part of Australia's regulatory framework for combatting money laundering, terrorism financing and other serious financial crimes. This instrument sets out the reporting requirements and expectations of entities engaging with the Australian Transaction Reports and Analysis Centre (AUSTRAC), including the information of key personnel and potential customers that must be collected by entities, when certain information is authorised to be disclosed to AUSTRAC, and when AUSTRAC is authorised to disclose information to others.

The instrument prescribes the information required to be disclosed to AUSTRAC which includes information relating to previous charges or convictions of key personnel and personal information relating to suspicious matters, threshold transactions and moving monetary instruments. The information becomes AUSTRAC information once disclosed to AUSTRAC and is able to be further disclosed to other foreign countries and entities. Further, AUSTRAC must publish information regarding suspensions and cancellations of registrations on their website which may, in certain circumstances, include personal information. While the statement of compatibility identifies that the measure engages and limits the right to privacy, it provides only general information regarding the operation of the *Privacy Act 1988* and the relevant secrecy provisions as safeguards. Further, the committee notes that the statement of compatibility does not identify that the onwards disclosure of personal information by AUSTRAC broadens the extent of the limitation on the right.

The committee therefore considers the safeguards identified may not be sufficient to ensure the potentially broad limitations on the right to privacy are proportionate in all circumstances. As such, there is a risk that the sharing and disclosure of personal information that is enabled by this legislative instrument may not always be a proportionate limit on the right to privacy.

In *Report 9 of 2024*, the committee commented on provisions in the Anti-Money Laundering and Counter-Terrorism Financing Amendment Bill 2024 (now Act) relating to the sharing of AUSTRAC information internationally. The committee considered that there may be a risk that the disclosure of certain information to foreign governments and entities, particularly information about alleged criminal activities, may in certain circumstances expose a person to a risk of the death penalty or to torture or other cruel treatment. Consequently, the committee considered that this measure may have implications for the right to life and freedom from torture and other cruel, inhuman or degrading treatment or punishment. This legislative instrument prescribes agencies which may disclose AUSTRAC information to the government of a foreign country, or to a foreign agency and as such, the committee considers that the same human rights concerns apply. The statement of compatibility accompanying this instrument identifies that the right to life and freedom from torture and other cruel, inhuman or degrading treatment or punishment may be engaged and identifies that the requirement in the Act that information can only be disclosed to a foreign government if it is appropriate to do so in all circumstances operates as a safeguard to prevent any violation of these rights. The statement of compatibility also sets out that AUSTRAC and the agencies prescribed in the instrument have obligations under the frameworks governing government-to-government assistance to protect the right to life. However, the statement of compatibility does not include information about whether these frameworks include guidelines to assist decision-makers in identifying and considering any risks that a person may be exposed to the death penalty or to torture as a result of the sharing of particular information, and if so, how those risks are managed. The committee therefore considers that there remains a risk that this instrument may be incompatible with the right to life and freedom from torture and other cruel, inhumane and degrading treatment or punishment and draws its previous human rights concerns and recommendations, as set out in *Report 9 of 2024*, to the minister and the Parliament.

Australian Border Force (Alcohol and Drug Tests) Rules 2025

Advice to Parliament

Drug testing Immigration and Border Protection workers

Rights to equality and non-discrimination, privacy and work

This instrument prescribes matters relating to alcohol and drug testing for Immigration and Border Protection workers employed by the Department of Home Affairs, including the authorisation of persons to conduct tests, the devices to be used in conducting tests, procedures for handling samples taken, and the confidentiality of test results. The committee notes that requiring workers to undergo alcohol tests and provide body samples for the purposes of drug testing and retaining information relating to the outcome of the testing engages and limits the right to privacy, and may engage and limit the right to just and favourable conditions of work. The committee notes that the measure may also have a disproportionate effect on workers with certain attributes or medical conditions who may be more likely to be required to take prohibited drugs, and so may limit the right to equality and non-discrimination.

The committee previously considered a similar instrument in *Report 4 of 2024* and concluded that the instrument may not have been rationally connected to the objective, the power to direct all workers to undertake testing was insufficiently circumscribed, and it was not clear if there were adequate safeguards or that the power was subject to independent oversight or review. As this instrument relates to the testing of the drugs specified in the 2024 instrument, the committee's previously human rights concerns remain relevant.

In regard to this instrument, the committee considers that in general terms the measure is capable of pursuing a legitimate objective, however, it is unclear whether the measure would be effective in preventing corruption and ensuring workplace safety in certain circumstances and as such the measure may not necessarily be rationally connected to that objective in practice. The committee notes that the rules include numerous safeguards that assist with proportionality, primarily with respect to the right to privacy. However, the committee considers that it is not clear whether these safeguards are sufficient to ensure any limitation on rights is proportionate having regard to the broad range of prohibited drugs, the wide range of persons to whom the measure applies, the potential availability of less rights restrictive approaches and the potentially significant interference with rights. The committee therefore considers there to be a risk that the alcohol and drug testing of workers, including the retention and disclosure of samples and results, constitutes an impermissible limit on the rights to privacy and work. Further, in the absence of adequate safeguards to ensure that any differential treatment is based on reasonable and objective criteria, the committee considers there to be a risk that the measure may result in unlawful discrimination in certain circumstances.

The committee has recommended amendments to the instrument and the statement of compatibility, and otherwise draws its human rights concerns to the attention of the minister and the Parliament.

Social Security (Administration) (Enhanced Income Management Regime – Qualified Portion of Payments) Determination 2025 and Social Security (Administration) (Income Management – Crediting of Accounts) Rules 2025

The Social Security (Administration) (Enhanced Income Management Regime - Qualified Portion of Payments) Determination 2025 provides for a new participant to enhanced income management under Part 3AA of the *Social Security (Administration) Act 1999* (the Administration Act) to continue to be able to access their full welfare payment, even where their welfare payment is treated under the portioning regime in the Administration Act but their participation in enhanced income management is not yet operationalised by Services Australia.

The Social Security (Administration) (Income Management - Crediting of Accounts) Rules 2025 prescribe circumstances in which certain amounts are to be credited to the Income Management Record and a person's notional income management account for the purposes of the income

management regime in Part 3B of the Administration Act, and specifically for the purpose of giving a BasicsCard to the person or increasing the monetary value stored on a BasicsCard held by the person. The Income Management Record acts as a reference point for reporting on and referencing the collective balances of all the separate income management accounts.

The measures in these two instruments assist individuals on the enhanced income management regime and the income management regime to access money. While the statements of compatibility to both instruments state that the measures promote the rights to equality and non-discrimination, self-determination, social security and an adequate standard of living, the committee notes that these instruments form part of the broader enhanced income management regime and the income management regime which limit the human rights of the individuals subject to them. The committee notes that it has examined all legislation associated with compulsory income management since the committee commenced operation in 2012 and has consistently expressed concern that these regimes do not constitute a proportionate limit on several human rights. In its 2024 inquiry into compulsory income management, the committee considered that there is a considerable risk that the regimes constitute an impermissible limitation on the rights to social security, privacy and equality and non-discrimination, and that there is a risk that compulsory participation may not, in relation to some cohorts of participants, constitute a permissible limit on the right to an adequate standard of living, the right to health and the rights of the child. The committee further recommended that the government amend the Administration Act to make income management voluntary. The committee notes that the statements of compatibility to these instruments do not engage with the committee's previous comments and draws these broader concerns to the attention of the minister and the Parliament.

Social Security (Special Benefit – Class of Visas) Determination 2025

Advice to Parliament

Mutual obligation requirements for special benefit and newly arrived resident's waiting period

Rights to social security; adequate standard of living; health; children's rights; equality and non-discrimination; and protection of the family

This instrument specifies the classes of visas that may be required to satisfy mutual obligation requirements to access special benefit and other social security payments, and the classes of visas subject to the newly arrived resident's waiting period of 208 weeks or four years for social security payments.

The committee notes that insofar as these measures restrict access to social security payments for migrants on certain classes of visas, it engages and may limit the right to social security, the right to an adequate standard of living, the right to health, the right to equality and non-discrimination, the right to protection of the family and the rights of the child. These 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.

The committee considers that the general objectives of ensuring a financially sustainable social security system and targeting those most in need constitutes a legitimate objective, although some questions remain as to whether the measures would in practice promote general welfare and would necessarily be effective to achieve some of the stated objectives. The committee further considers that the availability of exemptions operates as an important safeguard, providing some flexibility to take into account individual circumstances and treat different cases differently. However, for newly arrived migrants who experience economic precarity and do not qualify for an exemption, the committee notes that the potential interference with their rights may be significant. Further, it is not clear to the committee that the measures represent the least rights restrictive approaches. As such, the committee considers there to be a risk that these measures may not constitute a permissible limitation on these rights.

The committee also notes that it raised similar concerns with respect to the newly arrived resident's waiting period when the waiting period was extended from two years to four years in 2021 and is disappointed that the explanatory materials did not consider the committee's previous comments. The committee draws its human rights concerns to the attention of the minister and the Parliament.

Chapter 1
New and ongoing matters

1.1 The committee comments on the following bills and legislative instruments, and in some instances, seeks a response or further information from the relevant minister.

Bills

Freedom of Information Amendment Bill 2025[10]

Purpose	This bill seeks to amend the *Freedom of Information Act 1982* to change the operation of the Freedom of Information framework and make consequential amendments to the *Australian Information Commissioner Act 2010* and the *Public Interest Disclosure Act 2013*.
Portfolio	Attorney-General
Introduced	House of Representatives, 3 September 2025
Rights	Freedom of expression

Restricting access to information

1.2 The bill seeks to amend the *Freedom of Information Act 1982* (FOI Act) to reform the operation of the Freedom of Information framework (FOI framework). The FOI framework provides for processes for requesting information held by government agencies and for review of decisions to refuse access. Some of the main changes sought to be introduced in the bill include:

- an amendment to the object clause to more expressly reflect the balance between promoting transparent government and providing safeguards to protect essential private interests and the proper and effective operation of government in the FOI framework;[11]
- an agency or minister may refuse to deal with repeat or vexatious requests or requests that are an abuse of process,[12] and the definition of 'abuse of the process for an access action' is expanded to include an action that is

[10] This entry can be cited as: Parliamentary Joint Committee on Human Rights, Freedom of Information Amendment Bill 2025, *Report 7 of 2025*; [2025] AUPJCHR 53.

[11] Schedule 1, part 1, item 3, subsection 3(2).

[12] Schedule 2, part 4, item 41, section 15AD.

harassing, intimidating, insulting or abusing an individual or employee of an agency;[13]

- an FOI request cannot be made anonymously or under a pseudonym;[14]
- an agency or minister may refuse to process a request as a 'practical refusal reason'[15] if it would take more than a prescribed amount of time to process, with a default minimum of 40 hours;[16]
- application fees can be specified in the regulations for FOI requests, internal reviews and Information Commissioner (IC) reviews,[17] but not for requests for an individual's own personal information;[18]
- an agency or minister can refuse requests to give access to a document on the terms of the request, without having identified the document, if it is apparent it is or would be an exempt document;[19]
- a document is exempt if it has been prepared by a minister, on a minister's behalf or by an agency, and a substantial purpose for its preparation was submission for consideration by the cabinet or to brief a minister in relation to issues to be considered by the cabinet;[20]

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13 Schedule 2, part 4, item 50, subsection 89L(4). Abuse of the process for an access action also includes, but is not limited to, unreasonably interfering with the operations of an agency, and seeking to use the FOI Act for the purpose of circumventing restrictions on access to a document(s) imposed by a court.

14 Schedule 2, part 5, item 53, paragraphs 15(2)(ba) and (bb).

15 *Freedom of Information Act 1982*, sections 24 and 24AA: a 'practical refusal reason' exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations or the performance of the minister's functions, or the request does not provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the minister, to identify it. If an agency or minister is satisfied that a practical refusal reason exists in relation to the request, they must undertake a request consultation process which provides an opportunity for the applicant to seek assistance from the agency or minister to revise the request, and if the practical refusal reason still exists, they may refuse to give access to the document.

16 Schedule 3, part 2, item 10, paragraph 24AA(1)(c).

17 Schedule 6, items 2, 4, 5 and 6, paragraph 15(2)(f), subsection 54B(1A), paragraph 54N(1)(c) and section 93C.

18 Schedule 6, item 6, subsection 93C(3).

19 Schedule 7, part 1, item 1, section 23A.

20 Schedule 7, part 2, items 3 and 4, paragraphs 34(1)(a) and (c).

- an amendment to the public interest exemptions as it relates to the deliberative process of government[21] to include factors against giving access;[22] and
- an outgoing minister may transfer requests seeking access to information to another minister or the responsible agency,[23] and otherwise, active FOI requests are automatically forwarded to a relevant agency,[24] and applications to annotate or correct personal records made to a responsible minister will be taken to have lapsed on the minister ceasing office.[25]

Preliminary international human rights legal advice

Right to freedom of expression

1.3 Insofar as the various measures that seek to amend the FOI framework have the practical effect of restricting or impeding individuals' access to information held by government, including by broadening the grounds on which an FOI request may be refused, introducing application fees and removing anonymous and pseudonymous requests, these measures engage and limit the right to access information, a component of the right to freedom of expression.

1.4 The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or print, in the form of art, or through any other media of an individual's choice.[26] The right to freedom of expression also includes 'a right of access to information held by public bodies'.[27] The United Nations (UN) Human Rights Committee has stated:

> To give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. States parties should make every effort to ensure easy, prompt, effective and practical access to such information. States parties should also enact the necessary procedures, whereby one may gain access to information, such as by means of freedom of information legislation. The

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21 *Freedom of Information Act 1982*, section 47C provides that a document is conditionally exempt if its disclosure under the FOI Act would disclose matter (*deliberative matter*) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation which has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, or a minister or government of the Commonwealth.

22 Schedule 7, part 3, item 14, subsection 11B(3A).

23 Schedule 8, part 1, item 2, subsection 16B(1).

24 Schedule 8, part 1, item 2, subsection 16B(2).

25 Schedule 8, part 1, item 3, section 51CA.

26 International Covenant on Civil and Political Rights, article 19(2).

27 UN Human Rights Committee, *General Comment No. 34, Article 19: Freedom of opinions and expression* (12 September 2011) [18].

> procedures should provide for the timely processing of requests for information according to clear rules that are compatible with the Covenant. Fees for requests for information should not be such as to constitute an unreasonable impediment to access to information. Authorities should provide reasons for any refusal to provide access to information. Arrangements should be put in place for appeals from refusals to provide access to information as well as in cases of failure to respond to requests.[28]

1.5 The UN Special Rapporteur on the right to freedom of opinion and expression has also endorsed a set of general principles to give effect to the right to freedom of information:

(a) Freedom of information legislation should be guided by the principle of maximum disclosure.

(b) Public bodies should be under an obligation to publish key information.

(c) Public bodies must actively promote open government.

(d) Exceptions should be clearly and narrowly drawn and subject to strict 'harm' and 'public interest' tests.

(e) Requests for information should be processed rapidly and fairly and an independent review of any refusals should be available.

(f) Individuals should not be deterred from making requests for information by excessive costs.

(g) Meetings of public bodies should be open to the public.

(h) Laws which are inconsistent with the principle of maximum disclosure should be amended or repealed.

(i) Individuals who release information on wrongdoing - whistle-blowers - must be protected.[29]

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[28] UN Human Rights Committee, *General Comment 34, Article 19: Freedom of opinions and expression* (12 September 2011) [19].

[29] Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* (June 1999). These are endorsed by the UN Economic and Social Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, E/CN.4/2000/63 (2000) [43] and the UN Commission on Human Rights, *The right to freedom of opinion and expression*, Res 2000/38 (2000) [11].

1.6 The right to freedom of expression may be subject to limitations that are necessary to protect the rights or reputations of others,[30] national security,[31] public order, or public health or morals.[32] Additionally, such limitations must be prescribed by law, be rationally connected to the objective of the measures and be proportionate.[33]

Multiple rights

1.7 To the extent that the measures limit the right to access information, these measures also engage and limit multiple other human rights which include access to information as a core part of fulfilling the right, including the right to health, privacy, the right to take part in public affairs and the right to education. The UN General Assembly has resolved that freedom of information is a fundamental human right 'and the touchstone for all freedoms to which the United Nations is consecrated'.[34] The UN Special Rapporteur on Education has further stated:

> Access to information is essential to enable people to exercise their human rights. Without relevant, timely and accurate information, rights holders cannot know which services they are entitled to, what the associated costs are (if any) or which complaint mechanisms they can use to seek redress when their right …is violated.[35]

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30 Restrictions on this ground must be constructed with care. For example, while it may be permissible to protect voters from forms of expression that constitute intimidation or coercion, such restrictions must not impede political debate. See UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* (2011) [28].

31 Extreme care must be taken by State parties to ensure that treason laws and similar provisions relating to national security are crafted and applied in a manner that conforms to the strict requirements of paragraph 12(3) of the International Covenant on Civil and Political Rights. It is not compatible with paragraph 3, for instance, to invoke such laws to suppress or withhold from the public information of legitimate public interest that does not harm national security or to prosecute journalists, researchers, environmental activists, human rights defenders, or others, for having disseminated such information. See UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* (2011) [30].

32 The concept of 'morals' here derives from myriad social, philosophical and religious traditions. This means that limitations for the purpose of protecting morals must be based on principles not deriving exclusively from a single tradition. See UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* (2011) [32].

33 UN Human Rights Committee, *General Comment No. 34: Article 19: Freedoms of Opinion and Expression* (2011) [21]-[36].

34 United Nations General Assembly, *Resolution 59(1)*, 65th Plenary Meeting, 14 December 1946.

35 UN Human Rights Council, *Report of the Special Rapporteur on Education*, A/HRC/38/32 (2018) [45].

1.8 The right to health is the right to enjoy the highest attainable standard of physical and mental health.[36] It includes the right to information accessibility, which includes the right to seek, receive and impart information and ideas concerning health issues.[37] The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression stated:

> The default position must be that public authorities do not wait for a request for information; they must have an affirmative policy of releasing all relevant information in ways that are understandable to a non-technical public and that advance public health priorities.
>
> …
>
> A Government that deprives the public of reliable information puts individuals at risk and can justify such deprivation only on the narrowest grounds and with the greatest degree of necessity to protect a legitimate interest.[38]

1.2 The right to privacy includes respect for informational privacy, including the right to respect for private and confidential information, particularly the storing, use and sharing of such information.[39] In order for the right to be effective, every person has the right to find out what personal data is stored in relation to them, for what purpose and who has access to their information.

1.9 The right to take part in public affairs is the right of all citizens, without discrimination or unreasonable restriction, to take part in the conduct of public affairs, directly or through freely chosen representatives; to stand for public office; to vote in elections; and to have access to positions in public service.[40] This is engaged insofar as the measures relate to the imparting and receipt by citizens of information and ideas about public and political issues.

1.10 The right to education provides that education should be accessible to all.[41] It includes access to information that covers all aspects of education governance,

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36 International Covenant on Economic, Social and Cultural Rights, article 12(1).

37 UN Economic, Social and Cultural Rights Committee, *General Comment No. 14: the right to the Highest Attainable Standard of Health* (2000) [11]-[12].

38 UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on Disease pandemics and the freedom of opinion and expression*, A/HRC/44/49 (2020) [18] and [20].

39 International Covenant on Civil and Political Rights, article 17.

40 International Covenant on Civil and Political Rights, article 25. See UN Human Rights Council, *General Comment No. 25: Article 25, Right to participate in public affairs, voting rights and the right of equal access to public service* (1996) [1], [5]–[6].

41 International Covenant on Economic, Social and Cultural Rights, article 13.

including decision-making procedures for school admissions, teacher selection and other areas of concern for education-related stakeholders.[42]

1.11 Access to information is essential to respect, protect and fulfil multiple other human rights. As the bill seeks to amend the FOI Act, which covers most government agencies, any limitation on the right to access information impacts access to a broad range of information held by public bodies in hugely diverse areas of public policy and private life, and would therefore engage and limit multiple other human rights.

Legitimate objective and rational connection

1.12 The statement of compatibility identifies that the right to freedom of expression is engaged by the measures to amend the cabinet exemption and the public interest test as it relates to the deliberative process exemption, and by the introduction of application fees.[43] However, the statement of compatibility does not identify the impact many of the measures in the bill have on limiting access to information more broadly and therefore provides little information as to the proportionality of the measures with this right.

1.13 As to whether the measures in the bill are aimed at achieving a legitimate objective, the bill broadly seeks to improve efficiencies in the FOI framework. While administrative convenience, in and of itself, is unlikely to be sufficient to constitute a legitimate objective, if the FOI framework is so delayed such as to not be able to facilitate the timely processing of requests for information, this in itself may restrict access to information and not be compatible with the right to freedom of expression. The Attorney-General noted that the FOI Act was established over 40 years ago before the common use of electronic documents, digital communications and records in the workplace.[44] In 2023–2024, $86.2 million was spent on processing FOI requests, a 23% increase on the year prior, and public servants spent more than one million hours processing FOI requests.[45] If the current cost and time taken to process FOI requests is delaying access to information and resulting in public services not being delivered, improving the efficient operation of the FOI framework in this context may constitute a legitimate objective for the purposes of international human rights law. However further information is required as to whether the current volume of FOI requests and subsequent time and cost spent processing these requests results in delays in providing individuals with access to information or in delays more broadly in delivery of public services.

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42 UN Human Rights Council, *Report of the Special Rapporteur on Education*, A/HRC/38/32 (2018) [46].

43 Statement of compatibility, p. 9.

44 The Hon Ms Michelle Rowland MP, Attorney-General, Second Reading Speech, *House of Representatives Hansard*, 3 September 2025, p. 8.

45 The Hon Ms Michelle Rowland MP, Attorney-General, Second Reading Speech, *House of Representatives Hansard*, 3 September 2025, p.8.

1.14 Under international human rights law, it must also be demonstrated that any limitation on a right has a rational connection to the objective sought to be achieved. The key question is whether the relevant measure is likely to be effective in achieving the objective being sought. Whether the specific measures in the bill are likely to achieve timely processing of FOI requests in the FOI framework is unclear. While many of the measures have been introduced in response to the 2013 *Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010* (the Hawke Review), given the complexity of FOI legislation, the Hawke Review's primary recommendation was to conduct a more comprehensive review and, rather than amending the FOI Act, consider completely rewriting it.[46] The explanatory materials did not detail any consultation or provide evidence to demonstrate how each of the measures in the bill would be effective to achieve the stated objective. Further, as discussed below, a number of measures in the bill encourage non-disclosure of documents, for example measures to introduce a processing cap,[47] and discretion to refuse access on the terms of a request.[48] While this may encourage greater efficiency in the first instance, it may lead to greater requests for review both internally and externally, and therefore it is unclear whether the measures would, in practice, lead to more timely processing of requests for information.

Proportionality

1.15 A key aspect of whether a limitation on a right can be justified is whether the limitation is proportionate to the objective being sought. In this respect, it is necessary to consider a number of factors, including whether a proposed limitation is sufficiently circumscribed; whether it is accompanied by sufficient safeguards; and whether any less rights restrictive alternatives could achieve the same stated objective. Another relevant factor in assessing proportionality is whether there is the possibility of oversight and the availability of review. The proportionality of each of the key measures outlined above are assessed in turn below.

Vexatious or frivolous requests

1.16 The bill seeks to allow an agency or minister to refuse to deal with a request that is vexatious or frivolous, likely has the effect of harassing or intimidating or otherwise causing harm (or a reasonable fear of harm) to another person, or a request that is otherwise an abuse of process.[49] The effect of this amendment would be that an agency or minister may refuse to deal with specific requests without impacting the applicant's ability to make other requests or remake the request that was declined.

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46 Australian Government, *Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010*, 2013, p. 16 [recommendation 1].

47 Schedule 3, part 2, item 11, subsection 24AA(1A).

48 Schedule 7, part 1, item 1, section 23A.

49 Schedule 2, part 4, item 41, section 15AD.

The separate vexatious applicant declaration process through the Information Commissioner would continue to exist.[50]

1.17 The terms in the measure appear to include a broad range of circumstances. The terms vexatious, frivolous, harassing and intimidating are taken to have their ordinary meanings.[51] 'Harm' may include, but is not limited to, harm to health (including psychological health and wellbeing), safety and welfare.[52] The explanatory memorandum states that:

> [t]he 'effect of' the request does not require that it in fact caused harassment etc to a person, it is sufficient if the request is considered to be likely to have that effect. This enables an agency or Minister to consider the impact that processing a request may have on staff or another person (for example, if processing the request may release information or require consultation with a person who has a domestic violence order in place against the applicant).[53]

1.18 While the example given provides a circumstance which would likely cause specific harm, the provision itself is framed broadly, which creates a risk that general concerns about potential harms to staff could be enough for an application to be refused.

1.19 The explanatory memorandum also states that the term 'abuse of process' includes seeking access to information for a purpose other than a purpose consistent with the objects of the FOI Act. This may include requests received as part of a campaign designed to disrupt agency, ministerial or governmental operations.[54] Similarly, it appears there is a risk that 'abuse of process' could also be applied broadly to enable agencies to refuse requests that are perceived to be disruptive to government operations, for example requests from campaigners for environmental decision-making information may be seen to be disrupting government operations. It appears the measure could in practice be used to refuse a broad range of requests and as such it is unclear whether the measure is sufficiently circumscribed.

1.20 Further, in relation to the grounds upon which the Information Commissioner can declare an applicant as vexatious, the bill provides for an expanded definition of 'abuse of the process for an access action' to include an action that is harassing, intimidating, insulting or abusing an individual or employee of an agency.[55] The effect

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50 *Freedom of Information Act 1982*, part VIII, division 1.

51 Explanatory memorandum, p. 24.

52 Explanatory memorandum, p. 24.

53 Explanatory memorandum, p. 24.

54 Explanatory memorandum, p. 24.

55 Schedule 2, part 4, item 50, subsection 89L(4). Abuse of the process for an access action also includes, but is not limited to, unreasonably interfering with the operations of an agency, and seeking to use the FOI Act for the purpose of circumventing restrictions on access to a document(s) imposed by a court.

of being declared a vexatious applicant would depend on the terms and conditions stated in the declaration, but may provide that the individual cannot make requests for documents without the written permission of the Information Commissioner.[56] While declaring applicants to be vexatious may be a proportionate limit on the right to freedom of expression when applied strictly, expanding the grounds upon which an individual may be declared vexatious may not always be proportionate. It is unclear from the information provided in the explanatory materials why this ground has been expanded and whether it is a proportionate limitation on the right to access information.

Removing ability to make anonymous and pseudonymous requests

1.21 The bill seeks to provide that where an applicant makes an FOI request on behalf of themselves, the request cannot be made anonymously or under a pseudonym,[57] and they may be required to provide proof of identity.[58] If an applicant makes a request on behalf of a third party for the other person's personal information or information concerning their business, commercial or financial affairs, the applicant must provide proof of the applicant's identity, the other person's identity and that the applicant is authorised to access the document on behalf of the other person.[59] Requests for documents on behalf of a third party can be anonymous, however, where it does not relate to the third party's personal information or information concerning their business, commercial or financial affairs.

1.22 The statement of compatibility states that this measure aims to achieve the objective of ensuring vexatious applicant declarations are effective and unable to be circumvented via the use of a pseudonym; it enables agencies and ministers to readily determine whether multiple requests should be considered in aggregate; it ensures personal or private information is only disclosed in appropriate circumstances; ensures agencies or ministers can appropriately determine the national security or personal safety implications of granting access to documents or information; and it protects the safety and wellbeing of agency officers and employees, by discouraging applicants from engaging in inappropriate or threatening behaviour when making a request.[60]

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56 *Freedom of Information Act 1982*, section 89M.

57 Schedule 2, part 5, item 53, paragraphs 15(2)(ba) and (bb).

58 Schedule 2, part 5, item 54, paragraph 15(2)(d).

59 Schedule 2, part 5, item 54, paragraphs 15(2)(d) and (e). The bill as introduced provided that all requests on behalf of a third party must include the full name of the other person and may require proof of identity. Government amendments agreed to have limited the scope of this measure such that the full name of the third party only needs to be provided in relation to requests on behalf of a third party for the third party's personal information or information concerning their business, commercial or financial affairs, see Government amendment sheet SV117, items (1) and (2), amended paragraph 15(2)(bb) and substituted subsection 19(1).

60 Statement of compatibility, pp. 7-8.

The statement of compatibility further states that the *Privacy Act 1988* (Privacy Act) applies.[61]

1.23 While this measure may assist with managing requests for documents, the statement of compatibility does not identify whether this is a proportionate limit on the right to freedom of expression. It assists with the proportionality of the measure that requests for documents on behalf of a third party can be anonymous if it does not relate to their personal or business information. The supplementary explanatory memorandum states that this supports, for example:

> a community group being able to put in a request on behalf of their constituents, an investigative journalist or whistleblowers. Retaining the requirement for the applicant to provide a name supports a number of policy purposes, including to ensure vexatious applicant declarations are effective and unable to be circumvented through use of a pseudonym.[62]

1.24 However, this exception is not extended to individuals making a request for themselves. While an individual who wants to make an anonymous request for documents may be able to seek the assistance of another person or organisation to make a request on their behalf (and therefore remain anonymous), this option may not be readily available for all individuals. It is unclear whether in practice this may deter, and provide a chilling effect on, individuals and organisations seeking information in some circumstances, particularly for whistleblowers and individuals working within the agencies that they want to disclose information about.

1.25 Further, while the statement of compatibility states that the information disclosed is governed by the Privacy Act, Australian Privacy Principle (APP) 2 provides a right to anonymity or pseudonymity when dealing with an APP entity, which includes all Commonwealth agencies.[63] It is unclear how this provision aligns with the principles of the Privacy Act and whether, in requiring that an applicant provide their name, this is the least rights restrictive approach.

<u>Agency or minister may refuse to process a request that would take more than 40 hours of work</u>

61 Statement of compatibility, p. 8.

62 Supplementary explanatory memorandum, p. 4.

63 Australian Privacy Principle 2.

1.26 The bill seeks to allow an agency or minister to refuse to process a request as a 'practical refusal reason'[64] if it would take more than a prescribed amount of time to process. The default minimum processing cap would be 40 hours of work and regulations may prescribe a higher number of hours.[65] The explanatory memorandum states that:

> The default minimum cap of 40 hours has been determined on the basis that it represents a reasonable period to allocate to processing an individual FOI request, constituting just over one week's ordinary hours of work for a full-time employee under Australia's National Employment Standards as at the time of these amendments.[66]

1.27 The statement of compatibility does not identify that this measure engages and limits the right to freedom of expression so does not address whether the limitation is proportionate. It is unclear from the justification in the explanatory memorandum why 40 hours represents a reasonable period to allocate to a request and why this would be appropriate in all circumstances. While the measure appears to be directed towards improving efficiencies in the FOI system, the explanatory materials do not identify any consideration of less rights restrictive alternatives to improve government resources. For example, it may be appropriate to proactively discuss with an applicant the scope of their request and whether what they are seeking is in practice narrower than what they have requested,[67] rather than setting processing caps that may deny an applicant access to information simply because the information requested is too large or the information is difficult to find. Further, the measure does not appear to include consideration of any difficulty in finding certain documents or information because of errors or inefficiencies in government record keeping which may cause a particular request to have a large processing time. As such, it is unclear that this measure represents a proportionate limitation.

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64 *Freedom of Information Act 1982*, sections 24 and 24AA provides that a 'practical refusal reason' exists in relation to a request for a document if the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations or the performance of the minister's functions, or the request does not provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the minister, to identify it. If an agency or minister is satisfied that a practical refusal reason exists in relation to the request, they must undertake a request consultation process which provides an opportunity for the applicant to seek assistance from the agency or minister to revise the request, and if the practical refusal reason still exists, they may refuse to give access to the document.

65 Schedule 3, part 2, item 11, subsection 24AA(1A).

66 Explanatory memorandum, p. 36.

67 *Freedom of Information Act 1982*, sections 24 and 24AB provides that where a practical refusal reason exists, the agency or minister must undertake a request consultation process. Rather than proactively contacting an applicant about the scope of the request, the applicant is notified of an intention to refuse access and is given the opportunity to contact the agency or minister within 14 days in order to receive assistance.

Application fees

1.28 The bill allows application fees for FOI requests, internal reviews and Information Commissioner (IC) reviews to be specified in the regulations. Requests for an individual's own personal information must not be subject to an application fee and the regulations must provide for waiver or remission in prescribed circumstances of financial hardship.[68]

1.29 The UN Human Rights Committee has stated that fees for requests for information should not be such as to constitute an unreasonable impediment to access to information.[69] In this measure, fees cannot be applied to an individual's request for their own personal information and the regulations must provide for a waiver or remission in cases of financial hardship. This assists with the proportionality of the measure, although it is unclear how accessible the waiver or remission process will be in practice or whether the process of applying for a fee waiver in itself may deter applicants. Further, as the amount of the application fees would be specified in the regulations, it is difficult to assess in practice whether any fees imposed would constitute an 'unreasonable impediment to access to information' and whether they may be so high as to deter potential applicants.

Refusal to give access on the terms of the request

1.30 The bill would allow an agency or minister to refuse requests to give access to a document on the terms of the request, without having identified the document, if it is apparent it is or would be an exempt document. This measure would still require consideration of whether the obligation to provide an edited copy of the document applies.[70]

1.31 The explanatory memorandum states that this amendment is intended to have efficiency benefits by allowing agencies and the minister to more quickly deal with FOI requests of this kind and increase their overall capacity to process FOI requests.[71] It further states that the new provision recognises that fully processing FOI requests for documents that are clearly exempt based on the terms of the request may not be an efficient use of public resources in cases where an access refusal can be anticipated as the likely outcome of the FOI request from the outset.[72]

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68 Schedule 6, item 6, subsections 93C(3) and (4).

69 UN Human Rights Committee, *General Comment 34, Article 19: Freedom of opinions and expression* (12 September 2011) [19].

70 Schedule 7, part 1, item 1, section 23A.

71 Explanatory memorandum, p. 67.

72 Explanatory memorandum, p. 68.

1.32 An exempt document is a document exempt under division 2 of Part IV of the FOI Act,[73] or conditionally exempt under division 3 of Part IV of the FOI Act and access would be contrary to the public interest.[74] The UN Special Rapporteur on freedom of opinion and expression has endorsed the principle that any exceptions to disclosure of government information should be clearly and narrowly drawn and subject to strict harm and public interest tests.[75] The exemptions and conditional exemptions are numerous and broad, and no information is provided in the explanatory materials as to whether they are proportionate limitations on the right to access information. It is therefore unclear whether the exemptions and conditional exemptions in the FOI Act are permissible exceptions and whether refusing access on the terms of the request without considering the documents themselves may compound potential concerns that the exemptions are overly broad.

1.33 Further, while refusing requests on their terms may aid efficiency, it also creates a risk that more requests may be refused and that this ground of refusal may be misapplied or misused. In terms of safeguards, internal review and review by the Information Commissioner would exist for decisions made to refuse access on the terms of the request, and applicants are also able to lodge another FOI request in different terms. This may assist with the proportionality of the measure. However, refusal on the terms of a request may lead to many more applications for review of a decision both internally and with the Information Commissioner and, rather than

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73 *Freedom of Information Act 1982*, part IV, division 2: Exempt documents are documents affecting national security, defence or international relations; cabinet documents; documents affecting enforcement of law and protection of public safety; documents to which secrecy provisions of enactments apply; documents subject to legal professional privilege; documents containing material obtained in confidence; Parliamentary Budget Office documents; documents disclosure of which would be contempt of Parliament or contempt of court; documents disclosing trade secrets or commercially valuable information; and electoral rolls and related documents.

74 *Freedom of Information Act 1982*, part IV, division 3: Conditionally exempt documents are documents that would disclose confidential information between the Commonwealth and a state; would disclose matter of the deliberative processes involved in the functions of an agency, minister or Commonwealth government; would have a substantial adverse effect on the financial or property interests of the Commonwealth or of an agency; would prejudice or have a substantial adverse effect on the operations of agencies; would involve the unreasonable disclosure of personal information about any person; would disclose information concerning a person in respect of their business or professional affairs which would unreasonably affect them; contains information relating to research being undertaken and would unreasonably expose the agency or officer to disadvantage; or would have a substantial adverse effect on Australia's economy.

75 Article 19, 'The Public's Right to Know: Principles on Freedom of Information Legislation' (June 1999). These are endorsed by the UN Economic and Social Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (2000) E/CN.4/2000/63, [43] and the UN Commission on Human Rights, *The right to freedom of opinion and expression*, (2000) Res 2000/38, [11].

encourage early resolution of requests, may operate to delay access to documents if the decision is overturned on review.

Cabinet exemption

1.34 The bill seeks to exempt a document from disclosure if it has been prepared by a minister, on a minister's behalf or by an agency, and a substantial purpose for its preparation was submission for consideration by the cabinet or to brief a minister in relation to issues to be considered by the cabinet.[76] This replaces the current requirement that the document is exempt if brought into existence for the *dominant purpose* of submission for consideration by the cabinet or briefing a minister on a document which was brought into existence for the dominant purpose of submission for consideration by the cabinet.[77]

1.35 The statement of compatibility states that the objective of the measure is to protect cabinet confidentiality and the principle of collective ministerial responsibility.[78] The explanatory memorandum further provides that the measure recognises:

> … that documents may be created for multiple purposes and may disclose sensitive information about Cabinet matters even if they were not created for the 'dominant purpose' of Cabinet consideration, or briefing a Minister on a document to be submitted for Cabinet consideration. This amendment ensures that documents considered by Cabinet will still be exempt under section 34 if they were prepared for a substantial purpose of Cabinet consideration. Replacing dominant with substantial is intended to ensure that the Cabinet purpose must still be of substance, real and not insignificant, trivial or nominal, even if it is not the dominant purpose, ensuring the exemption still applies to documents with a genuine Cabinet purpose.[79]

1.36 Exemptions that apply to a class of documents do not appear to align with the principle of maximum disclosure and the principle that exceptions should be clearly and narrowly drawn and subject to strict 'harm' and 'public interest' tests.[80] While many documents may disclose sensitive information about Cabinet matters, the explanatory materials have not explained why this would, in all cases, be of concern. On the contrary, the disclosure of such information may improve the integrity and

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76 Schedule 7, part 2, items 3 and 4, paragraphs 34(1)(a) and (c).

77 *Freedom of Information Act 1982*, part IV, subsection 34(1).

78 Statement of compatibility, p. 9.

79 Explanatory memorandum, p. 70.

80 Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* (June 1999). These are endorsed by the UN Economic and Social Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression,* E/CN.4/2000/63 (2000) [43] and the UN Commission on Human Rights, *The right to freedom of opinion and expression*, Res 2000/38 (2000) [11].

effectiveness of government decision-making which is the very justification for including the class exemption in the first place. Of note, the Robodebt Royal Commission recommended the repeal of the Cabinet documents class exemption in order to improve transparency in Cabinet decision-making, and recommended that confidentiality should only be maintained over any Cabinet documents or parts of Cabinet documents where it is reasonably justified for an identifiable public interest reason, depending on the individual circumstances of each case.[81] The current broad exemption for Cabinet documents does not include any consideration of possible harm associated with disclosure or a public interest test. It appears that various less rights restrictive approaches are available. For example, the Queensland Government proactively releases documents considered by Cabinet within 30 business days of a final decision subject to various public interest considerations in that release.[82] Alternatively, at a minimum, a less rights restrictive approach would be to include exemptions based on harm associated with disclosure and a public interest test. By broadening a class exemption, this measure does not appear to be sufficiently circumscribed or the least rights restrictive approach.

Public interest exemption

1.37 The bill seeks to include an amendment to the public interest exemptions as it relates to the deliberative process of government to include factors against giving access. The factors against giving access include whether giving access would, or could reasonably be expected to, have the following effects:

- prejudice the frank or timely discussion of matters or exchange of opinions between participants in deliberative processes of government for the purposes of consultation or deliberation in the course of, or for the purposes of, those processes;
- prejudice the frank or timely provision of advice to or by an agency or minister, or the consideration of that advice after it is provided;
- prejudice the orderly and effective conduct of a government decision-making process.[83]

1.38 The statement of compatibility states that this measure seeks the legitimate purpose of ensuring the integrity and effectiveness of government decision-making.[84] The explanatory memorandum states that, in general terms, the exemption recognises that governments need to be able to run internal operations effectively and

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81 Commonwealth of Australia, *Royal Commission into the Robodebt Scheme* (Vol. 1, 2023) pp. 656-657.

82 Queensland Government, *The Queensland Cabinet Handbook: Governing Queensland* (2025) p. 48.

83 Schedule 7, part 3, item 14, subsection 11B(3A).

84 Statement of compatibility, p. 9.

have time to consider advice and options provided by the public service in the course of considering options or making a decision.[85]

1.39 The explanatory memorandum further states:

> Adopting its ordinary meaning, the term 'frank' in this context refers to open, unreserved and candid expression. Whilst public servants are subject to obligations under the *Public Service Act 1999* including upholding APS values of providing Government with advice that is frank, honest, timely and based on the best available evidence (subsection 10(5)), these amendments recognise that this does not necessarily mean that everything produced by the Public Service is to be released. For example, disclosure of information generated in the early and formative stages of a policy development process, particularly informal and exploratory ('blue skies') thinking or discussions, may inhibit the free and frank exchange of opinions that is necessary for the development of robust policy advice.[86]

1.40 No explanation has been provided, however, as to how restricting access to this information, rather than actively disclosing, ensures the effectiveness and integrity of government decision-making. Further, it appears that the factors against giving access are so broad that they could in theory justify restricting access to almost any information. It is unclear, for example, what may prejudice the orderly and effective conduct of a government decision-making process and arguably many documents may be refused to be disclosed on this basis. These factors do not align with the principles of proactive and maximum disclosure and the requirement that any exceptions should be clearly and narrowly drawn. As such, it is unclear whether the measure including such broad factors weighing against disclosure is sufficiently circumscribed and therefore a proportionate limitation on the right to freedom of expression.

Transferral and lapsing of requests when a minister ceases office

1.41 The bill seeks to provide that an outgoing minister may, where they reasonably believe they will cease to hold the relevant office, elect to transfer requests seeking access to information to another minister or the responsible agency.[87] Otherwise, active FOI requests would be automatically forwarded to a relevant agency.[88] Applications to annotate or correct personal records made to a responsible minister will be taken to have lapsed on the minister ceasing office.[89] In addition to limiting the right to access information, this aspect of the measure also limits the right to informational privacy, which includes the right to control the dissemination of

85 Explanatory memorandum, p. 76.

86 Explanatory memorandum, p. 77.

87 Schedule 8, part 1, item 2, subsection 16B(1).

88 Schedule 8, part 1, item 2, subsection 16B(2).

89 Schedule 8, part 1, item 3, section 51CA.

information about one's private life.[90] A minister would cease to hold office when they leave office due to a general election, change portfolios after a reshuffle of the ministry or when they resign office.[91]

1.42 This measure does not require a minister to transfer any active requests and does not require a minister to identify the documents subject to an FOI request before they leave office. Further, applicants are not able to make an application for review with the Information Commissioner in relation to an access refusal decision if the relevant minister ceases to hold the relevant office.[92]

1.43 Given the frequency with which ministers may change or leave office, it appears that this measure may impede timely access to documents and also impede access to review. It appears that the measure may make it more difficult to find requested documents and may in practice lead to individuals making new requests for information. Further, the limitations on access to review where certain applications would be taken to have lapsed and where a minister ceases to hold the relevant office do not support the proportionality of the measure.

Chilling effect

1.44 An additional factor in considering the proportionality of a measure is the extent of any interference with human rights. The greater the interference, the less likely the measure is to be considered proportionate. In addition to the specific measures addressed above, there are other measures in the bill that may, of themselves, constitute a proportionate or marginal interference with the right to access to information as part of freedom of expression, but taken together may limit the right. For example, measures to transfer requests for documents to another agency or minister;[93] amendments throughout the FOI Act to replace calendar days with working days;[94] and amendments to the deemed refusal process where a decision is not made on a request within time.[95] Taken together, the cumulative impact of the multiple measures in the bill may have a chilling effect on applicants seeking access to information and may together amount to a disproportionate limit on the right to freedom of expression.

1.45 Further the bill seeks to amend the object clause of the FOI Act to express that promoting transparent government through providing access to information is balanced against protecting essential private interests and the proper and effective operation of government in the FOI framework.[96] This appears to reflect an intention

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90 International Covenant on Civil and Political Rights, article 17.

91 Explanatory memorandum, p. 78.

92 Schedule 8, item 12, proposed subsection 54L(2A).

93 Schedule 2, part 6, item 62, subsection 16(1A).

94 Schedule 4, part 4, items 52 and 53, subsection 15(7A) and paragraph 15(8)(a).

95 Schedule 4, part 3.

96 Schedule 1, part 1, item 3, subsection 3(2).

that the operation of the FOI Act as a whole is to shift to increasing restrictions on access to information and this shift does not align with the principle of maximum disclosure. While there may be legitimate objectives for doing this, it is not clear that, on balance and when considering all the measures together, the operation of the bill as a whole is a proportionate limit on the right to freedom of expression.

Committee view

1.46 The committee notes that the bill seeks to amend the *Freedom of Information Act 1982* (FOI Act) to reform the operation of the Freedom of Information framework (FOI framework). The FOI framework provides for processes for requesting information held by government agencies and for review of decisions to refuse access.

1.47 The committee notes that the bill introduces multiple measures which broadly go towards improving efficiencies and addressing abuses of process in the FOI framework. The committee notes that by limiting disclosure of information through FOI requests and thereby restricting individuals' access to information held by government, many of these measures engage and limit the right to access information, a component of the right to freedom of expression. The committee further notes that, to the extent that the measures limit the right to access information, these measures also engage and limit multiple other human rights which include access to information as a core part of fulfilling the right, including the right to health, privacy, the right to take part in public affairs and the right to education.

1.48 The committee considers that, to the extent that the measures aim to improve the timely processing of requests for information, many of the measures may be capable of pursuing a legitimate objective for the purposes of international human rights law, although further information is required to understand the current inefficiencies with the FOI framework. The committee considers that the basis for many of the amendments appear to draw from the 2013 *Review of the Freedom of Information Act 1982 and Australian Information Commissioner Act 2010 report*, which recommended that a comprehensive review of the FOI Act be undertaken, and consideration be given to rewriting it entirely. The committee notes that this bill does not implement this recommendation. Further, the committee considers that the measures encourage greater non-disclosure of documents, and this may lead to increased requests for review, which may undermine the intent of improving efficiency and timely processing of requests. As such, while the measures may be rationally connected to the legitimate objective sought to be achieved, the committee considers that the explanatory materials have not provided evidence to support this.

1.49 The committee further considers that multiple measures in the bill may not be a proportionate limit on the right to freedom of expression. The committee considers further information is required to assess the compatibility of these measures with this right, and as such seeks the minister's advice in relation to:

(a) whether the current volume of FOI requests and subsequent time and cost spent processing these requests results in delays in providing individuals with access to information or results in delays more broadly in the delivery of public services;

(b) how the measures are rationally connected to (that is, effective to achieve) the legitimate objective of the bill, including whether the measures in the bill that have the effect of encouraging non-disclosure of documents may lead to greater requests for review, and whether this may undermine the timely processing of requests;

(c) whether the measure to refuse requests that are considered vexatious or frivolous is sufficiently circumscribed;

(d) why expanding the grounds upon which the Information Commissioner can declare an individual to be vexatious is considered necessary, and whether the measure is sufficiently circumscribed;

(e) why it is considered appropriate that individuals seeking access to documents that do not relate to their personal information must provide their name and may need to provide proof of identification;

(f) why it is considered that 40 hours represents a reasonable period to allocate to a request, and whether any less rights restrictive alternatives (than rejecting requests which would involve 40 hours of work or more) could achieve the same objective;

(g) what fee structure and circumstances for exemptions are proposed to be included in the regulations;

(h) what safeguards are in place to ensure that any application fees would not amount to an unreasonable impediment to access information;

(i) why it is considered proportionate to refuse access on the terms of a request rather than considering the documents themselves;

(j) why it is considered appropriate to include and expand Cabinet documents as a class exemption, and whether any less rights restrictive alternatives could achieve the same objective (for example, to consider the documents individually and include exemptions based on harm associated with disclosure and a public interest test);

(k) how does including factors weighing against disclosure for public interest exemptions as it relates to the deliberative process of government, rather than proactively disclosing information, ensure the effectiveness and integrity of government decision-making;

(l) whether the factors weighing against disclosure for public interest exemptions as it relates to the deliberative process of government are sufficiently circumscribed; and

(m) how the measure to transfer or lapse requests for official documents of a minister is proportionate with the right to access information, including why it is considered appropriate not to provide for review to the Information Commissioner where a minister ceases to hold the relevant office.

Legislative instruments

Aboriginal and Torres Strait Islander Heritage Protection (Murujuga) Declaration 2025[97]

FRL No.	F2025L01099
Purpose	This instrument declares Murujuga, Western Australia, as a 'declared area' and makes it an offence to move, damage, deface or otherwise disturb an Aboriginal site or Aboriginal object in the declared area, subject to certain exceptions.
Portfolio	Environment and Water
Authorising legislation	*Aboriginal and Torres Strait Islander Heritage Protection Act 1984*
Disallowance	15 sitting days after tabling (tabled in the House of Representatives on 7 October 2025 and in the Senate on 27 October 2025).[98]
Rights	Culture; effective remedy; equality and non-discrimination; privacy

Protection and preservation of the Murujuga

1.50 This instrument makes it an offence for a person to move, damage, deface, or otherwise disturb an Aboriginal site or Aboriginal object in the Murujuga, Western Australia (the declared area).[99] This offence does not apply to a Traditional Owner or Traditional Custodian acting in accordance with Ngarda-Ngarli tradition; to emergency services personnel acting in the course of their duties; or where a person has received prior written agreement from the Murujuga Aboriginal Corporation (MAC) to move, damage, deface or otherwise disturb the Aboriginal site or Aboriginal object.[100]

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97 This entry can be cited as: Parliamentary Joint Committee on Human Rights, Aboriginal and Torres Strait Islander Heritage Protection (Murujuga) Declaration 2025, *Report 7 of 2025*; [2025] AUPJCHR 54.

98 The disallowance date for the House of Representatives and the Senate will be in 2026. In the event of any change to the Senate or House's sitting days, the last day for the notice would change accordingly.

99 Subsection 6(1). Section 5 declares Murujuga, Western Australia as a 'declared area' for the purposes of section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*. A declaration may be made in relation to an area if the Minister for Environment and Water is satisfied that the area is a significant Aboriginal area and that it is under threat of injury or desecration.

100 Subsection 6(2).

Further, an Aboriginal site or Aboriginal object is taken *not* to be moved, damaged, defaced or otherwise disturbed by, or as a result of, industrial gaseous emissions.[101] Industrial gaseous emissions are defined as including but not limited to ammonia, carbon dioxide, oxides of nitrogen and oxides of sulphur.[102] This offence carries a penalty of imprisonment for five years or 100 penalty units ($33,000) or both.[103]

1.51 For the purposes of this instrument, an Aboriginal site is defined as any place of particular significance to Aboriginals where traditions, customs, ceremonies or beliefs are practised or observed in accordance with Ngarda-Ngarli tradition. An Aboriginal object is defined as any object or thing of particular significance to Aboriginals in accordance with Ngarda-Ngarli tradition, including but not limited to petroglyphs, rock art, middens, stone arrangements, paintings, artefacts, Aboriginal remains, fish traps, fish increase sites, stone tools, scarred trees, or any other object or thing made, created, used or arranged by Aboriginals in accordance with Ngarda-Ngarli tradition.[104]

International human rights legal advice

Rights to culture; privacy; and equality and non-discrimination

1.52 Insofar as the offence to move, damage, deface or otherwise disturb an Aboriginal site or object in the Murujuga protects and preserves this area from injury or desecration, the measure promotes multiple human rights, particularly the rights to culture, privacy and equality and non-discrimination.

1.53 The right to culture includes the right of all people to benefit from and take part in cultural life.[105] 'Culture' has been interpreted to be a broad and inclusive concept which includes ways of life; language; music and song; religion, rites and ceremonies; natural and human-made environments; and customs and traditions through which individuals, groups and communities express their humanity.[106]

1.54 Individuals belonging to ethnic, religious or linguistic minority groups, including Indigenous groups, have the right, in community with other members of

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101 Subsection 6(3).

102 Section 4.

103 *Aboriginal and Torres Strait Islander Heritage Protection Act 1984*, subsection 22(1).

104 Section 4.

105 International Covenant on Economic, Social and Cultural Rights, article 15; International Covenant on Civil and Political Rights, article 27. See also, UN Committee on Economic, Social and Cultural Rights, *General Comment No. 21: article 15* (right of everyone to take part in cultural life) (2009). The committee explains, at [6], that the right requires from a State party both abstention (including non-interference with the exercise of cultural practices) and positive action (including ensuring preconditions for participation, facilitation and promotion of cultural life).

106 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 21: article 15 (right of everyone to take part in cultural life)* (2009) [12].

their group, to enjoy their own culture, to profess and practice their own religion, and to use their own language.[107] This right is distinct from, and additional to, other human rights that all persons are entitled to enjoy, such as the right to take part in cultural life. While this right is conferred on individuals belonging to minority groups, its protection depends on the ability of the minority group to maintain its culture, language or religion. In this regard, it may be necessary for states to implement positive measures to protect the identity of a minority group and the rights of its members to enjoy and develop their culture.[108]

1.55 For Indigenous peoples, this right protects traditional ways of life which are closely associated with territory and the use of its resources, including traditional activities such as fishing or hunting. The UN Human Rights Committee has recognised the right of Indigenous peoples to 'enjoy the territories and natural resources that they have traditionally used for their subsistence and cultural identity'.[109] The United Nations Declaration on the Rights of Indigenous Peoples reaffirms this right and elaborates on its content.[110] The right to enjoy culture may also protect the right of elders to transmit to their children and future generations their culture and traditions and use of land and sea resources.[111]

1.56 The statement of compatibility states that the measure promotes cultural rights by ensuring the protection of the Murujuga and preserving it for Aboriginal people to enjoy in accordance with culture and tradition.[112] It explains that the Murujuga has particular significance to Aboriginal people in accordance with Aboriginal traditions on the basis of the sacred connection the area holds for the Ngarda-Ngarli through Dreaming, Storylines and Lore.[113] The explanatory statement notes that the Murujuga has one of the most significant and diverse collections of petroglyphs in the world and these petroglyphs allow for the teaching and continuation of culture. It notes that the petroglyphs relate to songs and mythologies, which have important meaning across the whole of the Pilbara region and are central

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107 International Covenant on Civil and Political Rights, article 27. UN Human Rights Committee, *General Comment No. 23: The rights of minorities* (1994) [5.2].

108 See UN Human Rights Committee, *General Comment No. 23: The rights of minorities* (1994) [5.2].

109 *Billy and Others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2022) [8.13].

110 United Nations Declaration on the Rights of Indigenous Peoples, article 11.

111 *Billy and Others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2022) [8.14].

112 Statement of compatibility, p. 12.

113 Statement of compatibility, p. 11.

to the Traditional Custodians' culture.[114] The profound cultural and spiritual significance of the area is recognised in its UNESCO World Heritage listing.[115]

1.57 The right to privacy prohibits arbitrary and unlawful interferences with an individual's privacy, family, correspondence or home.[116] In *Daniel Billy and others v Australia*, the UN Human Rights Committee considered that the traditional Indigenous way of life and Indigenous persons' special relationship with their territory falls within the scope of protection of the right to privacy.[117] Regarding the scope of states' obligations with respect to the right to privacy, the UN Human Rights Committee has stated that:

> …the application of article 17 [the right to privacy] should be understood not as being limited to the act of refraining from arbitrary interference; but rather as also obligating States parties to adopt positive measures that are needed to ensure the effective exercise of the rights under article 17 in the presence of interference by the State authorities and physical or legal persons.[118]

1.58 By including exceptions to the offence of moving, damaging, defacing or otherwise disturbing an Aboriginal site or object for Traditional Owners, Traditional Custodians and people who have received prior written agreement from the MAC to engage in certain actions, the measure treats people differently on the basis of the protected attribute of race. In this way, the measure may engage the right to equality and non-discrimination, which provides that everyone is entitled to enjoy their rights without discrimination of any kind and that all people are equal before the law and entitled without discrimination to equal and non-discriminatory protection of the law.[119] Differential treatment (including the differential effect of a measure that is

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114 Explanatory statement, p. 3.

115 UNESCO, *Murujuga Cultural Landscape* (accessed 21 November 2025).

116 International Covenant on Civil and Political Rights, article 17; UN Human Rights Committee, *General Comment No. 16: Article 17* (1988) [3]–[4].

117 *Daniel Billy and others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2023) [8.10].

118 *Daniel Billy and others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2023) [8.10].

119 International Covenant on Civil and Political Rights, articles 2 and 26. Article 2(2) of the International Covenant on Economic, Social and Cultural Rights also prohibits discrimination specifically in relation to the human rights contained in the International Covenant on Economic, Social and Cultural Rights. Articles 1, 2, 4 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination further describe the content of these obligations and the specific elements that state parties are required to take into account to ensure the elimination of discrimination on the basis of race, colour, descent, national or ethnic origin.

neutral on its face) will not constitute unlawful discrimination if the differential treatment is based on reasonable and objective criteria.[120]

1.59 The statement of compatibility acknowledges the engagement of the right to equality and non-discrimination, stating that the instrument favours the interests of Aboriginal people over other people on the basis of race. It states that the result is that non-Indigenous persons do not benefit from being able to take particular actions in the Murujuga.[121] The statement of compatibility states that this differential treatment can be characterised as a special measure within the meaning of Article 1(4) of the International Convention on the Elimination of All Forms of Racial Discrimination.

1.60 Article 1(4) provides for special measures 'taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms'. The UN Special Rapporteur on the situation of human rights and fundamental freedoms of Indigenous people has observed that special measures are required to address the disadvantages faced by Indigenous peoples in Australia.[122] Special measures are ordinarily achieved through preferential treatment of disadvantaged groups and should be 'designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities'.[123]

1.61 The statement of compatibility states that the instrument complies with the requirements of Article 1(4) because it preserves and protects the Murujuga for the benefit of Aboriginal people, and protects the rights of Aboriginal people to continue to enjoy their culture and undertake traditional activities in the Murujuga.[124] By seeking to protect the Murujuga, a significant Aboriginal cultural site, and preserve traditional ways of life closely associated with the Murujuga, the instrument protects the cultural rights of Traditional Custodians – which is distinct from a special measure. The Convention on the Elimination of All Forms of Racial Discrimination Committee has noted that:

> Special measures should not be confused with specific rights pertaining to certain categories of person or community, such as, for example the rights of persons belonging to minorities to enjoy their own culture, profess and

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120 UN Human Rights Committee, *General Comment No. 18: Non-Discrimination* (1989) [13]; see also *Althammer v Austria*, UN Human Rights Committee Communication No. 998/01 (2003) [10.2].

121 Statement of compatibility, p. 12.

122 United Nations Human Rights Council, *Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: The situation of indigenous peoples in Australia*, A/HRC/15/37/Add.4 (2010) [21].

123 United Nations Committee on the Elimination of Racial Discrimination, *General Recommendation No. 32* (2009) [16]–[18].

124 Statement of compatibility, p. 12.

> practise their own religion and use their own language, the rights of indigenous peoples, including rights to lands traditionally occupied by them…Such rights are permanent rights, recognized as such in human rights instruments...States parties should carefully observe distinctions between special measures and permanent human rights in their law and practice. The distinction between special measures and permanent rights implies that those entitled to permanent rights may also enjoy the benefits of special measures.[125]

1.62 Irrespective of whether the differential treatment of Aboriginal people in the measure is characterised as a special measure under international human rights law, the differential treatment would not constitute unlawful discrimination as it is based on reasonable and objective criteria and is necessary to protect the right of Indigenous people to develop and enjoy their culture.

1.63 However, by providing that an Aboriginal site or object is taken *not* to be moved, damaged, defaced or otherwise disturbed by, or as a result of, industrial gaseous emissions, the measure may in effect facilitate injury to or desecration of Aboriginal sites or objects in the Murujuga and thereby limit the rights to culture and privacy. While the statement of compatibility states that the measure promotes multiple rights, it does not acknowledge any potential limitations on rights.[126]

1.64 Australia has positive obligations to protect and prevent interference with the rights to culture and privacy.[127] The UN Human Rights Committee has observed that the 'protection of the right [to culture] is directed towards ensuring the survival and continued development of cultural identity'.[128] With respect to the right to privacy, the UN Human Rights Committee has stated:

> …States parties must prevent interference with a person's privacy, family or home that arises from conduct not attributable to the State, at least where such interference is foreseeable and serious. Thus, when environmental damage threatens disruption to privacy, family and the home, States parties must prevent serious interference with the privacy, family and home of individuals under their jurisdiction.[129]

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125 UN Committee on the Convention on the Elimination of All Forms of Racial Discrimination, *General Recommendation No. 32 on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination* (2009) [15].

126 Statement of compatibility, pp. 10–13. The rights identified as being promoted include the rights to culture, equality and non-discrimination, freedom of religion and self-determination.

127 See *Billy and Others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2022).

128 *Billy and Others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2022) [8.13].

129 *Billy and Others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2022) [8.9].

1.65 In assessing limitations on the rights to culture and privacy due to conduct not attributable to the state, such as climate change or industrial gaseous emissions, the case of *Billy and others v Australia* is pertinent. In this case, eight Torres Strait Islander persons ('the authors') claimed that their rights to culture, equality and non-discrimination, life and privacy as well as the rights of their children, were violated by Australia's failure to implement adequate adaptation measures to protect their lives and their way of life, homes and culture against the impacts of climate change and Australia's failure to adopt mitigation measures to reduce greenhouse gas emissions and stop the promotion of fossil fuel extraction and use.[130] The UN Human Rights Committee concluded that Australia violated the authors' right to enjoy their minority culture and right to privacy by failing to adopt timely adequate climate adaptation measures to protect the authors' collective ability to maintain their traditional way of life and to transmit to their children and future generations their culture and traditions and use of land and sea resources, as well as their home, private life and family.[131]

1.66 With respect to the right to privacy, the UN Human Rights Committee considered that:

> …when climate change impacts, including environmental degradation on traditional (Indigenous) lands in communities where subsistence is highly dependent on available natural resources and where alternative means of subsistence and humanitarian aid are unavailable, have direct repercussions on the right to one's home, and the adverse consequences of those impacts are serious because of their intensity or duration and the physical or mental harm that they cause, the degradation of the environment may then adversely affect the well-being of individuals and constitute foreseeable and serious violations of private and family life and the home.

1.67 While Australia had constructed sea walls on the islands, the UN Human Rights Committee considered that these adaptation measures were an inadequate response due to the delay in implementing them. The UN Human Rights Committee also noted that the impacts of climate change on the authors' rights represented a threat that Australia could have reasonably foreseen, noting the authors began raising the issue in the 1990s. This case indicates that delay in implementing positive measures to protect rights and the foreseeability of a threat to rights are relevant considerations in

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130 The UN Human Rights Committee considered the authors' claims under articles 6 (right to life), 17 (right to privacy), 24(1) (children's rights) and 27 (right to culture) to be admissible. The Committee considered that the authors' claims under article 2 (right to equality and non-discrimination) were inadmissible, and considered that having found violations of articles 17 (right to privacy) and 27 (right to culture), it was unnecessary to examine the authors' claims under article 24(1) (children's rights). The Committee did not find a violation of article 6 (right to life). See *Billy and Others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2022) [7.40], [7.11] and [10].

131 *Billy and Others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2022) [8.12] and [8.14].

assessing the permissibility of any limitations arising from those threats or as a result of a failure to implement positive measures.

1.68 The rights to culture and privacy 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.

1.69 The stated objective of the instrument overall is to preserve and protect the Murujuga from the threat of injury or desecration.[132] While this general objective is legitimate for the purposes of international human rights law, it is unclear what the specific objective is in relation to the measure to exclude damage caused by industrial gaseous emissions. A legitimate objective is one that is necessary and addresses an issue of public or social concern that is pressing and substantial enough to warrant limiting the right(s). The explanatory materials provide no information in this regard, and it is therefore not possible to conclude that the measure pursues a legitimate objective for the purposes of international human rights law.

1.70 Under international human rights law, it must also be demonstrated that any limitation on a right has a rational connection to the objective sought to be achieved. The key question is whether the relevant measure is likely to be effective in achieving the objective being sought. Without information regarding the objective of the measure, it is not possible to assess whether the measure is rationally connected to the objective. In general terms, however, it is noted that excluding damage or disturbance caused by, or as a result of, industrial gaseous emissions would appear to frustrate the overall purpose of the instrument. In order for the Murujuga to be declared as a 'declared area' for the purposes of preservation and protection under section 10 of the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (that is the legislative authority under which this instrument is made), the area must be a significant Aboriginal area and an area under threat of injury or desecration. Regarding the latter, the explanatory statement states that the minister was satisfied that:

- an area known as the Thalu site was under threat on the basis of activities relating to the construction of the Perdaman Urea Project by Perdaman Chemicals and Fertilisers Pty Ltd (Perdaman); and
- disturbed and undisturbed areas within leasehold areas occupied by Woodside Energy Group Ltd (Woodside), the Pilbara Port Authority (PPA), Yara Pilbara and Perdaman were under threat on the basis of past and future ground activities authorised by consents given under section 18 of the *Aboriginal Heritage Act 1972* (WA) (AH Act), that would allow for the disturbance of Aboriginal sites.[133]

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132 Statement of compatibility, p. 10.

133 Explanatory statement, p. 3.

1.71 There have also been scientific studies detailing ongoing damage to petroglyphs in the Murujuga caused by industrial pollution and emissions.[134] In light of this evidence, the measure does not appear to be effective in preserving and protecting certain Aboriginal sites and objects that are susceptible to damage due to industrial gaseous emissions such as petroglyphs.

1.72 A key aspect of whether a limitation on a right can be justified is whether the limitation is proportionate to the objective being sought. In this respect, it is necessary to consider the extent of any interference with human rights. The greater the interference, the less likely the measure is to be considered proportionate. Noting the profound cultural and spiritual significance of the petroglyphs, facilitating damage and disturbance to the petroglyphs represents a significant interference with rights. The explanatory statement recognises that the Murujuga has one of the most significant and diverse collections of petroglyphs in the world and these petroglyphs allow for the teaching and continuation of culture.[135] It states that the songs and mythologies relating to the images captured on the petroglyphs have important meaning across the whole of the Pilbara region.[136]

1.73 While the measure itself does not contain any specific safeguards to mitigate damage to Aboriginal sites and objects caused by industrial gaseous emissions, it is not clear whether there are other safeguards operating to reduce emissions and mitigate the risk of damage to the Murujuga, such as safeguards in other legislation or obligations on businesses. In this regard, it is noted that Australia has positive obligations under international human rights law to implement measures to protect the rights to privacy and culture, such as adaptation and mitigation measures to prevent or reduce foreseeable and serious interference with rights arising from environmental degradation caused by factors such as climate change.[137] Noting the scientific evidence that industrial emissions directly impact the petroglyphs and the profound cultural and spiritual significance of the petroglyphs, it is arguable that the threat posed by industrial gaseous emissions to the petroglyphs at the Murujuga is both foreseeable and serious. As the statement of compatibility does not recognise any limitation on rights, it does not address whether the measure is accompanied by sufficient safeguards to ensure any limitation is proportionate.

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134 See e.g. Curtin University, *Murujuga Rock Art Monitoring Program: Monitoring Studies, Report 2024* (2024); Professor Benjamin Smith and Professor John Black, *How the North West Shelf expansion risks further damage to Murujuga rock art*, The University of Western Australia (29 May 2025); Rhiannon Shine, 'Top statistician breaks silence over Murujuga rock art study near Woodside gas plant', *ABC* (2 October 2025).

135 Explanatory statement, p. 3.

136 Explanatory statement, p. 3.

137 *Billy and Others v Australia*, UN Human Rights Committee Communication No. 3624/2019 (2022) [8.9].

1.74 In conclusion, it has not been demonstrated that the measure pursues a legitimate objective, is rationally connected to that objective or represents a proportionate limitation on the rights to culture and privacy. As such, it is not clear that excluding industrial gaseous emissions from the offence to preserve and protect the Murujuga is compatible with the rights to culture and privacy.

Right to an effective remedy

1.75 Further, if the rights to privacy and culture were violated, affected individuals have the right to an effective remedy. The right to an effective remedy requires the availability of a remedy which is effective with respect to any violation of rights and freedoms recognised by the International Covenant on Civil and Political Rights.[138] It includes the right to have such a remedy determined by competent judicial, administrative or legislative authorities or by any other competent authority provided for by the legal system of the state. This may take a variety of forms, such as prosecutions of suspected perpetrators or compensation to victims of abuse. While limitations may be placed in particular circumstances on the nature of the remedy provided (judicial or otherwise), states parties must comply with the fundamental obligation to provide a remedy that is effective.[139]

1.76 Where there is an interference with the rights to culture or privacy as a result of conduct other than industrial gaseous emissions, effective remedies may be available for affected individuals, including by way of prosecutions of suspected perpetrators. However, excluding damage caused to Aboriginal sites and objects by industrial gaseous emissions from the scope of the offence limits the availability of effective remedies for potential interferences with the rights to culture or privacy in this context.

Committee view

1.77 The committee notes that insofar as making it an offence to move, damage, deface or otherwise disturb an Aboriginal site or object in the Murujuga protects and preserves this area from injury or desecration, the measure promotes multiple human rights, particularly the rights to culture, privacy and equality and non-discrimination. However, by providing that an Aboriginal site or object is taken *not* to be moved, damaged, defaced or otherwise disturbed by, or as a result of, industrial gaseous emissions, the measure may in effect facilitate injury to or desecration of Aboriginal

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138 International Covenant on Civil and Political Rights, article 2(3). See, *Kazantzis v Cyprus*, UN Human Rights Committee Communication No. 972/01 (2003) and *Faure v Australia*, UN Human Rights Committee Communication No. 1036/01 (2005). States parties must not only provide remedies for violations of the ICCPR, but must also provide forums in which a person can pursue arguable if unsuccessful claims of violations of the ICCPR. Per *C v Australia*, UN Human Rights Committee Communication No. 900/99 (2002), remedies sufficient for the purposes of article 5(2)(b) of the ICCPR must have a binding obligatory effect.

139 See UN Human Rights Committee, *General Comment No. 29: States of Emergency* (Article 4) (2001) [14].

sites or objects in the Murujuga and thereby limit the rights to culture and privacy. These 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.

1.78 The committee notes that the overall objective of the instrument is to preserve and protect the Murujuga. While this general objective is legitimate for the purposes of international human rights law, the committee notes that it is unclear what the specific objective is in relation to the measure to exclude damage caused by industrial gaseous emissions. In the absence of this information, the committee considers that it has not been demonstrated that the measure pursues a legitimate objective or is rationally connected to that objective. More generally, the committee notes that excluding damage or disturbance caused by, or as a result of, industrial gaseous emissions – a key threat to the petroglyphs in the Murujuga – would appear to frustrate the overall purpose of the instrument.

1.79 Regarding proportionality, noting the profound cultural and spiritual significance of the petroglyphs, the committee considers that by facilitating damage and disturbance to the petroglyphs, the measure represents a significant interference with rights. The committee recognises that the Murujuga has one of the most significant and diverse collections of petroglyphs in the world and these petroglyphs allow for the teaching and continuation of culture. The committee further notes that it is not clear whether there are any safeguards operating more generally to reduce industrial gaseous emissions and mitigate the risk of damage to the Murujuga, such as safeguards in other legislation or obligations on businesses. While recognising that it is the responsibility of states to respect, protect and fulfil human rights, the committee considers that businesses should respect human rights.[140] The committee considers that industrial businesses operating in the vicinity of the Murujuga should consider processes to reduce or eliminate the adverse impact of industrial gaseous emissions on Aboriginal sites and objects in the Murujuga, particularly the petroglyphs.

1.80 As such, the committee considers that it is not clear that excluding industrial gaseous emissions from the offence to preserve and protect the Murujuga is compatible with the rights to culture and privacy.

Suggested action

1.81 The committee recommends that the statement of compatibility be updated to include an analysis of how excluding industrial gaseous emissions from the offence is compatible with the rights to culture and privacy.

140 UN Office of the High Commissioner of Human Rights, *Guiding Principles on Business and Human Rights* (2011).

1.82 The committee draws these human rights concerns to the attention of the minister and the Parliament.

Australian Border Force (Alcohol and Drug Tests) Rules 2025[141]

FRL No.	F2025L01107
Purpose	This instrument prescribes matters relating to alcohol and drug testing for Immigration and Border Protection workers employed by the Department of Home Affairs, including the authorisation of persons to conduct tests, the devices to be used in conducting tests, procedures for handling samples taken, and the confidentiality of test results.
Portfolio	Home Affairs
Authorising legislation	*Australian Border Force Act 2015*
Disallowance	15 sitting days after tabling (tabled in the House of Representatives on 7 October 2025 and in the Senate on 27 October 2025).[142]
Rights	Equality and non-discrimination; privacy; work

Drug testing Immigration and Border Protection workers

1.83 The *Australian Border Force Act 2015* (ABF Act) empowers an authorised person to provide an 'Immigration and Border Protection worker'[143] with a written direction requiring them to undergo an alcohol screening test, undergo an alcohol breath test and/or provide a body sample for a prohibited drug test.[144] A direction may be given to a worker who is reasonably suspected of being under the influence of alcohol,[145] who is in the course of performing their duties,[146] or where certain incidents have occurred, such as a person is killed or seriously injured and the worker was in the course of performing their duties.[147] The term 'prohibited drug' refers to a narcotic substance within the meaning of the *Customs Act 1901*, and any other drugs specified

141 This entry can be cited as: Parliamentary Joint Committee on Human Rights, Australian Border Force (Alcohol and Drug Tests) Rules 2025, *Report 7 of 2025*; [2025] AUPJCHR 55.

142 The disallowance date for the House of Representatives and the Senate will be in 2026. In the event of any change to the Senate or House's sitting days, the last day for the notice would change accordingly.

143 *Australian Border Force Act 2015*, section 4. An 'Immigration and Border Protection worker' includes an APS employee in the Department and persons covered by the definition of officer in the *Customs Act 1901* and the *Migration Act 1958*, among others.

144 *Australian Border Force Act 2015*, Part 5, sections 34–36.

145 *Australian Border Force Act 2015,* section 34.

146 *Australian Border Force Act 2015,* section 35.

147 *Australian Border Force Act 2015*, section 36.

by legislative instrument.[148] The Australian Border Force (Prohibited Drugs) Instrument 2024 specifies 37 drugs (and types of drugs) for which workers may be tested, including: natural and manufactured gonadotrophins such as Follicle Stimulating Hormone; anabolic substances; natural and manufactured growth hormones; and a series of benzodiazepines.

1.84 The ABF Act provides that alcohol or prohibited drug tests are to be conducted in accordance with rules made under the Act. This legislative instrument specifies matters that are relevant for conducting alcohol or drug tests, including specifying the individuals, laboratories and devices authorised for testing, taking samples and analysis.[149] The instrument sets out the procedures for conducting alcohol and drug tests, including that they are undertaken in a respectful manner and in circumstances affording reasonable privacy.[150]

1.85 The instrument authorises information obtained from the analysis of a sample to be retained if the information relates to the detection of alcohol and prohibited drugs and the purpose of retaining the information is so that it can be used for the purpose of security vetting of the worker to whom the record relates, including for any organisational suitability assessments conducted by the department.[151] The instrument also authorises the disclosure of information revealed by an alcohol or drug test in certain circumstances, including for a worker's medical treatment if the worker does not have capacity to consent in writing to the disclosure.[152]

1.86 Failure to comply with a direction to provide a body sample may constitute a breach of the Australian Public Service (APS) Code of Conduct and may result in sanction or termination.[153] The results of a drug or alcohol test are admissible against the worker in relation to specified legal proceedings, including proceedings in relation to their employment termination.[154]

Preliminary international human rights legal advice

Rights to privacy, work and equality and non-discrimination

1.87 Requiring workers to undergo alcohol tests and provide body samples for the purposes of drug testing and retaining information relating to the outcome of the testing engages and limits the right to privacy, and may engage and limit the right to

148 *Australian Border Force Act 2015*, section 4.

149 Parts 2, 4 and 5.

150 Section 9.

151 Section 11.

152 Section 12.

153 *Australian Border Force Act 2015*, subsection 35(3). See further, *Public Service Act 1999*, subsection 13(4) and sections 15, 28 and 29.

154 *Australian Border Force Act 2015*, section 40. Results are also admissible in proceedings under the *Safety, Rehabilitation and Compensation Act 1988*, and proceedings in tort against the Commonwealth that are instituted by the worker.

just and favourable conditions of work. The right to privacy includes respect for informational privacy, including the right to respect for private and confidential information, particularly the storing, use and sharing of such information, and the right to control the dissemination of information about one's private life.[155] The right to privacy also includes the right to personal autonomy and physical and psychological integrity. It extends both to protecting a person's bodily integrity against compulsory procedures.[156] Relatedly, the UN Human Rights Committee has emphasised that personal and body searches must be accompanied by effective measures to ensure that such searches are carried out in a manner consistent with the dignity of the person who is being searched, and further that persons subject to body searches should only be examined by persons of the same sex.[157] The right to just and favourable conditions of work includes the right of all workers to safe working conditions.[158] It also includes the right not to be deprived of work unfairly.

1.88 Further, if workers with certain attributes or medical conditions were more likely to be prescribed or required to take some of the prohibited drugs (for example people with intersex variations and people transitioning genders are more likely to undergo hormone replacement therapy, and females are more likely to be receiving treatment for polycystic ovarian syndrome), the measure may also engage the right to equality and non-discrimination,[159] including the rights of persons with disability.[160] The right to equality and non-discrimination provides that everyone is entitled to enjoy their rights without discrimination of any kind and that all people are equal before the law and entitled without discrimination to equal and non-discriminatory protection of the law.[161] The right to equality encompasses 'indirect' discrimination which occurs where 'a rule or measure that is neutral at face value or without intent to discriminate' exclusively or disproportionately affects people with a particular protected

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155 International Covenant on Civil and Political Rights, article 17.

156 See, *MG v Germany*, UN Human Rights Committee Communication No. 1428/06 (2008) [10.1].

157 UN Human Rights Committee, *General Comment No.16: The Right to Respect of Privacy, Family, Home and Correspondence, and Protection of Honour and Reputation* (1988) [8].

158 See, UN Committee on Economic, Social and Cultural Rights, Ge*neral Comment No. 18: the right to work (article 6)* (2005) [2].

159 International Covenant on Civil and Political Rights, articles 2 and 26.

160 See the Convention on the Rights of Persons with Disability.

161 International Covenant on Civil and Political Rights, articles 2 and 26. See also articles 1–4 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women which further describe the content of these obligations, including the specific elements that State parties are required to take into account to ensure the rights to equality for women; and article 5 of the Convention on the Rights of Persons with Disabilities which guarantees equality for all persons under and before the law and the right to equal protection of the law.

attribute.[162] Differential treatment (including the differential effect of a measure that is neutral on its face) will not constitute unlawful discrimination if the differential treatment is based on reasonable and objective criteria.

1.89 The statement of compatibility acknowledges that the instrument engages the rights to privacy, work and equality and non-discrimination. These 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.

1.90 The statement of compatibility states that the objective of the alcohol and drug testing regime of workers is to ensure workplace safety and to protect against corruption and unethical conduct in law enforcement.[163] The statement of compatibility states that any differential treatment that results from the measure is legitimate as it supports these objectives.[164] It notes that workers who have problems associated with alcohol use or misuse of medication may be subject to discrimination and harassment, and that adequate policies are in place which allow the department to ensure the professional integrity of its workers. It is evident that workers who are under the influence of alcohol or illicit drugs may pose a risk to workplace safety, and the statement of compatibility also sets out some information relating to evidence of drug use amongst workers and how this may increase the risk of corruption within law enforcement organisations.[165] The stated objectives are capable of constituting legitimate objectives under international human rights law. However, due to the breadth of drugs that may be tested, including drugs prescribed for a legitimate medical reason, it is unclear that testing for all the prescribed drugs would necessarily improve workplace safety or decrease the risk of corruption. Questions therefore remain about the objective of the measure and its limitation on rights due to the broad scope of drugs that are prohibited and subject to testing.

1.91 It is also unclear if the measure is rationally connected, that is effective to achieve, the stated objective. In this regard, the statement of compatibility notes that alcohol and drug testing arrangements have proven to operate effectively in identifying drug use in the workforce, which has revealed corrupt and unethical

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162 *Althammer v Austr*ia, UN Human Rights Committee Communication No. 998/01 (2003) [10.2]. The prohibited grounds of discrimination are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation. The prohibited grounds of discrimination are often described as 'personal attributes'. See Sarah Joseph and Melissa Castan*, The International Covenant on Civil and Political Rights: Cases, Materials and Commentary*, 3rd edition, Oxford University Press, Oxford, 2013 [23.39].

163 Statement of compatibility, p. 23.

164 Statement of compatibility, p. 29.

165 Statement of compatibility, p. 24.

behaviours by workers.[166] Alcohol and drug testing could be rationally connected to the objective of protecting against corruption and ensuring workplace safety, but only where a worker is using one of the prohibited drugs as a result of unethical or criminal influence or coercion, or where the level of alcohol or type of drug poses a risk to workplace safety. The alcohol and drug testing would not appear to be effective where, for example, a worker involved in corruption or unethical conduct is not taking the prohibited drugs themselves or where a worker is taking the prohibited drugs for legitimate medical reasons and this does not impact on the safety of the workplace. Consequently, this legislative instrument may only be effective to identify and address corrupt or compromised workers in a narrow set of circumstances.

1.92 As to proportionality, it is relevant to consider a range of factors including the availability of safeguards, the extent of any interference with rights, and whether there are any less rights-restrictive alternatives available. The legislative instrument contains various safeguards that are likely to assist the proportionality of the measure and the potential limitation on the rights to privacy and work, including the standards that must be followed in conducting tests,[167] that onwards disclosure of test results is only authorised by consent of the worker,[168] that body samples and other records relevant to a test must be destroyed[169] and that a test must be conducted by a person of the same sex.[170] The latter safeguard reflects the UN Human Rights Committee's expectations in regards to the right to privacy and protection of reputation.[171] The statement of compatibility also identifies other safeguards including the use of unique identifying numbers[172] and adherence to the obligations in the *Privacy Act 1988*.[173]

1.93 While these safeguards assist with proportionality, they may not be sufficient in consideration of the breadth of the measure and the potentially substantial interference with a worker's privacy. In this regard, the statement of compatibility does not identify why all departmental workers and contractors (and not merely those in certain higher risk roles) are subject to the requirement to undergo testing. Further, the ABF Act does not confine the circumstances in which a worker may be directed to undergo a test (for example, where some issue has arisen in relation to their work performance or personal manner).[174] Consequently, it would appear that there are

166 Statement of compatibility, p. 24.

167 Australian Border Force (Alcohol and Drug Tests) Rules 2025, section 20.

168 Australian Border Force (Alcohol and Drug Tests) Rules 2025, section 12.

169 Australian Border Force (Alcohol and Drug Tests) Rules 2025, section 11.

170 Australian Border Force (Alcohol and Drug Tests) Rules 2025, section 9.

171 UN Human Rights Committee, *General Comment No. 16: Article 17* (1988) [8].

172 Statement of compatibility, pp. 24-25.

173 Statement of compatibility, p. 24.

174 While section 36 of the ABF Act provides that a drug test direction may be given where a workplace incident has occurred (e.g. a death), section 35 provides for a general power to direct a worker to undergo a drug test.

less rights restrictive alternatives to the requirement for any Immigration and Border Protection worker to undertake alcohol and drug testing at any time throughout their employment. It is also unclear whether the exercise of these testing requirements is subject to independent oversight. While the instrument appears to allow a worker to dispute a result by testing a second sample, it is unclear whether a worker may challenge or otherwise seek review of the original test result if the second sample produces a different result. The statement of compatibility does not provide information in relation to these matters.

1.94 The extent of the potential interference with the rights to privacy and to work is significant. The alcohol and drug testing and collection of bodily samples that a worker is subjected to as part of their employment appears quite invasive in regard to bodily autonomy as the procedures allow for hair, urine and oral fluid samples to be taken.[175] Further, the results of the testing can be retained and used for security vetting and employer suitability.[176] If the test results led to a worker's employment being terminated or otherwise adversely affected, the potential interference with their right to work may be significant.

1.95 With respect to the right to equality and non-discrimination, it is not clear whether there are sufficient safeguards in place, if any, to ensure that any differential treatment that results from the operation of the measure is a proportionate means of achieving the objective. In particular, where a person has a medical condition that requires the taking of any of the prohibited drugs, the instrument does not include exceptions or provide for alternative procedures. The instrument also does not make specific provision for handling information relating to a test result that detects a prohibited drug in a person who has a medical condition (for example, prohibiting the disclosure of such information or requiring it to be destroyed). Alternative provisions along these lines could represent a less rights-restrictive alternative to address any differential treatment that arises as a result of the measure.

1.96 Consequently, having regard to: the broad range of drugs that may be tested for, including drugs prescribed for legitimate medical reasons; the wide range of persons to whom the measure applies; the potential availability of less rights restrictive approaches; and the potentially significant interference with rights, there is a risk that the alcohol and drug testing of workers, including the retention and disclosure of samples and results, constitutes an impermissible limit on the rights to privacy and work. In the absence of adequate safeguards to ensure that any differential treatment is based on reasonable and objective criteria, there is also a risk that the measure may result in unlawful discrimination in certain circumstances.

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175 Australian Border Force (Alcohol and Drug Tests) Rules 2025, sections 9 and 20.

176 Australian Border Force (Alcohol and Drug Tests) Rules 2025, sections 11 and 12.

Committee view

1.97 The committee notes that requiring workers to undergo alcohol tests and provide body samples for the purposes of drug testing, and retaining information relating to the outcome of the testing, engages and limits the right to privacy, and may engage and limit the right to just and favourable conditions of work. The committee notes that the measure may have a disproportionate effect on workers with certain attributes or medical conditions who may be more likely to be required to take prohibited drugs, and so may limit the right to equality and non-discrimination.

1.98 The committee notes that it previously considered a similar instrument, Australian Border Force (Prohibited Drugs) Instrument 2024, which specified the prohibited drugs for which all Immigration and Border Protection workers and contractors may be tested.[177] The committee concluded that despite the instrument being directed to the important objective of preventing corruption, it appeared to only be capable of addressing such a risk in relation to workers who used the prohibited drugs in relation to corruption and other criminal activity. The committee also considered that the power to direct all workers to undertake testing was insufficiently circumscribed, and that it was not clear if there were adequate safeguards or that the power was subject to independent oversight or review. The committee considered that there was a risk the instrument impermissibly limited the rights to privacy and to just and favourable conditions of work. As this instrument relates to the testing of the drugs specified in the 2024 instrument, the committee's previous human rights concerns remain relevant.

1.99 The committee considers that in general terms the measure is capable of pursuing a legitimate objective. However, it is unclear whether the measure would be effective in preventing corruption and ensuring workplace safety in certain circumstances and as such the measure may not necessarily be rationally connected to that objective in practice.

1.100 In relation to proportionality, the committee notes that the rules include numerous safeguards that assist with proportionality, primarily with respect to the right to privacy. However, the committee considers that it is not clear whether these safeguards are sufficient to ensure any limitation on rights is proportionate having regard to the broad range of drugs that may be tested for, including drugs prescribed for legitimate medical reasons; the wide range of persons to whom the measure applies; the potential availability of less rights restrictive approaches; and the potentially significant interference with rights. The committee therefore considers there to be a risk that the alcohol and drug testing of workers, including the retention and disclosure of samples and results, constitutes an impermissible limit on the rights to privacy and work. In the absence of adequate safeguards to ensure that any differential treatment is based on reasonable and objective criteria, the committee

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177 Parliamentary Joint Committee on Human Rights, Report 4 of 2024 (15 May 2024) pp. 46-50.

considers there to be a risk that the measure may result in unlawful discrimination in certain circumstances.

Suggested action

1.101 The committee reiterates its previous recommendation with respect to alcohol and drug testing of Immigration and Boarder Force workers that the *Australian Border Force Act 2015* be amended to provide that a direction to undergo an alcohol or drug test may only be given in relation to a concern that has arisen regarding a person's work performance, potential criminal or corruption concerns, or where there is a specific operational risk.[178]

1.102 The committee recommends that the instrument be amended to include alternative conduct or procedures that should be deployed where a person has a medical condition that requires the taking of any of the prohibited drugs. These could include exceptions to testing, the ability to consider individual circumstances, or special requirements with respect to handling of results.

1.103 The committee recommends that the statement of compatibility be updated to provide an analysis of the limitation on the right to work.

1.104 The committee draws these human rights concerns to the attention of the minister and the Parliament.

[178] Parliamentary Joint Committee on Human Rights, *Report 4 of 2024* (15 May 2024) pp. 46-50.

Social Security (Special Benefit – Class of Visas) Determination 2025[179]

FRL No.	F2025L01125
Purpose	This legislative instrument specifies the classes of visas that may be required to satisfy the 'mutual obligation requirements' in subsection 729(2B) of the *Social Security Act 1991,* the classes of visas that may qualify for special benefits under subparagraph 729(2)(f)(v) of the *Social Security Act 1991* and the classes of visas subject to the newly arrived resident's waiting period for the special benefit.
Portfolio	*Department of Social Services*
Authorising legislation	*Social Security Act 1991*
Disallowance	15 sitting days after tabling (tabled in the House of Representatives on 7 October 2025 and in the Senate on 27 October 2025).[180]
Rights	Adequate standard of living; children's rights; equality and non-discrimination; health; protection of the family; social security

Mutual obligation requirements for special benefit and newly arrived resident's waiting period

1.105 This legislative instrument specifies the following classes of visas that may be required to satisfy the 'mutual obligation requirements' in the *Social Security Act 1991* (the Act)[181] to qualify for special benefit:[182]

- Subclass 070 (Bridging (Removal Pending));
- Subclass 449 (Humanitarian Stay (Temporary));
- Subclass 785 (Temporary Protection);
- Subclass 786 (Temporary (Humanitarian Concern)); and
- Subclass 790 (Safe Haven Enterprise).

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179 This entry can be cited as: Parliamentary Joint Committee on Human Rights, Social Security (Special Benefit – Class of Visas) Determination 2025, *Report 7 of 2025*; [2025] AUPJCHR 56.

180 In the event of any change to the Senate or House's sitting days, the last day for the notice would change accordingly.

181 *Social Security Act 1991*, subsection 729(2B).

182 Part 2, section 7.

1.106 Special benefit is a discretionary benefit only available to a person who is unable to get any other income support payment.[183] To grant a person special benefit, the Employment Secretary must be satisfied of certain matters, including that no social security pension or other social security benefit is payable to the person for the relevant period, and that the person is the holder of a visa that is in the class of visas determined by the minister.[184] This instrument sets out the classes of visas for the purposes of this latter eligibility requirement.[185]

1.107 To satisfy the mutual obligation requirements, the person must satisfy the employment pathway plan requirements in Division 2A of Part 3 of the *Social Security (Administration) Act 1999* (the Administration Act), which may include requirements relating to seeking, accepting and undertaking paid work or undertaking other activities such as training or study,[186] and satisfy the Employment Secretary that the person is willing to actively seek and to accept and undertake paid work in Australia, except unsuitable paid work.[187] Alternatively, where the person is exempt from the employment pathway plan requirements under subdivision C of Division 2A of Part 3 of the Administration Act, for example due to circumstances making it unreasonable to comply with the requirements or the person was subjected to domestic violence or the person has caring responsibilities, the person must satisfy the Employment Secretary that the person would have been willing to actively seek and to accept and undertake suitable paid work were it not for the circumstances relating to the exemption. Compliance consequences (such as payment suspensions, reductions or cancellations) may be imposed on a person who does not comply with their mutual obligation requirements, in accordance with Division 3AA or 3A of Part 3 of the Administration Act.

1.108 Further, this instrument determines two temporary partner visas for the purposes of applying the newly arrived resident's waiting period.[188] Special benefit is not payable to a person during the period in which they are subject to a newly arrived resident's waiting period, unless an exemption applies. For example, a person will be exempt from the newly arrived resident's waiting period if, in the Secretary's opinion, the person has suffered a substantial change in circumstances beyond their control

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183 *Social Security Act 1991*, subsection 729(1).

184 *Social Security Act 1991*, subsection 729(2).

185 Part 2, section 6. See *Social Security Act 1991*, subparagraph 729(2)(f)(v).

186 Section 40G of the *Social Security (Administration) Act 1999* sets out examples of requirements that may be included in an employment pathway plan.

187 *Social Security Act 1991*, subsection 729(2B).

188 Part 2, section 8. The visas are Subclass 309 (Partner (Provisional)) and Subclass 820 (Partner). Subsection 739A(1) of the *Social Security Act 1991* provides that, subject to some exemptions, certain persons are subject to a newly arrived resident's waiting period for special benefit. These are persons who enter Australia, become the holder of a permanent visa, or become the holder of a visa in a class of visas determined by the Minister for the purposes of paragraph 739A(1)(e).

after they first entered Australia.[189] Holders of the determined visas do not satisfy the payability requirements for special benefit until their newly arrived resident's waiting period has been served, unless an exemption applies. The waiting period starts[190] on the day on which the person applied for the determined visa and ends when the person has been in Australia for a period of, or periods totalling, 208 weeks or four years after that day.[191] Holders of these determined visas may also be subject to the newly arrived resident's waiting period for family tax benefit Part A and parental leave pay.

1.109 The instrument also specifies temporary protection type visas as classes of visas that are exempt from the waiting period for special benefit.[192] This means holders or former holders of these determined visas are exempt from the newly arrived resident's waiting period and may be granted special benefit immediately on the grant of the determined visas, provided the person satisfies other qualification and payability requirements.[193] Holders of these visas may also be exempt from the newly arrived resident's waiting period for family tax benefit Part A and parental leave pay, enabling immediate access to these payments where eligible.[194]

International human rights legal advice

Rights to social security; adequate standard of living; health; children's rights; equality and non-discrimination; and protection of the family

1.110 By providing that holders of temporary partner visas are subject to a newly arrived resident's waiting period of 208 weeks or four years, during which social security benefits are not payable to the person, this measure engages and may limit a number of rights, including the right to social security, the right to an adequate standard of living, the rights of the child, the right to equality and non-discrimination, and the right to health. Additionally, specifying classes of visas that may be required to satisfy mutual obligation requirements to qualify for special benefit, noting that failure to comply with mutual obligation requirements may result in a person's payment being suspended, reduced or cancelled, also engages and may limit these rights.

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189 Subsection 739A(7) of the *Social Security Act 1991*.

190 Part 2, sections 9 and 10 specify Subclass 309 (Partner (Provisional)) and Subclass 820 (Partner) for the purposes of determining the date on which the newly arrived resident's waiting period starts under 739A(3)(b) and 739A(4)(b) of the *Social Security Act 1991*.

191 Paragraphs 739A(3)(b) and (4)(b) of the *Social Security Act 1991.*

192 Part 2, section 11. The visas are: Subclass 060 (Bridging F); Subclass 070 (Bridging (Removal Pending)); Subclass 449 (Humanitarian Stay (Temporary)); Subclass 785 (Temporary Protection); Subclass 786 (Temporary (Humanitarian Concern)); and Subclass 790 (Safe Haven Enterprise).

193 Explanatory statement, p. 1.

194 Explanatory statement, p. 14.

1.111 The right to social security recognises the importance of adequate social benefits in reducing the effects of poverty and plays an important role in realising many other economic, social and cultural rights, in particular the right to an adequate standard of living, the right to health, the right to equality and non-discrimination and the rights of the child.[195] Social security benefits must be adequate in amount and duration.[196] States must guarantee the equal enjoyment by all of minimum and adequate protection, and the right includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage.[197] The right to social security also includes the right to access benefits to prevent access to health care from being unaffordable.[198] Relatedly, the right to maternity leave is protected by article 10(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) and article 11(2)(b) of the Convention on the Elimination of All Forms of Discrimination against Women. The right to maternity leave includes an entitlement for parental leave with pay or comparable social security benefits for a reasonable period before and after childbirth.[199]

1.112 The right to an adequate standard of living requires states to take steps to ensure the availability, adequacy and accessibility of food, clothing, water and housing for all people in Australia, and also imposes on Australia the obligations listed above in relation to the right to social security.[200] The right to health is the right to enjoy the highest attainable standard of physical and mental health, and requires available, accessible, acceptable and quality health care.[201] It is a right to have access to adequate health care (including reproductive and sexual healthcare) as well as to live

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195 International Covenant on Economic, Social and Cultural Rights, article 9. See also, UN Economic, Social and Cultural Rights Committee, *General Comment No. 19: The Right to Social Security* (2008).

196 UN Committee on Economic, Social and Cultural Rights*, General Comment No. 19: The Right to Social Security* (2008) [22].

197 UN Committee on Economic, Social and Cultural Rights*, General Comment No. 19: The Right to Social Security* (2008) [4] and [9].

198 UN Economic, Social and Cultural Rights Committee, *General Comment No. 19: The Right to Social Security* (2008) [13].

199 The UN Committee on Economic, Social and Cultural Rights has further explained that the obligations of States parties to the International Covenant on Economic, Social and Cultural Rights in relation to the right to maternity leave include the obligation to guarantee 'adequate maternity leave for women, paternity leave for men, and parental leave for both men and women'. See UN Committee on Economic, Social and Cultural Rights, *General Comment 16: The equal right of men and women to the enjoyment of all economic, social and cultural rights* (2005).

200 International Covenant on Economic, Social and Cultural Rights, article 11.

201 International Covenant on Economic, Social and Cultural Rights, article 12(1).

in conditions that promote a healthy life (such as access to safe drinking water, housing, food, and a healthy environment).[202]

1.113 Insofar as these measures restrict access to social security payments, including special benefit, family tax benefit Part A and parental leave, for migrant families once in Australia, these measures also engage and may limit the rights of the child. Under the Convention on the Rights of the Child, children have the right to benefit from social security and to a standard of living adequate for a child's physical, mental, spiritual, moral and social development.[203] The Convention requires states to assist parents or carers of children, through social assistance and support, to realise a child's right to an adequate standard of living.[204] To the extent that the measure restricts newly arrived migrant parents' access to social security, which may limit their ability to meet the basic needs of themselves and their children, it may adversely affect the rights of their children to benefit from social security and to an adequate standard of living. The United Nations (UN) Committee on Economic, Social and Cultural Rights has emphasised that the provision of benefits (in the form of cash or services) is crucial for realising the rights of the child.[205] Australia is also required to ensure that, in all actions concerning children, the best interests of the child are a primary consideration.[206] This requires legislative, administrative and judicial bodies and institutions to systematically consider how children's rights and interests are or will be affected directly or indirectly by their decisions and actions.[207]

1.114 In addition, the measure appears to engage and limit the right to equality and non-discrimination insofar as it would have a disproportionate impact on women, as they are the primary recipients of certain social security payments, including paid parental leave. The right to equality and non-discrimination provides that everyone is entitled to enjoy their rights without discrimination of any kind and that all people are equal before the law and entitled without discrimination to equal and non-

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202 UN Economic, Social and Cultural Rights Committee, General Comment No. 14: the right to the Highest Attainable Standard of Health (2000) [4]. See also, General Comment No. 12: the right to food (article 11) (1999); General Comment No. 15: the right to water (articles 11 and 12) (2002); and General Comment No. 22: the right to sexual and reproductive health (2016).

203 Convention on the Rights of the Child, articles 26 and 27.

204 See also Convention on the Rights of the Child, article 27(3).

205 UN Committee on Economic, Social and Cultural Rights*, General Comment No. 19: The Right to Social Security* (2008) [18].

206 Convention on the Rights of the Child, article 3(1).

207 UN Committee on the Rights of Children, *General Comment 14 on the right of the child to have his or her best interest taken as primary consideration* (2013).

discriminatory protection of the law.[208] The right to equality encompasses both 'direct' discrimination (where measures have a discriminatory intent) and 'indirect' discrimination (where measures have a discriminatory effect on the enjoyment of rights).[209] Indirect discrimination occurs where 'a rule or measure that is neutral at face value or without intent to discriminate', exclusively or disproportionately affects people with a particular protected attribute.[210] The UN Committee on Economic, Social and Cultural Rights has observed that where a legal provision, 'although formulated in a neutral manner, might in fact affect a clearly higher percentage of women than men, it is for the State party to show that such a situation does not constitute indirect discrimination on grounds of gender'.[211]

1.115 Further, where a person possesses characteristics which make them particularly vulnerable to intersectional discrimination, such as on the grounds of both gender or sex and national origin or ethnicity, the UN Committee on Economic, Social and Cultural Rights has highlighted that 'particularly special or strict scrutiny is required in considering the question of possible discrimination'.[212]

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208 International Covenant on Civil and Political Rights, articles 2 and 26. Article 2(2) of the International Covenant on Economic, Social and Cultural Rights also prohibits discrimination specifically in relation to the human rights contained in the International Covenant on Economic, Social and Cultural Rights. Articles 1–4 and 15 of the Convention on the Elimination of All Forms of Discrimination against Women further describe the content of these obligations, including the specific elements that State parties are required to take into account to ensure the rights to equality for women.

209 UN Human Rights Committee, *General Comment 18: Non-discrimination* (1989).

210 *Althammer v Austria*, UN Human Rights Committee Communication no. 998/01 (2003) [10.2]. The prohibited grounds of discrimination are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation. The prohibited grounds of discrimination are often described as 'personal attributes'.

211 *Marcia Cecilia Trujillo Calero v. Ecuador*, UN Committee on Economic, Social and Cultural Rights, Communication No. 10/2015, E/C.12/63/D/10/2015 (26 March 2018) [19.4].

212 *Marcia Cecilia Trujillo Calero v. Ecuador*, UN Committee on Economic, Social and Cultural Rights, Communication No. 10/2015, E/C.12/63/D/10/2015 (26 March 2018) [19.2]. See also *Rodriguez v Spain,* UN Committee on Economic, Social and Cultural Rights, Communication No. 1/2013 E/C.12/57/D/1/2013 (20 April 2016) [14.1]; UN Committee on Economic, Social and Cultural Rights, *General Comment 20: non-discrimination in economic, social and cultural rights* (2009) [17] and *General Comment 16: the equal right of men and women to the enjoyment of all economic, social and cultural rights* (2005) [5]; and Committee on the Elimination of Discrimination against Women, *General Recommendation No. 28: The Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, CEDAW/C/GS/28 (16 December 2010) [28].

1.116 Australia also has obligations to provide the widest possible protection and assistance to the family.[213] To the extent that applying the four year waiting period to partner visas may operate as a deterrent or barrier to newly arrived migrants bringing their partners or spouses to join them in Australia, the measure may engage and limit the right to protection of the family. This is particularly so for families experiencing financial disadvantage as a result of the measure, as without access to social security payments, they may be unable to support partners for the duration of the waiting period. A measure which limits the ability of certain family members to join others in a country is generally a limitation on the right to protection of the family.[214] An important element of protection of the family is to ensure family members are not involuntarily separated from one another. While the state has a right to control immigration, the right to protection of the family does require Australia to create the conditions conducive to family formation and stability, including family reunification.[215]

1.117 These rights may be subject to permissible limitations where the limitation pursues a legitimate objective (one which, where an economic, social and cultural right is in question, is solely for the purpose of promoting the general welfare in a democratic society),[216] is rationally connected to that objective and is a proportionate means of achieving that objective.[217] In relation to the right to equality and non-discrimination, differential treatment (including the differential effect of a measure that is neutral on its face) will not constitute unlawful discrimination if the differential treatment is based on reasonable and objective criteria.

Legitimate objective

1.118 Any limitation on the above rights must pursue a legitimate objective, namely, one that is necessary and addresses an issue of public or social concern that is pressing and substantial enough to warrant limiting the right. This general test is further qualified by specific requirements that apply to economic, social and cultural rights, namely that states may limit these rights only insofar as 'this may be compatible with the nature' of those rights, and 'solely for the purpose of promoting the general

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213 Under articles 17 and 23 of the International Covenant on Civil and Political Rights and article 10 of the International Covenant on Economic, Social and Cultural Rights.

214 See, for example, *Sen v the Netherlands*, European Court of Human Rights Application No. 31465/96 (2001); *Tuquabo-Tekle And Others v The Netherlands*, European Court of Human Rights Application No. 60665/00 (2006) [41]; *Maslov v Austria*, European Court of Human Rights Application No. 1638/03 (2008) [61]-[67].

215 See *Ngambi and Nebol v France*, United Nations Human Rights Committee, Communication No. 1179/2003 (2004) [6.4]–[6.5].

216 International Covenant on Economic, Social and Cultural Rights, article 4.

217 UN Human Rights Committee, *General Comment 18: Non-Discrimination* (1989) [13] and UN Committee on Economic, Social and Cultural Rights, *General Comment 20: non-discrimination in economic, social and cultural rights* (2009) [13]. See also *Althammer v Austria*, UN Human Rights Committee Communication No. 998/01 (2003) [10.2].

welfare in a democratic society'.[218] This means that the only legitimate objective in the context of the economic, social and cultural rights is a limitation for the 'promotion of general welfare'. The term 'general welfare' is to be interpreted restrictively and refers primarily to the economic and social well-being of the people and the community as a whole, meaning that a limitation on a right which disproportionately impacts a vulnerable group may not meet the definition of promoting 'general welfare'.[219]

1.119 The statement of compatibility states that the objective of mutual obligation requirements is to support people in receipt of relevant social security payments to find and keep paid work which is suitable for them and facilitate their participation in, and contribution to, Australian society and the economy. It states that it is reasonable to expect that recipients of social security payments undertake activities and programs that will increase their chances of finding and keeping paid work.[220] More broadly, the explanatory statement states that mutual obligation requirements are based on the principle that it is fair and reasonable to expect unemployed people receiving a participation payment (including special benefit) to do their best to find paid work, undertake activities that will improve their skills and increase their employment prospects and, in some circumstances, contribute something to their community in return for receiving income support.[221] Facilitating people to obtain employment and contribute to Australian society and the economy may promote the general welfare such as to constitute a legitimate objective for the purposes of international human rights law.

1.120 In relation to the application of the waiting period, the statement of compatibility states that the waiting period is designed to encourage migrants under the skilled and family streams of Australia's migration program to take steps to provide for their own support when they first settle in Australia, consistent with long standing policy.[222] The statement of compatibility further provides that this measure seeks to ensure that special benefit and other relevant payments are targeted to vulnerable persons who require financial assistance.[223]

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218 See International Covenant on Economic, Social and Cultural Rights, article 4.

219 Limburg Principles on the Implementation of the ICESCR, June 1986 [52]. See also, Amrei Muller, 'Limitations to and derogations from economic, social and cultural rights', *Human Rights Law Review* vol. 9, no. 4, 2009, p. 573; Erica-Irene A Daes, The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights, *Study of the Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities*, E/CN.4/Sub.2/432/Rev.2 (1983), pp. 123–4.

220 Explanatory statement, p. 15.

221 Explanatory Statement, p. 3.

222 Explanatory statement, p. 15.

223 Explanatory statement, p. 15.

1.121 In general terms, ensuring the financial sustainability of the welfare system may be capable of constituting a legitimate objective for the purposes of international human rights law, insofar as it may ensure that limited resources are directed towards those most in need.[224] To the extent that a financially sustainable social security system promotes the economic and social well-being of the people and the community as a whole, the limitation may be for the purpose of promoting general welfare. However, a limitation which disproportionately impacts a vulnerable group may not meet the requirement of promoting 'general welfare'.[225] Insofar as this measure would appear to have a disproportionate impact on vulnerable groups, including newly arrived migrants, questions arise as to whether this measure would, in practice, promote general welfare for the purpose of international human rights law. In addressing these questions, the UN Committee on Economic, Social and Cultural Rights has indicated that the reasonableness and proportionality of the proposed limitation is relevant, including whether the limitation is the only way to achieve the stated purpose and whether there are alternative measures that do not seriously limit rights.[226] In relation to the other stated objective of reinforcing expectations of self-reliance for new migrants, this is unlikely to constitute a legitimate objective, noting that a legitimate objective must address a pressing or substantial concern and not simply seek a desirable or convenient outcome, such as meeting community expectations.

Rational connection

1.122 Under international human rights law, it must also be demonstrated that any limitation on a right has a rational connection to (that is, effective to achieve) the objective sought to be achieved.

1.123 In relation to the mutual obligation requirements, the statement of compatibility notes that applying mutual obligations for this cohort reflects the nature and purpose of these temporary visas and recognises these visa holders need additional support to find employment and facilitate their participation in, and

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224 Jurisprudence of the UN Committee on Economic, Social and Cultural Rights indicates that the aim of protecting the resources of a social security system can be a valid and legitimate objective: *Marcia Cecilia Trujillo Calero v. Ecuador*, UN Committee on Economic, Social and Cultural Rights, Communication No. 10/2015, E/C.12/63/D/10/2015 (26 March 2018) [17.1].

225 Limburg Principles on the Implementation of the ICESCR, June 1986 [52]. See also, Amrei Muller, 'Limitations to and derogations from economic, social and cultural rights', *Human Rights Law Review* vol. 9, no. 4, 2009, p. 573; Erica-Irene A Daes, The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights, *Study of the Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities*, E/CN.4/Sub.2/432/Rev.2 (1983) pp. 123–4.

226 See *Marcia Cecilia Trujillo Calero v. Ecuador*, UN Committee on Economic, Social and Cultural Rights, Communication No. 10/2015, E/C.12/63/D/10/2015 (26 March 2018) [17.1], [23(c)].

contribution to, Australian society and the economy.[227] Whether the mutual obligation requirements are capable of effectively addressing barriers to employment and participation in society and the economy will depend on the nature of the requirements. The explanatory statement has not identified what supports and programs are provided to persons subject to these requirements in practice. More generally, the Administration Act provides that requirements may relate to seeking, accepting and undertaking paid work or undertaking other activities such as training or study, or voluntary work.[228] The effectiveness of this measure will depend on the extent to which mutual obligation requirements are targeted and personalised in practice. European human rights law jurisprudence has found that obligations or requirements such as a willingness to seek employment or receive training may be permissible if the requirements are reasonable and consistent with the objective sought to be achieved (such as obtaining lasting employment) and reducing or suspending social security benefits for failure to comply with such requirements must not deprive a person of their minimum essential benefits.[229]

1.124 By applying a 208 week waiting period for access to social security payments for newly arrived migrants, the measure may be effective to achieve the objective of requiring newly arrived migrants to support themselves and their families, which in turn, may help to achieve the broader objective of ensuring the financial sustainability of the welfare payment system. However, questions remain as to whether the measure would necessarily be effective to achieve the broader objective of supporting and targeting those most in need, noting that the effect of the measure would be to restrict access to social security payments for potentially vulnerable persons who may not be able to financially support themselves. For example, newly arrived migrant women subject to the waiting period, who earn a low income, will not have access to paid parental leave (unless an exemption applies), whereas other women in Australia earning up to $180,007 will have access to paid parental leave.[230] This example suggests that the measure may not necessarily target those most in need. In this way, there appears to be a risk that the measure may frustrate one of the key principles underpinning the welfare system, namely that payments are appropriately and effectively targeted to persons experiencing financial disadvantage.

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227 Statement of compatibility, p. 16.

228 Section 40G of the *Social Security (Administration) Act 1999* sets out examples of requirements that may be included in an employment pathway plan.

229 See, for example, ECSR Conclusions, decision of 06 December 2017, Norway, 2013/def/NOR/13/1/EN; ECSR Conclusions, decision of 06 December 2013, Hungary, 2013/def/HUN/13/1/EN; ECSR Conclusions, decision of 30 June 2006, Estonia, 2006/def/EST/13/1/EN.

230 For eligibility criteria for paid parental leave see Services Australia, Meeting the income test (accessed 19 November 2025).

Proportionality

1.125 In assessing proportionality, it is necessary to consider a number of factors, including whether the proposed limitation is accompanied by sufficient safeguards; whether there is sufficient flexibility to treat different cases differently; and whether any less rights restrictive alternatives could achieve the same stated objective.

1.126 A key safeguard accompanying both measures is the availability of exemptions. The explanatory statement notes that there are exemptions from mutual obligation requirements for those in certain circumstances, for example, those with caring responsibilities, who are impacted by domestic violence, and those who have an illness or disability.[231] The explanatory statement also notes that a person will be exempt from the newly arrived resident's waiting period if, in the Secretary's opinion, they have suffered a substantial change in circumstances beyond their control after they have first entered Australia.[232] It further notes that there are exemptions from the waiting period for special benefit for holders and former holders of temporary protection type visas,[233] meaning that a person may be paid special benefit immediately subsequent to being granted one of these visas, subject to the person otherwise satisfying the qualification and payability requirements for that payment. These exemptions for specified visa holders also extend to the family tax benefit Part A and parental leave pay.[234]

1.127 These exemptions will likely operate as an important safeguard to ensure that individuals in certain circumstances who are unable to meet their mutual obligation requirements or who experience substantial change in their individual circumstances can still access social security payments and afford to meet their basic needs and maintain an adequate standard of living. Exempting temporary protection type visa holders assists with proportionality as these individuals are particularly vulnerable and more likely to require economic and social support. The exemptions provide flexibility to consider individual circumstances and treat different cases differently, which assists with the proportionality of the measures.

1.128 However, the strength of the exemptions as a safeguard will likely depend on how the exemption processes operate in practice. It appears that individuals have to demonstrate their eligibility for an exemption, and this relies on the individual, at a minimum, being aware of the available exemptions and having sufficient knowledge and capability to provide the necessary information to demonstrate their eligibility for an exemption. It is not clear if the exemption processes would be accessible to all vulnerable individuals, noting that some may have accessibility issues, for example

231 Statement of compatibility, p. 15.

232 *Social Security Act 1991*, subsection 739A(7).

233 Part 2, section 11.

234 Explanatory statement, p. 7.

because of language barriers or difficulties around the requirement to discuss, and provide evidence for, potentially sensitive matters, such as domestic violence.

1.129 A further safeguard that assists with proportionality is the availability of internal and external review. The explanatory statement notes that internal and external review is available under Parts 4 and 4A of the Administration Act for decisions made under social security law.[235]

1.130 Further, the measures may represent a potentially significant interference with rights. For those migrants who experience economic precarity and do not qualify for an exemption, or are unable to provide the necessary evidence to navigate the exemptions processes, the measures could significantly interfere with their rights and their ability to meet their basic needs as well as those of their children. Failure to comply with a mutual obligation requirement may result in a person's social security payments being suspended, reduced or cancelled. If this consequence resulted in a person being deprived of their minimum essential needs, it is unlikely to constitute a proportionate limitation on rights.

1.131 It is also not clear that the measures represent the least rights restrictive approaches. For example, it is not clear whether the objective of facilitating newly arrived migrants to obtain employment could not be achieved by incentivising individuals to participate in programs and activities to assist them into employment, rather than imposing compulsory mutual obligation requirements that carry punitive sanctions for failure to meet those requirements. With respect to the waiting period, there is no flexibility to impose a shorter waiting period, taking into account the individual circumstances. When the waiting period was extended from two years to four years in 2021, the Parliamentary Joint Committee on Human Rights questioned why four years was considered to be an appropriate period of time and considered that the blanket application of a four year waiting period for all new migrants may not be the least rights restrictive approach, particularly for new migrants who live in economic precarity but do not qualify for an exemption.[236]

Concluding remarks

1.132 The objectives of ensuring a financially sustainable social security system and targeting those most in need may be capable of constituting legitimate objectives, although some questions remain as to whether the measures promote general welfare (noting the disproportionate impact on vulnerable groups) and whether the measures necessarily address a pressing public or social concern. While the mutual obligation requirements appear rationally connected to some stated objectives, including supporting migrants to access employment and to participate in society and the

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235 Explanatory statement, p. 8.

236 Parliamentary Joint Committee on Human Rights, Social Services Legislation Amendment (Consistent Waiting Periods for New Migrants) Bill 2021, *Report 12 of 2021* (20 October 2021) p. 76.

economy, the effectiveness of this measure will depend on whether the support provided is targeted and personalised. Likewise, while imposing the waiting period may be rationally connected to the objective of encouraging self-reliance, questions remain as to whether the measure would necessarily be effective to achieve the broader objective of supporting and targeting those most in need.

1.133 In relation to proportionality, the availability of exemptions operates as an important safeguard, providing some flexibility to take into account individual circumstances and treat different cases differently. However, the strength of this safeguard depends on the accessibility of the exemptions processes. For newly arrived migrants who experience economic precarity and do not qualify for an exemption, the potential interference with their rights may be significant. Further, it is not clear that the measures represent the least rights restrictive approaches. As such, there appears to be a risk that these measures may not constitute a permissible limitation on the rights to social security, an adequate standard of living, health, equality and non-discrimination, and protection of the family, as well as the rights of the child.

Committee view

1.134 The committee notes that this legislative instrument specifies the classes of visas that may be required to satisfy mutual obligation requirements to access special benefit and other social security payments, and the classes of visas subject to the newly arrived resident's waiting period of 208 weeks or four years for social security payments.

1.135 The committee notes that insofar as these measures restrict access to social security payments for migrants on certain classes of visas, it engages and may limit the right to social security, the right to an adequate standard of living, the right to health, the right to equality and non-discrimination, the right to protection of the family, and the rights of the child. These 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.

1.136 The committee considers that the general objectives of ensuring a financially sustainable social security system and targeting those most in need constitutes a legitimate objective, although some questions remain as to whether the measures would in practice promote general welfare. While the measures appear rationally connected to some stated objectives, it is not clear that the measures would necessarily be effective to achieve other stated objectives, such as ensuring the social security system targets those most in need. Regarding proportionality, the committee considers that the availability of exemptions operates as an important safeguard, providing some flexibility to take into account individual circumstances and treat different cases differently. However, the committee notes that the strength of this safeguard depends on the accessibility of the exemptions processes. For newly arrived migrants who experience economic precarity and do not qualify for an exemption, the committee notes that the potential interference with their rights may be significant.

Further, it is not clear to the committee that the measures represent the least rights restrictive approaches. As such, the committee considers there to be a risk that these measures may not constitute a permissible limitation on the rights to social security, an adequate standard of living, health, equality and non-discrimination, and protection of the family as well as the rights of the child.

1.137 Further, the committee notes that it raised similar human rights concerns with respect to the newly arrived resident's waiting period when the waiting period was extended from two years to four years in 2021.[237] The committee is disappointed that the explanatory materials did not appear to consider or refer to the committee's previous comments or recommendation to provide that stand-alone exemptions be made available for all payments subject to the newly arrived resident's waiting period.

1.138 The committee draws these human rights concerns to the attention of the minister and the Parliament.

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237 Parliamentary Joint Committee on Human Rights, Social Services Legislation Amendment (Consistent Waiting Periods for New Migrants) Bill 2021, *Report 12 of 2021* (20 October 2021) pp. 60–78.

Chapter 2
Concluded matters

2.1 The committee considers a response to matters raised previously by the committee.

2.2 Correspondence relating to these matters is available on the committee's website.[1]

Bills

Australian Centre for Disease Control Bill 2025

Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025[2]

Purpose	These bills establish the Australian Centre for Disease Control, as well as the office of the Director-General and the Advisory Council of the Australian Centre for Disease Control.
Portfolio	Health, Disability and Ageing
Introduced	House of Representatives, 3 September 2025 *Received Royal Assent 10 November 2025*
Rights	Effective remedy; health; privacy

2.3 The committee requested a response from the minister in relation to the bills in *Report 5 of 2025*.[3]

Publication of public health advice

2.4 The Australian Centre for Disease Control Bill 2025 (now Act) (the bill) requires the Director-General of the Australian Centre for Disease Control (Director-General) to publish the public health advice given in the performance of their functions, with some exceptions, on the website of the Australian Centre for Disease Control (the Centre).[4] This includes any supporting information, analysis or reasoning that was used to reach the recommendations in the advice.[5]

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1 See https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights

2 This entry can be cited as: Parliamentary Joint Committee on Human Rights, Australian Centre for Disease Control Bill 2025, *Report 7 of 2025*; [2025] AUPJCHR 57.

3 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 13-36.

4 Australian Centre for Disease Control Bill 2025, clause 21.

5 Australian Centre for Disease Control Bill 2025, subclause 21(2).

2.5 Public health advice is written advice that consists of or contains recommendations; is given by the Director-General, in the performance of their functions or duties, to the minister, a Commonwealth entity or an official of the Commonwealth, or a State or Territory government entity; that relates to public health matters; was not prepared for the purpose of being published otherwise than under this bill; and that the Director-General approves as final and settled advice.[6]

2.6 The Director-General must not publish public health advice if the advice is 'exempt material'.[7] Exempt material includes, most relevantly, a document or other material that, if published, could risk causing physical harm, threats of physical harm, social stigma, bullying, vilification, or other harm (other than commercial or economic harm) to an individual or group, and it is unreasonable to take that risk.[8] Exempt material also includes documents affecting national security, defence or international relations; documents to which secrecy provisions apply; documents subject to legal professional privilege; and documents containing material obtained in confidence.[9] If the Director-General can modify the advice to exclude or delete the exempt material, the Director-General must do so and publish the modified copy of the advice.[10] Rules may be made (by way of a future legislative instrument) in relation to the publication of public health advice. The bill provides a non-exhaustive list of things that the rules may do, including requiring the Director-General to inform a recipient of advice that the advice is proposed to be published; provide for consultation that must be carried out before publishing the advice; and provide for procedures for publishing the advice.[11]

Summary of initial assessment

Preliminary international human rights legal advice

Rights to health and privacy

2.7 To the extent that this measure helps to ensure that the population has access to health information and advice, this measure promotes the right to health. The right to health is the right to enjoy the highest attainable standard of physical and mental health and requires the states to take steps to prevent, treat and control epidemic diseases.[12]

2.8 However, by requiring the Director-General to publish public health advice that may include an individual's personal health information, the measure engages and

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6 Australian Centre for Disease Control Bill 2025, clause 20.

7 Australian Centre for Disease Control Bill 2025, clause 5.

8 Australian Centre for Disease Control Bill 2025, clause 5.

9 Australian Centre for Disease Control Bill 2025, clause 5.

10 Australian Centre for Disease Control Bill 2025, clause 22.

11 Australian Centre for Disease Control Bill 2025, clause 23.

12 International Covenant on Economic, Social and Cultural Rights, articles 12(1) and 12(2)(c).

limits the right to privacy. The right to privacy includes respect for informational privacy, including the right to respect for private and confidential information, particularly the storing, use and sharing of such information.[13] It also includes the right to control the dissemination of information about one's private life. The right to privacy 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.

Committee's initial view

2.9 The committee noted that this bill requires the Director-General to publish public health advice on the website of the Australian Centre for Disease Control (the Centre). The committee noted that the policy intention is for this advice to be limited to public health matters and not contain personal information, however, nothing in the bill restricts the inclusion of personal information in published material.

2.10 The committee noted that to the extent that this measure permits the publication of personal information, it engages and limits the right privacy. The committee considered further information was required to assess the compatibility of this measure with the right to privacy, and as such sought the minister's advice.

2.11 The full initial analysis is set out in *Report 5 of 2025*.[14]

Minister's response[15]

2.12 The minister advised:

> *1.a) whether the bill permits the publication of personal information (if it does not meet the definition of protected information or exempt material)*
>
> All personal information collected, used and disclosed by the Australian CDC is defined as *protected information* in the Australian Centre for Disease Control Bill 2025 (Bill). Under the Director-General's duty to publish public health advice (Part 2, Division 5), the Bill does not permit the publication of any *protected information* as it is considered *exempt material* (refer clause 5). Exempt material includes exemptions listed in Division 2 of Part IV of the *Freedom of Information Act 1982* (FOI Act), including section 38 of the FOI Act which applies to information protected by a secrecy provision. The Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025 proposes to amend Schedule 3 of the FOI Act to ensure that *protected information,* which is safeguarded by the secrecy provisions in the Bill, is exempt from disclosure both under the FOI

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13 International Covenant on Civil and Political Rights, article 17.

14 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 13-36.

15 The minister's response to the committee's inquiries was received on 17 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

Act and from publication under the Director-General's duty to publish public health advice.

For the avoidance of doubt, there are no circumstances in which personal information would not constitute *protected information.* These protections are necessary and consistent with other Commonwealth secrecy regimes, designed to prevent infringement of an individuals' right to privacy through release of sensitive health information that may identify a person, or cause harm to commercial interest's resultant from a breach of confidence.

1.b) if the bill does permit the publication of personal information, what is the nature and scope of personal information that could be published

Personal information cannot be published as part of the Director-General's duty to publish public health advice (Part 2, Division 5). See response to 1.a).

1.c) what safeguards are there to ensure any limit on the right to privacy is proportionate

The Bill contains the necessary safeguards to ensure the limit on the right to privacy is proportionate and legitimate. Protected information, including personal information, will not be published under the duty to publish public health advice. The unauthorised use or disclosure (including publication) of protected information will be an offence and will therefore be subject to penalty (outlined in clause 71). Protected information must be handled in accordance with the use and disclosure of protected information (outlined in Division 3 of Part 4), as well as the *Privacy Act 1988*, and any other applicable state or territory legislation. The serious consequences of unauthorised use and disclosure of protected information reflect the Australian CDC's high regard for privacy and data safety.

1.d) will the rules contain any safeguards specifically relating to the right to privacy, such as a requirement to inform a person if their personal information will be published, giving them an opportunity to request that that information not be published.

Personal information is protected information under the Bill. As protected information will not be published under the duty to publish public health advice, it is not envisaged the rules will contain any further safeguards relating to the right to privacy.

Concluding comments

International human rights legal advice

2.13 As outlined in the preliminary analysis, insofar as the requirement of the Director-General to publish health advice includes the publication of personal information, the measure engages the right to privacy. Further information was sought from the minister as to whether the measure permits the publication of personal information and if so, whether there are relevant safeguards accompanying the measure.

2.14 The minister advised that all personal information collected, used and disclosed by the Centre is defined as protected information. The minister stated that the bill does not permit the publication of any protected information as it is considered exempt material. Exempt material includes exemptions to publication listed in Division 2 of Part IV of the *Freedom of Information Act 1982* (FOI Act) including for information protected by a secrecy provision. The Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025 (now Act) amends the FOI Act to ensure that protected information is exempt from disclosure when a person requests access to that information under the FOI Act. The minister advised that there are no circumstances in which personal information would not constitute 'protected information' as defined in the bill.

2.15 In relation to safeguards, the minister advised that the unauthorised use or disclosure of protected information is an offence subject to penalty. Further, the minister advised that protected information must be handled in accordance with the *Privacy Act 1988* (the Privacy Act). In the minister's view, these serious consequences reflect the high regard placed on privacy and data safety. As protected information will not be published under the duty to publish health advice, it is not envisaged by the minister that the rules will contain further safeguards relating to the right to privacy.

2.16 Based on the information provided by the minister, it appears that personal information constitutes protected information for the purposes of the bill and the requirement for the Director-General to publish public health advice does not permit the publication of personal information. As such, the measure does not appear to limit the right to privacy.

Committee view

2.17 The committee thanks the minister for this response which clarifies the operation of key provisions in the bills and the publication of personal information.

2.18 The committee notes the minister's advice that there are no circumstances in which personal information would not constitute protected information. As such, the requirement to publish public health advice would not permit personal information to be published. The committee notes unauthorised disclosure of personal information constitutes an offence and this operates as a safeguard on any limit on the right to privacy.

2.19 The committee considers that its concerns have therefore been addressed, and makes no further comment in relation to this measure.

Power to request information

2.20 The bill would empower the Director-General to gather information, and to request that an entity give specific information to the Director-General or to a

designated service provider.[16] An entity includes Australian government entities, bodies corporate, international organisations, and individuals.[17] A designated service provider is the Australian Bureau of Statistics, the Australian Institute of Health and Welfare, and any other government entity determined by the Director-General.[18]

2.21 The Director-General may also enter into an agreement with an entity for the entity to give specific information to the Director-General or to a designated service provider.[19] Compliance with a request or agreement is not mandatory.[20]

2.22 The type of information that may be requested in the context of this measure is information or a class of information that would assist the Director-General in the performance of the Director-General's functions or duties, or the exercise of powers, under the bill, the *Biosecurity Act 2015*, the *National Health Security Act 2007*, and the *National Occupational Respiratory Disease Registry Act 2023*.[21]

Summary of initial assessment

Preliminary international human rights legal advice

Rights to health and privacy

2.23 Insofar as this measure helps to ensure that the Director-General is able to effectively carry out their functions and duties, which may improve access to health advice, data and services, this measure would promote the right to health. The content of the right to health is set out above.

2.24 However, empowering the Director-General to request, or enter into an agreement to receive, specified information which may include personal information, engages and may limit the right to privacy. While an entity or individual would consent to the giving of information, the information may contain personal information relating to other individuals who may not consent to the provision of that information. Further, the measure enables the provision of information to designated data service providers who could use or treat the information for a different purpose from that for which it was initially collected and shared.[22] The content of the right to privacy and the parameters for permissible limitations on the right are set out above.

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16 Australian Centre for Disease Control Bill 2025, paragraph 43(1)(a).

17 Australian Centre for Disease Control Bill 2025, paragraph 43(2)(a).

18 Australian Centre for Disease Control Bill 2025, clause 42.

19 Australian Centre for Disease Control Bill 2025, paragraph 43(1)(b).

20 Australian Centre for Disease Control Bill 2025, clause 43.

21 Australian Centre for Disease Control Bill 2025, subclause 43(3).

22 Australian Centre for Disease Control Bill 2025, clause 42 defines 'designated data service provider' as the Australian Bureau of Statistics, the Australian Institute of Health and Welfare, and any other Australian government entity determined by the Director-General.

Committee's initial view

2.25 The committee considered that to the extent that the bill empowers the Director-General to request information or enter into agreements for the provision of information which includes personal information relating to individuals, this measure would engage and may limit the right to privacy.

2.26 The committee considered that while this power would likely pursue a legitimate objective and is rationally connected to achieving that objective, questions remain as to whether the measure is proportionate. The committee considered further information was required to assess the compatibility of this measure with the right to privacy, and as such sought the minister's advice.

2.27 The full initial analysis is set out in *Report 5 of 2025*.[23]

Minister's response[24]

2.28 The minister advised:

> *2.a) what is the purpose of including individuals in the types of entities that may be requested to provide information to the Director-General?*
>
> Including individuals among the entities from which the Director-General may request information ensures the Australian CDC can directly access information relevant to public health, rather than acquiring information through an intermediary. This mechanism would be used in limited circumstances to supplement existing population-level datasets when they are insufficient to meet urgent or specific public health information needs.
>
> For example, in the case of a zoonotic disease outbreak the CDC may seek timely and targeted data from agricultural operators, who may be individuals rather than corporate or government entities. Requesting information directly from such individuals can improve efficiency, reduce delays, and supplement information collected elsewhere. This approach acknowledges that a diverse range of legal entities – including individuals – may be involved in activities critical to public health surveillance and response.
>
> *2.b) what safeguards, if any, are available to protect individuals' personal information from collection, use and disclosure?*
>
> The Bill establishes a comprehensive framework to ensure that personal information is securely protected throughout collection, use, and disclosure.

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23 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 13-36.

24 The minister's response to the committee's inquiries was received on 17 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

All authorisations in the Bill to collect, use and disclose information are linked to the Australian CDC's legislated public health functions or where required for other approved administrative reasons in line with the Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers (e.g. disclosure where required by a court or integrity body). This means that personal information may only be collected if it is necessary for the performance of a function, duty, or exercise of power under the Bill; ensuring that data handling is proportionate and purpose-driven and reducing unnecessary intrusion into privacy.

The data minimisation requirements set out at sections 51 and 52 impose safeguards to ensure that any disclosure of personal information in the course of the Australian CDC's public health functions is strictly limited to what is necessary to achieve the intended public health purpose. These provisions require that only the minimum amount of personal information needed for the CDC to perform its function is disclosed, and only to the minimum recipients who are essential to fulfilling the public health objective.

The Director-General will have a discretionary power to share data in certain circumstances (section 65). Data may be shared only to trusted government entities (or entities engaged on behalf of those entities) performing a legitimate public health activity (sections 40 and 41). For example, vaccination information may be shared with states and territories who need to link this information to hospitalisations data to understand morbidity among those who are/are not vaccinated and to target responses. The Director-General's discretion to share public health data is subject to a privacy equivalence requirement, which restricts data sharing only to entities bound by the *Privacy Act 1988* or equivalent state or territory privacy laws. This measure provides a higher level of privacy protection than is applied in the course of most existing Commonwealth data sharing practices, as there is ordinarily no legislated requirement to consider the subsequent application of privacy laws once data is shared from the Commonwealth to another entity.

In exercising the discretionary power to share data to another public health entity, the Director-General must determine that entities to which data will be shared comply with trusted access principles set out via legislative instrument. Trusted access principles will provide clarity and transparency about the standards the Director-General must have regard to in exercising the data sharing authority. They provide a mechanism to formalise limitations on the Director-General's discretion, such as where additional safeguards to protect privacy are required in response to circumstances such as novel technologies. The trusted access principles therefore support the longevity of the Bill by providing a mechanism to maintain contemporary privacy safeguards.

Data minimisation requirements are specified to limit the Director-General's discretion to share personal information to another public health

entity unless necessary for performance of legislated public health activities (section 51(3)(b) and (c); section 65(5)). As explained in the Explanatory Memorandum, the threshold of 'reasonably necessary' is imposed to proportionately limit disclosure of personal information to preclude arbitrary interferences with privacy. The practical implication of the data minimisation requirement is that disclosure of personal information to another trusted public health entity will only be authorised under the Bill where the public health activity cannot be performed on the basis of aggregate data (i.e. data that has been statistically treated such that it no longer meets the definition of 'personal information').All use and disclosure of personal information by the Australian CDC – and by other trusted public health entities to which the Australian CDC shares data – is subject to the Bill's secrecy regime (section 71). The regime applies equally to information about identified individuals and individuals who may theoretically be identifiable due to unique traits. Criminal penalties apply for any use or disclosure of personal information that is not authorised by the Bill.

Together, the privacy protections in the Bill deliver a robust framework to ensure that personal information is handled securely, lawfully, and ethically to deliver public benefit, with strong penalties for misuse. These legislated protections will be supported through a regime of non-legislated procedural safeguards and data sharing agreements between the Australian CDC and data custodians. Non-legislated policies and procedures are modelled on existing best-practice safe data measures applied by other Commonwealth agencies and include:

- **Five Safes Framework**: the gold standard multi-dimensional approach to managing disclosure risk. This is the basis for the CDC's Data Governance Framework.
- **Privacy Impact Assessments (PIA)** and Privacy Threshold Assessments. A PIA for the CDC Bill is currently being conducted by the Australian Government Solicitor.
- **Functional Separation Principle** to ensure no one working with identifiable data for linkage purposes can view both identifying information (e.g. name) and content data (e.g. diagnosis, demographics).
- An ongoing program of **security audits and system accreditations.**
- Development of a **Social Licence Framework** to guide the CDC's use of data and privacy protections in line with community expectations.
- **A Data Governance Framework for the CDC** setting out governance processes and accountabilities.

In addition to the privacy protections set out in the Bill, all collection, use and disclosure of the Australian CDC will be subject to the *Privacy Act 1998.* As an APP entity under this Act, the Australian CDC will comply with the Australian Government Entities Privacy Code and will be subject to the

Notifiable Data Breaches Scheme administered by the Office of the Australian Information Commissioner.

> *2.c) whether an individual to whom personal information relates will be informed of the use and sharing of their personal information and will have an opportunity to request that the information not be shared?*

Population health analysis is reliant on complete coverage across the Australian population to accurately identify public health concerns (for instance, diseases in specific regions or affecting particular demographic cohorts) and to inform targeted and proportionate mitigations and responses. Individuals will therefore not be able to opt-out of information sharing as this would undermine the accuracy and utility of the Australian CDC's analysis and advice. Further, administration of a consent framework would be prohibitively resource intensive and could not be implemented at scale.

This approach is consistent with existing Commonwealth and interjurisdictional public health data sharing practices which do not provide opt-out mechanisms. In particular, case information about diseases on the National Notifiable Disease List must be shared by states and territories to the Commonwealth under the *National Health Security Act 2007* (NHS Act). These existing mandatory arrangements will transfer to the Australian CDC under amendments contained within the *Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025.*

Given that the Australian CDC will analyse population-level data, individuals will not be notified when their personal information is collected, used, or disclosed. Transparency will instead be achieved through publication on the Australian CDC website of the sources of information used to inform public health advice.

> *2.d) why the bill does not explicitly exclude personal information from the type of information that may be requested by the Director-General?*

The Bill does not explicitly exclude personal information from the scope of information that may be requested by the Director-General. This is a deliberate and necessary drafting decision as excluding such information would prohibitively constrain the Australian CDC's capacity to analyse public health threats and provide accurate, evidence-based advice.

To fulfil its statutory functions, the Australian CDC must be empowered to use data that carries a theoretical risk of re-identification. As outlined in section 2.b above, the *Privacy Act 1988* defines personal information to include data about an individual who is 'reasonably identifiable'. This category encompasses the majority of data the CDC will rely upon to perform its public health advice functions. Person-level population datasets inherently carry a theoretical risk of re-identification – even when direct

identifiers such as names have been removed. This is because combinations of demographic and health-related attributes (such as age, gender, postcode, and medical condition) can be sufficiently unique to identify individuals, particularly in small cohorts or rare disease scenarios. Consequently, all information about individuals (regardless of whether it contains identifying information or not) must be treated as personal information under the Privacy Act and the secrecy regime established in the Bill, and handled in line with safeguards to protect privacy.

Concluding comments

International human rights legal advice

2.29 As set out in the preliminary analysis, while the measure pursues the legitimate objective of promoting public health, further information was sought from the minister with respect to proportionality.

2.30 As to why it is necessary to request information from individuals, the minister advised that doing so acknowledges that a diverse range of entities may be involved in activities that are critical to public health surveillance and response. The minister advised that this power would be used in limited circumstances to meet urgent or specific public health information needs and to supplement existing population-level datasets. The information provided by the minister suggests that including individuals in the types of entities that may be requested to provide information to the Director-General is necessary to achieve the objective of the measure.

2.31 In regard to safeguards, the minister provided information on the comprehensive framework of safeguards included in the bill and set out in the Privacy Act, as well as non-legislated procedural safeguards that ensure personal information is securely protected. The minister advised that all authorisations in the bill for the collection, use and disclosure of information are linked to the performance of a function, duty or exercise of power under the bill, or required for administrative reasons regarding Commonwealth offences and enforcement powers. The minister advised that the bill contains data minimisation requirements, namely that any disclosure of personal information is strictly limited to what is necessary to achieve the intended public health purpose. The minister further advised that disclosure of personal information will only be authorised where the public health activity cannot be performed on the basis of de-identified aggregate data. This assists to minimise the extent of interference with the right to privacy by restricting the scope of personal information that may be disclosed.

2.32 The minister also advised that the use of personal information is subject to the Privacy Act and the Director-General's discretion to share public health data is restricted to data sharing to entities also bound by the Privacy Act or equivalent state or territory privacy legislation. The minister further advised that the Director-General must determine that entities to which data will be shared comply with the trusted access principles which will be set out via legislative instrument. However, compliance

with the Australian Privacy Principles (APPs) and the Privacy Act are not a complete answer to concerns about interference with the right to privacy for the purposes of international human rights law. This is because the APPs contain a number of exceptions to the prohibition on use or disclosure of personal information for a secondary purpose, including where its use or disclosure is authorised under an Australian law,[25] which may be a broader exception than permitted in international human rights law. Further, it is not possible to assess the strength of the trusted access principles as a safeguard as the principles will be contained in a forthcoming legislative instrument.

2.33 With respect to state and territory privacy legislation, without a comprehensive review of this broader legislative framework, it is not possible to conclude whether the safeguards contained in state and territory privacy legislation are sufficient to protect the right to privacy for the purposes of international human rights law.

2.34 The minister also provided information on the non-legislative safeguards that operate to ensure that personal information is handled securely, lawfully and ethically, including governance frameworks, security audits, and a Privacy Impact Assessment for the bill. While these measures are likely to operate as safeguards and assist with the proportionality of the measure, they are subject to change and as such may not provide the safeguard value that legislative mechanisms would.

2.35 In regard to whether an individual to whom personal information relates will be informed of the use and sharing of their personal information, or given an opportunity to request that the information not be shared, the minister advised that population health analysis is reliant on complete coverage of the population and as such individuals will not be able to opt-out of information sharing. The minister also advised that the administration of a consent framework would be prohibitively resource intensive and could not be implemented at scale. Administrative convenience is not a reason in and of itself to limit the right to privacy. However, the minister advised that the sources of information used to inform public health advice will be published, which may operate as a safeguard to the extent that it enables individuals to determine if their personal information has been disclosed.

2.36 The minister also provided information as to why personal information is not explicitly excluded from the type of information that may be requested by the Director-General in the bill. The minister advised that excluding such information would prohibitively constrain the Centre's capacity to analyse public health threats and provide accurate advice which form part of its statutory functions. This is because person-level population datasets inherently carry a theoretical risk of re-identification. Treating de-identified datasets as personal information, which enlivens the privacy safeguards in the bill, Privacy Act and the Centre's procedures, ensures a thorough approach to protecting privacy.

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25 APP 9; APP 6.2(b).

2.37 In conclusion, while the potential scope of personal information that may be collected, used and disclosed may be broad, the purposes for which the information is used and disclosed, and the entities to whom the information is shared is circumscribed, and the data minimisation requirement appears to reduce the extent of any interference with privacy. The framework of legislative and non-legislative safeguards identified by the minister would likely assist with proportionality. Some of these safeguards may reduce the risk that information is used for a different purpose from that for which it was initially collected and shared, including the fact that data may only be shared to trusted government entities performing a legitimate public health activity, and the regime of procedural safeguards and data sharing agreements between the Centre and data custodians. However, the strength of some of the safeguards remain unclear. In particular, it is not possible to assess the effect of state or territory privacy legislation and the trusted access principles (which are yet to be made). On balance, it appears that the measure may constitute a proportionate limit on the right to privacy, although some questions and risks remain.

Committee view

2.38 The committee thanks the minister for this response. The committee considers that to the extent that empowering the Director-General to gather information may improve access to health advice, data and services, the measure would promote the right to health. However, if the information includes personal information, then the measure would also limit the right to privacy. The committee considers that the measure pursues the legitimate objective of promoting public health and appears rationally connected to this objective.

2.39 With respect to proportionality, the committee notes the minister's advice that individuals will only be requested to provide information in urgent and specific public health circumstances. The committee notes the minister's explanation that an individual will not be informed when their personal information is used and shared due to the need to analyse population-level data, and that the measure does not explicitly exclude personal information from the type of information that may be requested by the Director-General because to do so would prohibitively constrain the Centre's capacity to analyse public health threats and provide accurate, evidence-based advice.

2.40 The committee notes that the measure is accompanied by a number of safeguards, including the Privacy Act and non-legislated procedural frameworks. The committee considers that the Privacy Act and equivalent state or territory privacy legislation as well as the trusted access principles (which are to be made in future delegated legislation) do not themselves represent adequate safeguards. However, the committee considers that the framework of safeguards as a whole assists with the proportionality of the measure. The committee considers that on balance it appears the measure may constitute a proportionate limit on the right to privacy.

2.41 The committee draws these human rights concerns to the attention of the minister and the Parliament.

Power to direct people to give information

2.42 The bill would create a discretionary power for the Director-General to direct people to give information to the Director-General or to a designated data service provider[26] (which includes the Australian Bureau of Statistics, the Australian Institute of Health and Welfare, and any other Australian government entity determined by the Director-General).[27] The bill would prohibit the Director-General from giving a direction to an Australian government entity, an international organisation, or an individual employed or engaged by the Commonwealth, a State, a Territory or any Australian government entity or international organisation.

2.43 The bill would enable the Director-General to specify information or a class of information in a direction only if satisfied that the information is reasonably necessary for the performance of the Director-General's functions or duties under this bill; it is reasonable in all the circumstances to give the direction; and the Director-General has consulted the Advisory Council of the Australian Centre for Disease Control (Advisory Council) about the proposed direction.[28]

2.44 The bill would impose a civil penalty of 60 penalty units (currently $19,800) for failure to comply with a direction from the Director-General to give information.[29] The Director-General's decision to give a direction is reviewable by the Administrative Review Tribunal.[30]

Summary of initial assessment

Preliminary international human rights legal advice

Rights to health and privacy

2.45 To the extent that this measure helps to ensure that the Director-General is able to perform their functions effectively and improve access to health information and advice, this would promote the right to health as set out above. However, by directing a person to give information, which may include personal information, the measure engages and may limit the right to privacy, which may be permissibly limited where the limitation pursues a legitimate objective, is rationally connected to that objective and is a proportionate means of achieving that objective.

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26 Australian Centre for Disease Control Bill 2025, subclause 45(1).

27 Australian Centre for Disease Control Bill 2025, clause 42.

28 Australian Centre for Disease Control Bill 2025, subclause 45(4).

29 Australian Centre for Disease Control Bill 2025, clause 48.

30 Australian Centre for Disease Control Bill 2025, clause 47.

Committee's initial view

2.46 The committee noted that the Director-General's power to direct individuals to give specified information, including personal information, to the Director-General or a designated data service provider would engage and limit the right to privacy.

2.47 The committee considered that while this measure pursues a legitimate objective, and appears rationally connected to that objective, questions arise as to whether the measure is proportionate. While there are some legislative safeguards that would apply to the sharing of such information, the committee considered that further information was required to assess the adequacy of these safeguards, and as such sought the minister's advice.

2.48 The full initial analysis is set out in *Report 5 of 2025*.[31]

Minister's response[32]

2.49 The minister advised:

> *3.a) why the requirement to ensure information is 'reasonably necessary' does not explicitly include the requirement to exhaust all other means of obtaining the information (as described in the explanatory memorandum)?*
>
> The requirement for information to be 'reasonably necessary' does not include an explicit obligation to exhaust all other means of obtaining the information because such a requirement could significantly compromise the effectiveness and timeliness of public health advice and responses.
>
> In practice, the same or similar information may be held by multiple entities. If each entity could refuse compliance with a direction on the basis that information might be available elsewhere, this could lead to delays, duplication of effort, and uncertainty about who is ultimately responsible for providing the data. In public health contexts such delays have serious consequences, undermining timely decision-making and the ability to advise on and respond proactively to emerging threats.
>
> Instead, the Bill uses a dual safeguard: the information must be both 'reasonably necessary' and the direction must be 'reasonable in all the circumstances'. This ensures that any direction for information is proportionate, relevant, and made with due regard to the broader context, including the burden placed on the entity being directed to provide information. This framework allows the Director-General to assess the urgency, severity, and broader implications of a public health issue when deciding whether to issue a direction.

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31 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 13-36.

32 The minister's response to the committee's inquiries was received on 17 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

3.b) what is meant or intended by 'reasonable in all the circumstances' and what circumstances would specifically be considered by the Director-General in making this assessment. For example, whether the Director-General is required to consider whether the direction would constitute a proportionate limit on an individual's privacy?

The phrase 'reasonable in all the circumstances' has been drafted with the intent that any exercise of the Director-General's direction power is proportionate, justified, and sensitive to the full range of potential impacts, including on individual rights such as privacy.

This test requires the Director-General to weigh the urgency and severity of the public health threat against the potential consequences of issuing a direction, including whether it would constitute a proportionate limitation on privacy or other rights. While the Bill does not prescribe an exhaustive list of factors, the Explanatory Memorandum makes clear that the test is intended to be flexible and responsive to the context and complexity of each situation, particularly in the face of emerging or extreme public health threats.

Key factors considered by the Director-General in assessing this test may include:

- Severity of the public health threat: a risk-based assessment of the potential harm to public health, including the scale, immediacy, and nature of the threat.
- Necessity for public health functions: whether the information is essential to the Australian CDC's statutory functions.
- Availability of alternative mechanisms: whether the information could reasonably be obtained through less intrusive means, such as voluntary agreements under Clause 43.
- Scope and impact of the direction: including whether the direction is narrowly tailored to achieve its purpose without overreach.
- Privacy and human rights considerations: the Director-General must consider whether the direction would interfere with individual privacy and whether such interference is lawful, necessary, and proportionate, consistent with Article 17 of the International Covenant on Civil and Political Rights.
- Consultation and oversight: the requirement to consult the Advisory Council before issuing a direction adds a layer of scrutiny and accountability.

This approach ensures that the CDC's powers are adaptable to the demands of serious public health threats, while maintaining appropriate safeguards.

3.c) what consultation with the Advisory Council would involve, what factors are considered by the Advisory Council, and whether the

views of the Advisory Council need to be taken into account in determining whether a direction should be given?

The requirement for the Director-General to consult the Advisory Council before issuing a direction to provide information is a key safeguard designed to ensure the exercise of the direction power is subject to scrutiny, transparency, and expert input, while preserving the Director-General's ultimate accountability for decisions made under the Bill.

The primary purpose of consulting the Advisory Council is to provide independent, multidisciplinary advice on the appropriateness, necessity, and proportionality of a proposed direction by the Director-General. The Advisory Council is established under the Bill to support the Director-General in performing their functions. It will comprise members with expertise across a range of relevant fields, including public health, epidemiology, data governance, ethics and human rights. This diversity ensures that the Council can provide balanced and informed perspectives on complex public health matters.

While the Advisory Council's role is advisory rather than determinative, the Director-General is expected to genuinely consider its views before issuing a direction. Clause 49 provides for a register of directions to be maintained on the Australian CDC website, with authority to specify information that must be contained within the register in the rules. As the Explanatory Memorandum explains, the intent is to allow additional information to be included in the register to provide an appropriate level of transparency around the Director-General's use of the direction power. This may include specifying Advisory Council advice about exercise of the power.

3.d) why government entities, international organisations, and their employees are excluded from the Director-General's power to direct a person to give specific information?

The exclusion of Australian government entities, international organisations, and their employees from the Director-General's power to direct a person to provide specific information is a principled limitation, grounded in both legal constraints and practical governance considerations. This limitation ensures the scope of the direction power is as constrained as possible, applying only where it is legally enforceable and operationally necessary.

Within the Australian Government, there are already well-established mechanisms for negotiating the sharing of information, including through ministerial engagement, intergovernmental agreements, and Cabinet processes. These mechanisms are expected to be sufficient to ensure that the Australian CDC can access essential data from other government entities without the need for coercive powers. As such, the Bill does not extend the direction power to Commonwealth, state, or territory government bodies, recognising that cooperative arrangements are more appropriate and effective in these contexts.

Constitutional principles also play a role in this exclusion. In particular, the *Melbourne Corporation* doctrine limits the Commonwealth's ability to legislate in ways that would impair the capacity of states to function as independent governments within the federal system. Compelling state or territory entities to provide information through a statutory direction could breach this principle and undermine the cooperative federalism that underpins Australia's public health system.

International organisations are similarly excluded because they are not subject to Australian domestic law in a way that would make such directions enforceable. Many of these organisations operate under international legal immunities and privileges, which prevent the imposition of domestic legal obligations or penalties. Including them within the scope of the direction power would therefore be ineffective and potentially inconsistent with Australia's international obligations.

Employees or agents of these excluded entities are also not subject to a direction as they cannot be compelled to act in ways that their employer or organisation is not itself legally bound to comply with. This ensures consistency and avoids placing individuals in legally untenable positions.

3.e) how often will individuals and medical practitioners be subject to a direction?

The Australian CDC's core focus is on population-level public health, not individuals' health. Public health analysis is concerned with trends and risks across communities, and the CDC does not typically require information about specific individuals. The Bill reflects this by setting a high threshold in subclause 45(4), ensuring that the direction power is only exercised in exceptional circumstances.

Individuals may receive a direction in limited circumstances, such as the example provided at 2.a in the event of a zoonotic disease outbreak. Including individuals within the scope of the direction power reflects the reality that a diverse range of legal entities – including individuals – may be involved in activities critical to public health surveillance and response.

Medical practitioners are not envisaged to be subject to a direction under this clause.

3.f) what type of information is contemplated to be the subject of a direction, including the nature and scope of any personal information?

The type of information that may be subject to a direction is restricted to data that is directly relevant to effective performance of the Australian CDC's statutory functions to analyse and advise on public health matters. This includes information necessary to assess the magnitude, severity and impacts of a threat, and to inform timely and accurate public health advice.

This is expected to be data held by private sector entities that is not readily available through existing government-held sources that relates to

operational or environmental factors that are critical to understanding a public health threat. This may include information about exposures to zoonotic diseases (as explained at 2.a) or may include information necessary to assess factors that are essential to determining the population impact of a public health threat – for example, the number of negative pathology tests recorded by private pathology providers.

The power to issue a direction does not expressly exclude personal information. As explained at 2.d, this is because all person-level data inherently carry a theoretical risk of re-identification.

3.g) why it is mandatory for individuals to comply with a direction but not entities and whether consideration was given to affording individuals the same discretion to not comply with a direction?

Clause 45 authorises the Director-General to direct a person to give specified information. Compliance with a direction given by the Director-General is mandatory for individuals and other types of persons, per subclause 46(1).

Subclause 46(2) enables an entity dealing with a direction on behalf of the recipient to lawfully comply with the direction on the person's behalf. This authorisation is required for the legislated override at 46(3) to have effect where specified information is to be provided via an intermediary and does not affect the requirement for a person to comply with a direction.

Concluding comments

International human rights legal advice

2.50 Further information was sought from the minister with respect to proportionality, particularly in relation to the adequacy of the safeguards, the potential extent of any interference with the right to privacy and whether less rights restrictive alternatives were available.

2.51 The minister advised that including an explicit obligation to exhaust all other means of obtaining the information in the bill would significantly compromise the effectiveness and timeliness of public health advice and responses in practice. The minister advised that the same information may be held by multiple entities and a requirement to ensure that information is not obtainable through another entity may frustrate the process of collecting data and information in circumstances of an emerging threat.

2.52 As to the meaning of 'reasonable in all circumstances', the minister advised that in practice the Director-General would be required to weigh the urgency and severity of the public health threat against the potential consequences of issuing a direction, including whether the direction would constitute a proportionate limitation on privacy. While the bill does not prescribe an exhaustive list of factors that the Director-General is required to consider, the minister advised that the 'reasonable in all circumstances' test is intended to confer the Director-General with flexibility to

consider the circumstances of each individual situation and undertake some form of balancing exercise, whereby the Director-General may weigh the severity of the public health threat and necessity of the information against privacy and human rights considerations. This flexibility may assist with proportionality. If the Director-General were to consider the factors outlined by the minister in assessing whether the direction is 'reasonable in the circumstances', including the potential interference with an individual's right to privacy, the test would likely serve as a safeguard.

2.53 The minister also advised that the primary purpose of the Advisory Council is to provide independent, multidisciplinary advice on the appropriateness, necessity and proportionality of a proposed direction. The minister advised that while the Advisory Council's role is advisory rather than determinative, the Director-General is expected to genuinely consider the views of the Advisory Council. The strength of this safeguard in practice will therefore depend on the quality of the consultation undertaken and the extent to which the Director-General considers the views of the Advisory Council, noting that the bill requires the Director-General to have consulted the Advisory Council about the proposed direction (which may be a lower threshold in practice compared to genuine consideration of the Advisory Council's advice). The minister also stated that future rules may specify the information to be included on the register of directions and that such information may include specifying Advisory Council advice about the exercise of the power to give directions. If the Advisory Council's advice was published, it may assist with transparency. However, it is not clear that this transparency mechanism would necessarily operate as an adequate safeguard with respect to the provision of personal information to the Director-General as required by a direction.

2.54 The minister provided information about the distinction between certain entities and individuals being subject to a direction to provide information, explaining that the well-established mechanisms for sharing information within government are expected to be sufficient to ensure access to essential data without the need for coercive powers. The minister also provided information that the Commonwealth cannot legislate to impair the capacity of states to function independently and as such cannot compel states or territories to provide information. This information is also relevant in consideration of the requirement for individuals to comply with a direction. The minister advised that entities that are providing information on behalf of an individual are not required to comply with the direction, but have the discretionary ability to comply despite the operation of other laws. Based on the minister's advice, the distinction between individuals and entities in terms of mandatory compliance with a direction appears reasonable.

2.55 As to the likelihood that individuals and medical practitioners may receive a direction, the minister advised that this would occur in limited circumstances as they may be involved in activities critical to public health surveillance and response. The minister further advised that medical practitioners are not envisaged to be subject to a direction under this clause. While this may be the intention of the legislation, it is

noted that the bill does not explicitly preclude individuals or medical practitioners from being subject to a direction and does not refer to limited or exceptional circumstances for exercising the power to give a direction to individuals.

2.56 Regarding the type of information that may be the subject of a direction and the nature and scope of any personal information, the minister advised that only information that is necessary to assess the magnitude, severity and impacts of a threat, and to inform timely and accurate public health advice may be subject to a direction. The minister advised that the type of personal information that may be captured by the measure is data held by private sector entities that is not readily available and relates to operational and environmental factors that are critical to understanding a public health threat. For example, information about the number of negative pathology tests recorded by private pathology providers. The minister advised that the measure does not expressly exclude personal information due to the unavoidable and theoretical risk of re-identification. Based on the information provided by the minister, it appears that the nature and scope of personal information that may be the subject of a direction could be broad, but may in practice be in the form of aggregate data (such as the number of negative pathology tests). If this were the case, the extent of interference with privacy may be limited.

2.57 While the measure is accompanied by several safeguards, the strength of some of these safeguards, such as the requirements that the information is reasonably necessary and the direction is reasonable in all the circumstances, will depend on how these provisions are interpreted and applied in practice. If the Director-General's power to issue directions is exercised in the manner suggested by the minister, namely that individuals and medical practitioners will rarely be subject to a direction and personal information requested will be primarily provided as high-level public health data, the potential limitation on privacy may be proportionate.

Committee view

2.58 The committee thanks the minister for this response. The committee considers that directing individuals to give specified information, which may include personal information, to the Director-General or a designated data service provider, would promote the right to health to the extent that it improves access to health information and advice, but may also limit the right to privacy.

2.59 The committee considers that the measure pursues the legitimate objective of promoting public health, and appears rationally connected to that objective. With respect to proportionality, the committee considers that the measure is accompanied by a number of safeguards, such as the requirements that the information is reasonably necessary and the direction is reasonable in all the circumstances. The committee notes the minister's explanation that including an explicit obligation to exhaust all other means of obtaining the information (within the requirement to ensure information is 'reasonably necessary') could lead to delays, duplication of effort and uncertainty about who is responsible for providing the data during

circumstances of emerging threats that require proactive and timely response. The committee also notes the minister's advice that in practice the Director-General would be required to weigh the urgency and severity of the public health threat against the potential consequences of issuing a direction, including whether the direction would constitute a proportionate limitation on privacy. The committee considers that these requirements may operate as safeguards, but the strength of these safeguards will depend on how these provisions are interpreted and applied in practice.

2.60 The committee also notes the minister's advice that the Director-General is expected to genuinely consider the views of the Advisory Council and the future rules may specify that Advisory Council advice about the exercise of the power to give directions may be published. The committee considers that this consultation and transparency may operate as safeguards, however, these safeguards alone may not be adequate to ensure any limitation on the right to privacy is proportionate in practice.

2.61 Regarding the differences between individuals and entities needing to comply with a direction, the committee notes the minister's advice regarding the established mechanisms for information sharing within the government and the limitations of drafting legislation that impairs the capacity of states to function independently. The committee considers this distinction appears reasonable based on the information provided by the minister.

2.62 The committee further notes the minister's advice that the type of personal information that may be captured by the measure is data held by private sector entities that is not readily available and relates to operational and environmental factors that are critical to understanding a public health threat, such as the number of negative pathology tests recorded by private pathology providers. The committee considers that the nature and scope of personal information that may be the subject of a direction could be broad, but may in practice be in the form of aggregate data. If this were the case, the committee considers that the extent of any interference with the right to privacy may be limited.

2.63 If the Director-General's power to issue directions is exercised in the manner suggested by the minister, namely that individuals and medical practitioners will rarely be subject to a direction and personal information requested will be primarily provided as high-level public health data, the committee considers that the potential limitation on privacy may be proportionate.

2.64 The committee draws these human rights concerns to the attention of the minister and the Parliament.

Register of directions

2.65 The bill would require the Director-General to publish a register of directions given by the Director-General on the Centre's website, including the reason the

direction was given and any other information to be prescribed by the rules.[33] The rules may require the register to include information relating to the recipients of directions; provide for the form in which the register must be published; and provide for the circumstances in which directions may be removed from the register.[34]

Summary of initial assessment

Preliminary international human rights legal advice

Right to privacy

2.66 To the extent that the rules may require the register to include information relating to the recipients of directions, and this information may include personal information, the publication of the register of directions engages and may limit the right to privacy, which protects against arbitrary and unlawful interferences with an individual's privacy and attacks on reputation.[35] The right to privacy may be permissibly limited where the limitation pursues a legitimate objective, is rationally connected to that objective and is a proportionate means of achieving that objective.

Committee's initial view

2.67 The committee noted that the requirement that the Director-General publish a register of directions would engage and may limit the right to privacy to the extent that personal information is published on the register. The committee considered further information was required to assess the compatibility of this measure with the right to privacy.

2.68 The full initial analysis is set out in *Report 5 of 2025*.[36]

Minister's response[37]

2.69 The minister advised:

> *4.a) whether personal information will be published on the register, such as the names of individual recipients of directions?*
>
> The requirement for the Director-General to publish a register of directions under clause 45 is intended to promote transparency in the exercise of the direction power. The register, published on the Australian CDC's website,

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33 Australian Centre for Disease Control Bill 2025, clause 49.

34 Australian Centre for Disease Control Bill 2025, paragraph 49(3)(c).

35 There is international case law to indicate that this protection only extends to attacks which are unlawful. See *RLM v Trinidad and Tobago*, UN Human Rights Committee Communication No. 380/89 (1993); and *IP v Finland,* UN Human Rights Committee Communication No. 450/91 (1993).

36 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 13-36.

37 The minister's response to the committee's inquiries was received on 17 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

must include the reason for each direction, and may include additional information such as information about the recipient of the direction.

Subclause 49(4) imposes an obligation on the Director-General to take reasonable steps to ensure that *exempt material*[38] is not included in the register. Personal information is captured within this category and is thereby excluded from publication on the register.

4.b) whether information relating to a direction that is under review will be published on the public register?

No, the register is intended to only include directions that have been finalised.

4.c) whether there are any safeguards available to limit interference with the right to privacy in relation to the publication of information on the register, and whether these safeguards could be included in the bill (rather than in future rules)?

The Bill excludes personal information from publication on the register as subclause 49(4) requires the Director-General to take reasonable steps to ensure that *exempt material* (which includes personal information) is not included in the register.

Concluding comments

International human rights legal advice

2.70 In order to assess the extent of any potential interference with the right to privacy, further information was sought from the minister regarding whether personal information will be published on the register and if so, what safeguards accompany the measure. The minister confirmed that the register must include the reason for each direction given and may include information about the recipient of the direction. However, the minister advised that the Director-General is required to take reasonable steps to ensure that exempt material, which includes documents to which secrecy provisions apply, is not included on the register. The minister stated that as personal information is categorised as exempt material for the purposes of this bill, personal information will be excluded from the register. The minister also advised that the register is intended to only include directions that have been finalised so a direction that is under review will not be published.

2.71 The requirement that the Director-General take reasonable steps to ensure the register does not include exempt material, which would capture personal information,

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38 *Exempt material* is defined to include section 38 of the *Freedom of Information Act 1982* (documents to which secrecy provisions of enactments apply). Under amendments to this Act being progressed via the *Australian Centre for Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025* the secrecy regime established by the *Australian Centre for Disease Control Bill 2025* will be added to the schedule of secrecy provisions covered by this category.

would operate as a strong safeguard to limit any interference with the right to privacy. Although this requirement is not a prohibition against publication of personal information, so there appears to remain a possibility that personal information may be published on the register, the risk of this occurring in practice may be low. Publication of final directions, as opposed to directions that are under review, would also operate as a safeguard to mitigate the risk of arbitrary interference with an individual's reputation. Ultimately, if personal information is excluded from the register, as advised by the minister, the measure would not impermissibly limit the right to privacy.

Committee view

2.72 The committee thanks the minister for this response. The committee considers that the publication of a register of directions may limit the right to privacy to the extent that the register includes personal information. The committee considers that the measure pursues the legitimate objective of promoting public health and may be rationally connected to this objective.

2.73 With respect to proportionality, the committee welcomes the information provided by the minister that personal information will be excluded from publication on the register. However, the committee notes there is no explicit prohibition against publication of personal information on the register. In this regard, the committee notes that the secrecy regime and the requirement that the Director-General take reasonable steps to ensure the register does not include exempt material act as safeguards. The committee notes that the risk of personal information being published on the register therefore appears to be low. The committee considers that if personal information is excluded from the register, as advised by the minister, the measure would not impermissibly limit the right to privacy.

2.74 The committee considers that its concerns have therefore been addressed, and makes no further comment in relation to this measure.

Authorised disclosure of information

2.75 The bill authorises the collection, use and disclosure of 'relevant information' and 'other information' in certain circumstances.[39]

2.76 'Relevant information' is defined in the bill to include information obtained or generated by a person in the course of performing functions or duties or exercising powers under the bill, and information obtained or generated by the Director-General, the minister, an APS employee, a designated data service provider or other specified person in various circumstances.[40] Relevant information also includes records and documents transferred to the Director-General under the Australian Centre for

[39] Australian Centre for Disease Control Bill 2025, part 4, division 3.

[40] Australian Centre for Disease Control Bill 2025, clause 5.

Disease Control (Consequential Amendments and Transitional Provisions) Bill 2025 (now Act).[41] This consequential bill enables the transfer of records or documents that relate to a function or power of the Director-General of the Centre that were, immediately before the commencement of the bill, in the possession of the Health Secretary, Commonwealth Chief Medical Officer, an APS employee of the Health Department, or a delegate of the Health Secretary or the Commonwealth Chief Medical Officer.[42] These records or documents are 'relevant information' for the purposes of the primary bill and as such may be used and disclosed in accordance with the provisions of the bill.

2.77 The bill notes that the authorisations generally apply to protected information, which is a kind of relevant information that is personal information about any person (including a deceased person) or is information, if disclosed, that could reasonably be expected to found an action for breach of a duty of confidence.[43] 'Other information' is not defined in the bill or explanatory materials.

2.78 The circumstances for which information is authorised to be collected, used and disclosed include:

- for the purpose of performing functions, duties and powers under this bill and other specified Acts;[44]
- if it is in the pubic interest to do so and the purpose of the disclosure could not be achieved without disclosing the protected information;[45]
- for the purposes of obtaining data services from a data service provider;[46]
- disclosure to Australian Bureau of Statistics, Australian Institute of Health and Welfare and oversight or integrity bodies for the purposes of those organisations' functions;[47]
- for the purpose of obtaining legal advice; [48]
- disclosure to a court or tribunal for the purposes of enforcing a law;[49]
- disclosure that is required or authorised under another law;[50]

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41 Australian Centre for Disease Control Bill 2025, clause 5.

42 Australian Centre for Disease Control Bill 2025 (Consequential Amendments and Transitional Provisions) Bill, Schedule 2, part 1, clause 2.

43 Australian Centre for Disease Control Bill 2025, clause 5.

44 Australian Centre for Disease Control Bill 2025, clauses 51 and 52.

45 Australian Centre for Disease Control Bill 2025, clause 53.

46 Australian Centre for Disease Control Bill 2025, clause 54.

47 Australian Centre for Disease Control Bill 2025, clauses 55 and 56.

48 Australian Centre for Disease Control Bill 2025, clause 57.

49 Australian Centre for Disease Control Bill 2025, clause 58.

50 Australian Centre for Disease Control Bill 2025, clause 59.

- disclosure to the entity that provided the information or the entity to which the information relates; [51]
- where the information is already publicly available or where the person to whom the information relates has consented; [52]
- for the purposes of preventing or lessening a serious threat to the safety, health or wellbeing of the public or individual(s);[53] and
- for the purpose of assisting a public health entity to carry out a prescribed public health activity.[54]

2.79 Some authorisations specify the individuals or entities to whom information may be disclosed, whereas other authorisations simply state the purpose for which the information may be collected, used and disclosed.

Summary of initial assessment

Preliminary international human rights legal advice

Rights to health and privacy

2.80 This measure may promote the right to health, as set out above, as it is likely to assist the Director-General in carrying out their functions and duties, resulting in increased access to health advice and improved public health data.

2.81 Authorising the collection, use and disclosure of information, including personal information, engages and limits the right to privacy, which may be permissibly limited where the limitation pursues a legitimate objective, is rationally connected to that objective and is a proportionate means of achieving that objective.

2.82 If the measure impermissibly limited a person's right to privacy, it is not clear if there is an effective remedy as the bill removes civil liability for the collection, use or disclosure of authorised information.[55] The right to an effective remedy requires the availability of a remedy which is effective with respect to any violation of the right to privacy.[56]

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51 Australian Centre for Disease Control Bill 2025, clauses 60 and 61.

52 Australian Centre for Disease Control Bill 2025, clauses 62 and 64.

53 Australian Centre for Disease Control Bill 2025, clause 63.

54 Australian Centre for Disease Control Bill 2025, clauses 65 and 66.

55 Australian Centre for Disease Control Bill 2025, subclause 77(3).

56 International Covenant on Civil and Political Rights (ICCPR), article 2(3). See, *Kazantzis v Cyprus,* UN Human Rights Committee Communication No. 972/01 (2003) and *Faure v Australia,* UN Human Rights Committee Communication No. 1036/01 (2005). States must not only provide remedies for violations of the ICCPR, but must also provide forums in which a person can pursue arguable if unsuccessful claims of violations of the ICCPR. Per *C v Australia*, UN Human Rights Committee Communication No. 900/99 (2002), remedies sufficient for the purposes of article 5(2)(b) of the ICCPR must have a binding obligatory effect.

Committee's initial view

2.83 The committee noted that authorising the collection, use and disclosure of relevant information, which includes personal information, would engage and limit the right to privacy. The committee considered that while the measure is capable of pursuing a legitimate objective, questions remain as to whether the measure is proportionate. The committee considered further information was therefore required to assess the compatibility of this measure with the right to privacy, and as such sought the minister's advice.

2.84 The full initial analysis is set out in *Report 5 of 2025*.[57]

Minister's response[58]

2.85 The minister advised:

> *5.a) what is the nature and scope of personal information that may be collected, used and disclosed in accordance with the various authorisations?*
>
> Clauses 51 and 52 are the key authorisations that the Australian CDC will rely on to perform its public health functions under the Bill and other laws in which it has statutory roles. The scope of personal information relevant to these authorisations is constrained by the scope of these statutory roles.
>
> Personal information used under these authorisations will chiefly be population-level, administrative datasets necessary to inform assessment of the magnitude, severity and distribution of public health threats, risk and protective factors, and potential mitigants. As noted at 2.d these datasets are characterised as including 'personal information' due to the theoretical risk of reidentification, but do not contain any identifying information about an individual. Data sources are likely to include, for example, the Australian Immunisation Register, National Disability Insurance Scheme, Registries of Births, Deaths and Marriages, and Admitted Patient Care (hospitalisations). Under these authorisations, personal information may be disclosed to an entrusted person, with the secrecy regime to apply to subsequent use and disclosure of the information.
>
> Personal information may also be disclosed to other persons where necessary to perform the Australian CDC's statutory roles, subject to the dual data minimisation requirements at 51(3)(b) and 51(3)(c) and/or 52(3)(b) and 52(3)(c) being satisfied. This authorisation allows data obtained through the Australian CDC's information gathering powers to supplement information gathered under the *Biosecurity Act 2015, National Health Security Act 2007,* and the *National Occupational Respiratory Disease*

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57 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 13-36.

58 The minister's response to the committee's inquiries was received on 17 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

Registry Act 2023 in the performance of the Australian CDC's statutory roles under those laws. For example, this authorisation will address critical gaps identified during the COVID-19 pandemic where it was not possible to bring together information about vaccination status or deaths with disease surveillance information collected under the authority of the *National Health Security Act 2007*. It will also enable an expanded range of demographic and risk factor information to be used to examine occupational respiratory diseases under the *National Occupational Respiratory Disease Registry Act 2023.*

Clause 53 permits personal information to be disclosed in the public interest. This authorisation may be used to enable publication of public health advice. As noted in the Explanatory Memorandum, this authorisation may be relied on where necessary to provide urgent public health warnings in instances of disease incursions affecting a small number of individuals, or disease clusters in small geographic areas. This information would need to be treated as personal information as it carries an inherent theoretical risk of re-identification. The provision does not generally authorise publishing information that would identify individuals, and the Australian CDC will not generally be in possession of information that identifies individuals (see response at 2.b). However as explained at 5.b below, the tests set out at 52(2)(a) and (b) may be satisfied in rare circumstances to enable publishing of this information.

The authorisation in clause 54 to disclose information to data service providers is closely linked to the authorisations in clauses 51 and 52. This enables personal information gathered under the Australian CDC's statutory roles under the Bill and other laws to be disclosed to the Australian Bureau of Statistics or the Australian Institute of Health and Welfare for the purpose of linking data and preparing it for analysis. This is the only authorisation that requires disclosure of identifying information (such as names) as this information is essential to undertake data linkage. However, the Australian CDC will not generally be in possession of identifying information and will therefore rely on this authorisation in limited circumstances. Instead, authorisations at clauses 43 and 45 allowing for data to be supplied directly to a Designated Data Service Provider will be used where possible and preferred by data custodians. Designated Data Service Providers will then make available to the Australian CDC linked person-level data that has been anonymised (i.e. identifying information replaced with a random identifier).

The authorisation in clause 55 delineates disclosures to the Australian Bureau of Statistics or the Australian Institute of Health and Welfare for the purpose of providing data services to the Australian CDC from disclosures for the purpose of performing the national statistical functions of those agencies. Under this authorisation, population-level public health information gathered by the Australian CDC may be disclosed for the purpose of producing national statistics or providing researcher access to this information via the existing secure data assets maintained by these

agencies. Data expected to be disclosed under this authorisation includes information about communicable diseases and information on the National Occupational Respiratory Disease Registry as the Australian CDC will be the Commonwealth custodian of this information.

The authorisations in clauses 56 to 62 are general authorisations that are necessary to give effect to the mandatory defences set out at Principle 11 of the Attorney-General's Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers. These authorisations do not establish any obligations to disclose personal information. Rather the clauses make clear on the face of the Bill that a person may disclose personal information if incidental to processes described in these authorisations.

Clause 63 enables personal information to be disclosed where necessary for the purpose of preventing or lessening a serious threat to public safety, health or wellbeing. This authorisation may be relied on to provide urgent public health warnings in instances of disease incursions affecting a small number of individuals, or disease clusters in small geographic areas. This information would need to be treated as personal information as it carries an inherent theoretical risk of re-identification. As the Australian CDC will not generally be in possession of identifying information, this authorisation could not generally be used to publicly disclose information about an identified individual (see 5.b below for further detail).

Clause 64 provides a mechanism for the Australian CDC to disclose relevant information with consent. This may be used to publish information about Advisory Council members on the Australian CDC website with their consent.

Clauses 65 and 66 are the primary authorisations for data sharing by the Australian CDC. These authorisations allow the Australian CDC to share public health information it has collected and linked, with other entities that have a public health function. Such entities must be listed in a legislative instrument as *prescribed public health entities* (clause 41) and must be either Australian government entities or organisations engaged to perform public health activities on behalf of government. The scope of information that may be disclosed under these authorisations is limited to data gathered by the Australian CDC in the course of performing its statutory functions. This typically includes population-level administrative datasets that support analysis of public health threats, risk and protective factors, and potential interventions. Personal information disclosed through these authorisations will generally be anonymised person-level information that carries a theoretical risk of reidentification.

> *5.b) who are the entities and/or individuals to whom relevant information may be disclosed in circumstances where the authorisation does not explicitly specify the individual or entity (such as clauses 53 and 63)?*

The intent of these authorisations is to allow the Australian CDC to disclose relevant information to any entity where such disclosure is reasonably necessary and in the public interest; or where necessary for the purpose of preventing or lessening a serious threat to public safety, health or wellbeing. These authorisations may be used to publish public health advice in instances where attribute disclosure is unavoidable, such as in cases of disease incursions affecting a small number of individuals or disease clusters in small geographic areas.

In general, the provisions do not support publishing information that identifies individuals. However, in rare cases, public health advice may require identification – for example, if a situation similar to the recent blood-borne virus transmission issue in New South Wales were to occur at a national level due to clinical hygiene concerns. In such instances, the identity of the individual posing the risk would typically already be publicly available (e.g. through health alerts issued by states and territories). The role of the Australian CDC would be to provide consistent, nationwide guidance on precautionary measures.

> *5.c) whether the measure is accompanied by other safeguards to ensure that any limitation on privacy is proportionate in all circumstances?*

The disclosure in the public interest measure only permits disclosure of personal information where the Director-General is satisfied the disclosure is in the public interest. This is a high threshold that requires careful consideration of the purpose, necessity, and potential consequences of the disclosure. As explained in the Explanatory Memorandum, this authorisation is not intended to be used routinely, but only where the benefits of disclosure clearly outweigh the potential risks to individual privacy.

Subclauses 53(4) and 53(5) provide a mechanism to impose limitations on the Director-General's discretion to make disclosures in the public interest and to direct the Director-General's consideration to matters relevant to balancing considerations of public interest, providing a mechanism for additional privacy protections to be imposed.

> *5.d) if an individual's right to privacy is breached, whether that individual will be notified and have access to an effective remedy?*

Individuals whose personal information is involved in a privacy breach are entitled to be notified and may have access to remedies. As an Australian Government entity, the Australian CDC will be an APP entity under the *Privacy Act 1988*. This means it is bound by the Australian Privacy Principles (APPs), which set out standards for handling per information, including obligations around transparency, security, and accountability. Additionally, the CDC will be subject to the Australian Government Agencies Privacy Code, which imposes further governance requirements. Under the Notifiable Data Breaches scheme under the *Privacy Act 1988*, if the

Australian CDC experiences an eligible data breach (defined as a breach that is likely to result in serious harm to an individual) it must:

1. Notify the Office of the Australian Information Commissioner (OAIC).
2. Notify affected individuals as soon as practicable.
3. Provide recommendations to those individuals about steps they should take in response to the breach.

Affected individuals also have access to remedies, including:

- Lodging a complaint with the OAIC, which can investigate and take regulatory action.
- Seeking compensation or legal redress if the breach results in harm and the agency is found to have failed its obligations under the Privacy Act.

Concluding comments

International human rights legal advice

2.86 Further information was sought from the minister to assess the proportionality of the authorisations with the right to privacy, in particular regarding the nature and scope of personal information captured by the measure, the entities to whom relevant information may be disclosed, the adequacy of accompanying safeguards, and the availability of an effective remedy.

2.87 Regarding the scope of personal information authorised to be disclosed, the minister advised that the datasets necessary to inform assessments of public health threats will primarily be population-level, administrative datasets and generally do not contain personal identifying information about an individual. These datasets are characterised as including personal information due to the theoretical risk of reidentification. The minister advised that the authorisation to disclose information to data service providers may result in personal information being disclosed to the Australian Bureau of Statistics or the Australian Institute of Health and Welfare where necessary to address critical gaps in data obtained through other statutory frameworks and to undertake data linkage. However, the Centre will generally provide anonymous data and information to designated data service providers. In relation to the authorisation to disclose information in the public interest, the minister advised that this authorisation does not generally authorise the publication of identifying information as this information will not commonly be in the possession of the Centre. However, in rare cases, identifying information may be published if necessary to provide public health advice, such as the identification of an individual dentist to advise patients of a risk of blood-borne virus transmission.

2.88 Based on the information provided by the minister, it appears that a broad range of personal information may be authorised to be collected, used and disclosed as data is drawn from a wide range of sources, such as the Australian immunisation

Register, National Disability Insurance Scheme, Registries of Births, Deaths and Marriages and Admitted Patient care (hospitalisations). However, it appears that personal information will generally be dealt with as population-level information and anonymous datasets, which will reduce the scope of personal information shared and mitigate the risk of information being identifiable or attributable to individuals. This assists with proportionality and reduces the extent of the interference with the right to privacy.

2.89 Further information was also sought regarding the entities and individuals to whom relevant information may be disclosed where the authorisation does not specify an entity or individual. The minister advised that these authorisations may be used to publish public health advice in instances where attribute disclosure is unavoidable, such as in cases of disease incursions affecting a small number of individuals or disease clusters in small geographic areas. Based on the examples provided by the minister, it appears that personal information is therefore authorised to be disclosed to the public at large.

2.90 As to safeguards accompanying the measure, the minister advised that the public interest disclosure authorisation requires careful consideration of the purpose, necessity and potential consequences of disclosure. The minister stated that this authorisation will only be used where the benefits of disclosure clearly outweigh the potential risks to individual privacy. The minister noted that rules may be made to prescribe guidelines for the exercise of the Director-General's power to give certificates (that the disclosure is in the public interest and the purpose of the disclosure could not be achieved without disclosing the protected information). The guidelines may require the Director-General to consider certain matters that are relevant to balancing considerations of public interest. The minister noted that the guidelines may provide a mechanism for additional privacy protections to be imposed. If the Director-General's discretion is exercised in the manner suggested by the minister, it appears that the Director-General will have flexibility to consider the circumstances of each individual situation and undertake some form of balancing exercise to weigh the severity of the public health threat and necessity of the information against privacy and human rights considerations. This flexibility assists with proportionality. However, as the guidelines are yet to be made and their contents are unclear, it is difficult to assess the strength of this safeguard in practice. It is also noted that the bill does not require guidelines to be made; it provides that rules *may* prescribe guidelines for the exercise of the Director-General's power. Discretionary safeguards alone may not be sufficient, as they are less stringent than safeguards embedded in legislation.

2.91 In conclusion, while the nature and scope of personal information that may be captured by the measure appear to be broad, in practice, as information is primarily dealt with as population-level information and anonymous datasets, the extent of any interference with the right to privacy may not be significant. Some authorisations specify the entities to whom information may be shared, which assists with ensuring

the measure is sufficiently circumscribed. Other authorisations, however, do not identify or restrict the entities or individuals to whom information may be disclosed and it appears in certain circumstances, identifying information may be disclosed to the public at large. Based on the minister's information, it appears that the latter would occur infrequently. As to the circumstances in which interferences with the right to privacy may be permitted, many of the authorisations specify the circumstances, which assists with proportionality. However, some of the circumstances are drafted in imprecise terms, for example, disclosure in the public interest. Guidelines made by way of future rules may assist to circumscribe this authorisation and may include additional privacy safeguards. The safeguard value of the guidelines, however, is difficult to assess as the guidelines are yet to be made. On the other hand, as outlined in the preliminary analysis, some authorisations contain specific safeguards that may assist with proportionality, such as requiring disclosure to an entrusted person or only if the discloser is satisfied of certain matters, including that the minimum amount of protected information is disclosed. On balance, while the measure is accompanied by some useful safeguards, it is not clear that these safeguards will be adequate to ensure that any interference with the right to privacy is proportionate with respect to each of the authorisations.

2.92 As to the availability of remedies for a breach of an individual's right to privacy, the minister stated that the Centre has obligations under the Privacy Act, the APPs and the Notifiable Data Breaches scheme for handling personal information. Specifically, if the Centre experiences an eligible data breach that is likely to result in serious harm to an individual, the Centre must notify the Office of the Australian Information Commissioner (OAIC), notify the affected individual as soon as practicable, and provide recommendations to those individuals about steps to respond to the breach. Individuals may lodge a complaint with OAIC and seek compensation or legal redress if the breach results in harm and the agency is found to have failed its obligations under the Privacy Act. As set out in the preliminary analysis, compliance with the APPs and the Privacy Act are not a complete answer to concerns about interference with the right to privacy for the purposes of international human rights law. Further, a data breach arises in instances of unauthorised disclosure. If information, including personal information, is authorised to be disclosed there would be no data breach (and the affected individual would not be notified). In circumstances where the collection, use and disclosure of personal information is authorised under this bill but would constitute an impermissible interference with the right to privacy under international human rights law, it does not appear that an individual would have access to an effective remedy.

Committee view

2.93 The committee thanks the minister for this response.

2.94 The committee notes that authorising the disclosure of information, including personal information, to various entities engages and limits the right to privacy. The

committee considers that the measure pursues the legitimate objective of promoting public health and appears likely to be rationally connected to this objective.

2.95 With respect to proportionality, the committee notes the minister's advice that information contained in datasets needs to be treated as personal information as it carries an inherent theoretical risk of re-identification and the Centre's role in publishing public health advice may involve publication of information in instances where attribute disclosure is unavoidable. The committee notes that a broad range of personal information may therefore be disclosed that is drawn from a wide range of sources. The committee notes that while personal information will generally be dealt with as population-level information and anonymous datasets, it appears that the bill authorises disclosure of personal information to the public at large in certain circumstances. The committee notes the safeguards that accompany the authorisations, including that the rules may prescribe guidelines for the exercise of the Director-General's power to give public interest certificates (which would authorise the disclosure of protected information), are not embedded in the bill itself.

2.96 The committee therefore considers that it is not clear that these safeguards will be adequate to ensure that any interference with the right to privacy is proportionate with respect to each of the authorisations.

2.97 The committee notes that where an individual's right to privacy is breached, an effective remedy should be available. The committee notes the minister's advice that the handling of personal information must be in accordance with the Privacy Act and the obligations required by the Office of the Australian Information Commissioner. However, in circumstances where the collection, use and disclosure of personal information is authorised under the bill, but the authorisation does not constitute a permissible limitation on the right to privacy under international human rights law, the committee considers that an individual may not have access to an effective remedy.

2.98 The committee draws these human rights concerns to the attention of the minister and the Parliament.

Data-sharing declarations for serious threat to public health

2.99 The bill enables the Director-General to make a data sharing declaration if satisfied that there is a severe and immediate, or severe and unforeseen, threat to public health and making the declaration is necessary to respond to the threat.[59] A data sharing declaration is to be made by legislative instrument that is exempt from disallowance.

2.100 The declaration must specify the kinds of information to which the declaration applies; the extent to which the declaration applies to personal information or information that, if disclosed, could reasonably be expected to found an action for

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[59] Australian Centre for Disease Control Bill 2025, subclause 67(1).

breach of a duty of confidence; the entity that may collect, use or disclose the information; the entity that the information may be disclosed to and the permitted purposes of the collection, use or disclosure.[60] The permitted purpose must be a purpose that is directly related to preventing or reducing the threat to public health.[61] A data sharing declaration may be subject to conditions.

2.101 At any time when a data sharing declaration is in force, an entity may collect, use or disclose information if it is for a permitted purpose specified in the declaration; the information is of a kind specified in the declaration; the entity is specified in the declaration; the information is disclosed to an entity specified in the declaration; and any conditions are satisfied.[62]

Summary of initial assessment

Preliminary international human rights legal advice

Rights to health and privacy

2.102 To the extent that this measure helps respond to a public health threat and improve access to health information and advice, this would promote the right to health (as set out above). However, by authorising the collection, use and disclosure of information, including personal information, by way of a data sharing declaration, the measure engages and limits the right to privacy, which may only be permissibly limited where the limitation pursues a legitimate objective, is rationally connected to that objective and is a proportionate means of achieving that objective.

2.103 If this measure impermissibly limited a person's right to privacy, it is not clear if there is an effective remedy to address this potential limitation as the bill removes civil liability for the collection, use or disclosure of authorised information.[63]

Committee's initial view

2.104 The committee noted that the Director-General's power to make a data sharing declaration if satisfied there is a severe and immediate, or severe and unforeseen, threat to public health would engage and limit the right to privacy insofar as a declaration may authorise the disclosure of personal information. The committee considered further information was required to assess the compatibility of this measure with this right, and as such sought the minister's advice.

2.105 The full initial analysis is set out in *Report 5 of 2025*.[64]

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60 Australian Centre for Disease Control Bill 2025, subclause 67(2).

61 Australian Centre for Disease Control Bill 2025, subclause 67(3).

62 Australian Centre for Disease Control Bill 2025, clause 69.

63 Australian Centre for Disease Control Bill 2025, subclause 77(3).

64 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 13-36.

Minister's response[65]

2.106 The minister advised:

> *6.a) whether individuals will be informed that their information has been or is likely to be disclosed under a data sharing declaration?*
>
> Individuals will not be directly notified when their personal information is disclosed pursuant to a data sharing declaration made by the Director-General. This reflects the nature of the declaration, which is only made where there is a severe and immediate, or severe and unforeseen, threat to public health, and where timely access to data is critical to mitigating that threat.
>
> While individual notification is not provided for, the CDC will maintain transparency around its use of data by publishing the sources of information used on its website. This approach ensures that while individuals may not be notified directly, the public is informed about the types of data being used to support public health responses. It balances the need for urgent action with transparency and accountability, while recognising that direct notification may not be feasible or appropriate at a whole-of-population level, particularly in emergency contexts.
>
> *6.b) why a declaration is exempt from disallowance?*
>
> Subjecting declarations to disallowance could undermine the technical and scientifically based advice of the Director-General and impede timely public health mitigation and containment activities. The declaration power is intended to be used for timely data sharing to respond to severe public health threats. The risk of disallowance could undermine this objective by imposing legal uncertainties arising from potential disallowance; and may reduce participation in data sharing due to legal risk that the declaration may later be disallowed and the sharing of the information be unauthorised.
>
> Disallowance could therefore delay or preclude sharing of information required to provide timely advice in a response to a public health threat and could therefore delay or preclude necessary mitigation and response activities. As such, disallowance of a data sharing declaration could lead to inadequate management of public health threats and risks posed to human health, resulting in material impacts on the health and wellbeing of Australians.
>
> *6.c) whether the bill could include specific safeguards relating to the collection, use and disclosure of personal information in data sharing declarations?*
>
> The Bill does not prescribe fixed privacy safeguards within the authorisation for data sharing declarations. This is because the authorisation is intended

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65 The minister's response to the committee's inquiries was received on 17 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

to be used in emergency or urgent public health situations, where the nature, scope, and urgency of the threat and the data required to respond may not be known in advance. Prescribing rigid privacy safeguards in the legislation could undermine the flexibility needed to respond effectively to such threats. Instead, the Bill requires that each data sharing declaration must explicitly state whether it includes personal information, and if so, the extent to which such information is involved. This ensures transparency and accountability in each instance the power is exercised, while allowing the declaration to be tailored to the specific public health context.

Compliance with a data sharing declaration is voluntary. Entities listed in a declaration are not compelled to provide information. Entities are instead responsible for assessing their own level of comfort with participating. This necessarily involves weighing the privacy risks associated with sharing information against the public health objectives of the declaration. This approach respects the autonomy of data custodians while supporting lawful data sharing in the national interest.

The purpose of any declaration must be directly related to preventing or reducing a threat to public health. This requirement acts as a built-in safeguard, ensuring that the power is only used where there is a clear and justifiable public health rationale. The declaration must also comply with broader legal obligations, including those under the *Privacy Act 1988*, which continue to apply to the handling of personal information.

6.d) whether there are any effective remedies for the potential violation of the right to privacy?

Any collection, use, or disclosure of personal information under data sharing declaration must comply with broader privacy protections under Australian law. This includes the *Privacy Act 1988* and the Australian Privacy Principles governing how personal information must be handled by Commonwealth agencies and certain private sector organisations.

If an individual believes their personal information has been mishandled under a data sharing declaration, they have the right to lodge a complaint with the Office of the Australian Information Commissioner (OAIC). The OAIC is the independent regulator responsible for overseeing privacy compliance and investigating alleged breaches of the Privacy Act. This process provides for an accessible and effective remedy.

Concluding comments

International human rights legal advice

2.107 In order to assess the proportionality of the measure, further information was sought regarding whether individuals will be informed that their information may be disclosed, why a declaration is exempt from disallowance, whether there could be legislative safeguards and whether there are effective remedies available.

2.108 The minister confirmed that individuals will not be directly notified when their personal information is disclosed under a data sharing declaration as direct notification may not be feasible or appropriate in emergency circumstances that impact the wider population. The minister provided information about the publishing of sources of information on the Centre's website to ensure transparency and accountability.

2.109 The minister stated that a declaration is exempt from disallowance because of the need to provide timely public health mitigation and containment strategies and to respond to severe public health threats. The minister advised that disallowance could undermine this objective and reduce participation in data sharing due to the legal risk that the declaration, and the disclosure of information it provides for, may be disallowed. The minister provided information on the inadequate management of public health risks and the material impacts on the health and wellbeing of Australians that may result from the disallowance of a data sharing declaration. However, the legal effect of disallowance is that the instrument ceases to have effect from the time of disallowance. Information sharing pursuant to the declaration would therefore be legally valid if it occurred before the instrument was disallowed. It is therefore not clear that legal uncertainty is a sufficient justification for exemption from disallowance.

2.110 The time-limited nature of the declaration may assist with proportionality, particularly if the declaration is repealed as soon as the threat has been dealt with. However, the bill allows a declaration to remain in force for up to 12 months. Considering the immediate threat to public health that the disclosure is seeking to address, a shorter time period in which such a declaration would remain in force may offer more safeguard value for any limitation on the right to privacy.

2.111 In regard to other safeguards, the minister confirmed that the bill does not prescribe privacy safeguards for data sharing declarations. The minister stated that due to the emergency or urgent nature of the declaration and inability to know what data is required to respond to a threat in advance, rigid privacy safeguards may undermine the flexibility required to respond effectively to such threats. The minister did, however, identify other safeguards, including that compliance with a data sharing declaration is voluntary; that the obligations for handling personal information in the Privacy Act apply; and that the purpose of the declaration must be directly related to preventing or reducing a threat to public health. While these safeguards may assist with proportionality, it is unclear if these would be adequate as the detail of the measure and its potential limitation on the right to privacy will be contained in a future legislative instrument that is exempt from disallowance. It is therefore not possible to conclude whether the measure would constitute a permissible limit on the right to privacy in practice.

2.112 While the minister provided information about the complaint remedy available for alleged breaches of the Privacy Act through the OAIC, access to this remedy relies

on the individual being notified of any potential breach. As noted above, individuals will not be directly notified of the use and disclosure of their personal information. It is therefore not clear that an effective remedy would be available in practice.

Committee view

2.113 The committee thanks the minister for this response. The committee considers that authorising the collection, use and disclosure of information, including personal information, by way of data sharing declarations would promote the right to health to the extent that it helps respond to a public health threat and improve access to health information and advice, but would also limit the right to privacy. The committee considers that insofar as the measure enables data sharing in times of severe public health threats, the measure pursues a legitimate objective and is likely rationally connected to this objective.

2.114 With respect to proportionality, the committee notes that the urgent nature of a data sharing declaration prevents individuals from being informed of any disclosure of their personal information. The committee notes the minister's advice that a declaration is exempt from disallowance because of the need to provide timely health mitigation and containment strategies and respond to severe public health threats. The committee considers that as an instrument ceases to have effect from the time of disallowance, and information could be shared prior to this occurring, it is not clear that the exemption from disallowance is justified. The committee also considers that a time period shorter than 12 months in which a declaration would remain in force may assist in safeguarding any limitation on the right to privacy.

2.115 The committee notes that the bill does not prescribe privacy safeguards for data sharing declarations, however, the minister identified other safeguards that may assist with proportionality, such as the application of the Privacy Act. The committee considers that it is unclear if these safeguards would be adequate as the detail of the measure and its potential limitation on the right to privacy will be contained in a future exempt legislative instrument. The committee considers that it is therefore not possible to conclude whether the measure would constitute a permissible limit on the right to privacy in practice.

2.116 The committee draws these human rights concerns to the attention of the minister and the Parliament.

Regulatory Reform Omnibus Bill 2025[66]

Purpose	This bill seeks to amend 30 primary Acts relating to regulatory settings and performance. The bill seeks to improve information sharing within Government, reduce the risk of fraud and reduce regulatory burden on Australians and businesses. The bill also seeks to repeal redundant legislation.
Portfolio	Finance
Introduced	House of Representatives, 8 October 2025
Rights	Privacy

2.117 The committee considered this bill and published its advice to Parliament in *Report 6 of 2025*.[67] The committee did not make a request for the provision of a response from the minister but did make a series of recommendations to assist with the proportionality of the measures.

Authorising the collection, use and disclosure of personal information

2.118 Several provisions in the bill would authorise the sharing, use and disclosure of information, including personal information. In particular, the bill seeks to amend the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Child Support (Assessment) Act 1989*, the *Paid Parental Leave Act 2010*, the *Social Security (Administration) Act 1999* and the *Student Assistance Act 1973* to expand the permitted circumstances where a person can record, disclose and use protected information to include circumstances that are for the purposes of the Centrelink, Child Support and Medicare programs.[68]

2.119 The bill also seeks to amend the *Dental Benefits Act 2008*, *Health Insurance Act 1973*, and the *National Health Act 1953* to authorise the use and disclosure of protected information, which includes personal information, to an entrusted official for the purpose of the integrity and sustainability of a Medicare program or for the protection of a person from a risk arising from the provision of a benefit or service under a Medicare program.[69]

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66 This entry can be cited as: Parliamentary Joint Committee on Human Rights, Regulatory Reform Omnibus Bill 2025, *Report 7 of 2025*; [2025] AUPJCHR 58.

67 Parliamentary Joint Committee on Human Rights, *Report 6 of 2025* (29 October 2025) pp. 78-81.

68 Schedule 1, items 78, 82, 89, 91 and 93.

69 Schedule 2, items 58, 70 and 153.

Summary of committee view

2.120 The committee considered that these measures engage and limit the right to privacy, which may be permissibly limited. The committee considered that the measures appear to pursue a legitimate objective and may be rationally connected to this objective. However, in relation to proportionality, having regard to the broad scope of information that may be used or disclosed and in the absence of adequate safeguards accompanying the measures, the committee considered that it was not clear that the measures constitute a proportionate limitation on the right to privacy.

2.121 The committee noted that the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Child Support (Assessment) Act 1989*, the *Paid Parental Leave Act 2010*, the *Social Security (Administration) Act 1999*, the *Student Assistance Act 1973*, the *Dental Benefits Act 2008*, the *Health Insurance Act 1973* and the *National Health Act 1953* were legislated prior to the establishment of the committee. As such, these Acts have not been subject to foundational reviews for their human rights compatibility in accordance with the terms of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Noting the committee's concerns with respect to the right to privacy, the committee considered that it would be of considerable assistance if these Acts were subject to a foundational human rights assessment. The committee therefore recommended that the Government consider undertaking a foundational review of these Acts for their compatibility with the right to privacy. Such a review should consider whether the Acts contain adequate safeguards to ensure that any limitation on the right to privacy is permissible.

2.122 The committee further recommended that the statement of compatibility be updated to provide a more fulsome assessment of the compatibility of these measures with the right to privacy, including specifying the safeguards available.

Minister's response[70]

2.123 The minister advised:

> **General remarks**
>
> The Bill is about better regulation, cutting red tape, and ensuring Australians can get faster and more streamlined access to the essential services they need and deserve. The Bill includes 60 measures and will amend 28 Acts, repeal two redundant Acts, and improve the operations of 13 government agencies.
>
> The Committee's comments were focused on specific provisions within the Bill, which focus on authorising the collection, use and disclosure of personal information, and which the Committee felt raised potential issues with the right to privacy:

[70] The minister's response to the committee's inquiries was received on 4 November 2025. This is an extract of the response. The response is available in full on the committee's webpage.

- Schedule 1, Part 3 of the Bill, which seeks to simplify information sharing for connected service delivery – by specific amendments to the following legislation:
    - *A New Tax System (Family Assistance) (Administration) Act 1999*,
    - *Child Support (Assessment) Act 1989*,
    - *Child Support (Registration and Collection) Act 1988*,
    - *Paid Parental Leave Act 2010*,
    - *Social Security (Administration) Act 1999*, and
    - *Student Assistance Act 1973*.
- Schedule 2, Part 5 of the Bill, which seeks to authorise appropriate information sharing to improve the integrity of Medicare – by specific amendments to the following legislation:
    - *Dental Benefits Act 2008*,
    - *Health Insurance Act 1973 (Health Insurance Act)*, and
    - *National Health Act 1953 (National Health Act)*.

Responses to the Committee's specific questions

1. **Suggested action: The committee recommends that the Government consider undertaking a foundational review of the following Acts for their compatibility with the right to privacy in accordance with the terms of the Human Rights (Parliamentary Scrutiny) Act 2011. Such a review should consider whether the Acts contain adequate safeguards to ensure that any limitation on the right to privacy is permissible:**

a. ***A New Tax System (Family Assistance) (Administration) Act 1999*;**

b. ***Child Support (Assessment) Act 1989*;**

c. ***Paid Parental Leave Act 2010*;**

d. ***Social Security (Administration) Act 1999*;**

e. ***Student Assistance Act 1973*;**

f. ***Dental Benefits Act 2008*;**

g. ***Health Insurance Act 1973*; and**

h. ***National Health Act 1953*.**

Consistent with the Committee's suggested action, the Government will consider a foundational review of the Acts listed immediately above for their compatibility with the right to privacy in accordance with the terms of the *Human Rights (Parliamentary Scrutiny) Act 2011*, including whether the Acts contain adequate safeguards to ensure that any limitation on the right to privacy is permissible.

2. **<u>Suggested action:</u> The committee recommends that the statement of compatibility be updated to provide a more fulsome assessment of the compatibility of these measures with the right to privacy, including specifying the safeguards available.**

While the statement of compatibility with human rights could not be updated before the debate commencing in the House (and Senate) in the week commencing 3 November 2025, the Committee's concerns about the impact of the measures on the right to privacy are addressed below. These responses are outlined separately below in relation to both Parts of the Bill discussed in the Committee's report.

<u>Schedule 1, Part 3 of the Bill – Simplifying information sharing for connected service delivery</u>

The proposed amendments in Schedule 1, Part 3 of the Bill clarify and simplify the arrangements for sharing information about individuals between the Centrelink, Medicare, and Child Support programs, for Services Australia to provide an improved customer experience. Cross-program information sharing is largely already permitted through alternate provisions in the legislation. However currently legislation includes unnecessary restrictions and in some instances precludes part of the Services Australia's workforce from receiving or sharing program information. The proposed amendments in the Bill ensure that the legal arrangements for sharing protected information across these programs to reflect Services Australia's contemporary operational structure and provide a stronger legislative foundation.

In practice, these amendments are intended to reduce the need for individuals to contact Services Australia multiple times to update their personal details across different programs, in line with public expectations. Information that could be shared includes changes to a person's address, relationship status, bank account details, partner details, child/care of child details, or information about their circumstances or vulnerabilities. While the measures extend the sharing of information across Centrelink, Medicare and Child Support programs, it is still only one organisation, Services Australia, administering these programs.

These amendments are intended to improve people's experience dealing with Services Australia and will help people by making arrangements simpler and more convenient.

For example, Jane and her children leave her family home to escape family and domestic violence. She changes her and her children's surnames, moves to a new house and creates her own new bank account. Jane needs to tell the government about her updated name, address, bank account and relationship status. Implementing the proposal will support streamlining information sharing. Instead of providing her new details separately to Centrelink and Child Support, she can update her details once and provide

permission for them to be updated in other programs. This simplifies Jane's interactions with government.

There are strong safeguards in place that apply to the sharing of information between programs. The information that will be used and shared under these proposed reforms is 'protected information' that is subject to the secrecy framework of each of the Acts that are proposed to be amended. These provisions impose a higher level of protection to a person's information than is imposed on personal information under the *Privacy Act 1988* (Privacy Act). For example, criminal sanctions apply for the unauthorised use or disclosure of protected information.

Services Australia currently has a range of safeguards in place for disclosures of information between the Centrelink, Medicare and Child Support programs. For example, its Operational Privacy Policy, Privacy Management Plan, mandatory privacy training provide resources for staff which includes requirements for handling information (including cross program disclosures).

Services Australia has systems in place to ensure ongoing compliance with privacy and secrecy obligations. Consistent with the Australian Government Agencies Privacy Code and Services Australia's Operational Privacy Policy, Services Australia will assess any new or unchanged ways of handling information, to identify and manage any impacts on personal privacy. Privacy Threshold Assessments (PTAs) are required for all new or changed ways of handling personal information (including proposed cross program disclosures) and Privacy Impact Assessments (PIAs) are undertaken for high-risk privacy projects.

Services Australia has also established technical and governance safeguards in place to ensure information is only shared where the law allows it, and to protect the security of personal information. This includes a Data Governance Framework which provides a guide to the agency to operate within legislative requirements and comply with relevant codes and policies, a Data Trust and Ethics Framework and robust privacy, information management, cyber security, system access and fraud control policies and procedures. Services Australia has a Protective Security Governance Policy which sets out how it will comply with the mandatory security governance requirements of the Australian Government Protective Security Policy Framework, including vetting, access control and incident reporting requirements.

Services Australia will ensure any changes to the sharing of information between these programs as a result of these amendments, including system design and operational application will be developed in accordance with usual design practices. This includes ensuring appropriate safeguards are in place to mitigate the risk of unintended consequences for people and to ensure compliance with the Privacy Act and secrecy provisions in relevant legislation.

Given these safeguards, the proposed amendments present a reasonable and proportionate limit to a person's right to privacy as they present an incremental change to how personal information is used and disclosed within Services Australia. This is necessary to achieve the legitimate objective of enhancing the agency's ability to deliver government services in line with public expectations across different government programs.

Schedule 2, Part 5 of the Bill – Authorising appropriate information sharing to improve the integrity of Medicare

The proposed amendments in Schedule 2, Part 5 of the Bill (items 37 – 158) seek to respond to recommendations of the Independent Review of Medicare Integrity and Compliance (Philip Review), which emphasised the need to identify legislative and privacy-related concerns that may constrain a culture of information sharing and risk mitigation across government agencies and teams.

There are a range of safeguards to protect the personal information that may be collected, used or disclosed under these reforms. Specifically, information may only be used or disclosed for specific purposes, including the integrity and sustainability of Medicare and in respect of the safety of those individuals that access services under Medicare programs.

Unauthorised use or disclosure of protected information will attract criminal penalties. Information obtained under the amendments will be handled in accordance with the limitations placed on the use and disclosure of information under the amendments, the *Privacy Act 1988*, and applicable Commonwealth, State, or Territory legislation.

The proposed reforms only permit the collection, use and disclosure of relevant information in particular circumstances and for specified purposes. For example, where and collection, use or disclosure is for a purpose relating to the integrity or sustainability of a Medicare program, or to protect a person accessing a health service from a risk to their safety.

These changes are necessary to address existing limitations that are hindering regulatory processes and impacting the ability of the Department of Health, Disability and Ageing to effectively monitor, investigate and enforce compliance with requirements under health portfolio legislation.

As the proposed reforms will strengthen the regulatory capability of the department to effectively undertake its compliance functions, they are connected to a legitimate objective and proportionate to the purpose of providing safe and high-quality services to individuals accessing services under a Medicare program.

These changes are necessary to ensure that Commonwealth expenditure is well protected. The proposed information collection, and disclosure measures are reasonable, necessary and proportionate to a legitimate objective of protecting the integrity and ongoing sustainability of Medicare

programs and public health programs, as well as the safety of health patients.

To ensure that the collection of information under these provisions, and any subsequent use, or disclosure of such information, is reasonable, necessary and proportionate, the Department of Health, Disability and Ageing is obtaining a privacy impact assessment (PIA) in relation to implementation of the proposed measures.

The existing National Health (Privacy) Rules 2025 (Privacy Rules) do not support information sharing to address identified risks in relation to Medicare and its programs and health policy development and research. The Privacy Rules represent unique barriers to the appropriate handling of health information because they impose more stringent and detailed requirements than general privacy legislation and secrecy provisions in Health portfolio legislation.

Section 135AA of the National Health Act and the first iteration of the Privacy Rules were made in the early 1990s to reflect specific concerns of the time and have not kept pace with modern developments in technology. Section 135AA of the National Health Act is prescriptive about the content of the Privacy Rules which means the Information Commissioner does not have flexibility to vary the content to reflect the modern technological environment, nor to issue rules which are written in a more timeless manner to pre-empt future changes.

The protection of privacy is provided by the Australian Privacy Principles (APPs), whole of government arrangements in relation to privacy and security requirements, and the general secrecy provisions within the National Health Act and Health Insurance Act. Departmental data governance arrangements provide additional protection.

As rules-based legislation, the Privacy Rules includes a burdensome detail which is not technology or time-neutral. This is in contrast with a principles-based approach to legislation. For example, in relation to the APPs the Office of Australian Information Commissioner (OAIC) states: "The Australian Privacy Principles are principles-based law. This gives an organisation or agency flexibility to tailor their personal information handling practices to their business models and the diverse needs of individuals. They are also technology neutral, which allows them to adapt to changing technologies[71]."

Given the strength of these protections, it is considered that the proposed reforms will result in an appropriate protection of personal information despite the repeal of the Privacy Rules.

I also note that the information law and information protection areas of the Attorney-General's Department were engaged during the development of

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71 Australian Privacy Principles | OAIC

the reforms and indicated that the proposed measures seem reasonable and targeted towards a legitimate policy aim.

The Office of the Australian Information Commissioner was also engaged about these measures and it did not raise concerns. For example:

- In January 2018, the then Information Commissioner wrote to the Department of Health to query whether the provision enabling the Privacy Rules (s. 135AA of the National Health Act) should be reviewed to determine whether the provision served a relevant purpose. This concerned whether the rules/guidelines needed to be remade, whether the scope should be clarified (to consider whether s. 135AA of the National Health Act applies to information which does not identify an individual) and to determine if the guidelines could be remade in a less prescriptive way.
- The Information Commissioner considered that there had been significant developments in the previous 25 years suggesting that s. 135AA of the National Health Act may no longer be fit for purpose. These changes included new privacy protections in the Privacy Act; community expectations that health data should be used to support research, and technological developments to store and handle information securely. It was also considered whether Medicare Benefits Scheme (MBS) and Pharmaceutical Benefits Scheme (PBS) claims information are inherently different to other types of health data, which are regulated as sensitive information by the Privacy Act framework.
- In December 2023, the Department of Health again engaged with the OAIC about proposed reforms to s. 135AA of the National Health Act and Privacy Rules. The OAIC agreed that the underlying policy objectives of the Privacy Rules should be re-examined with a view to determining whether existing arrangements remain relevant or effective in light of technological changes, the community's changing expectations about how their data will be handled, and more broadly questions about how valuable health data should be able to be used, or made available, for purposes in the public interest (such as research). The OAIC raised concerns about whether the existing arrangements involving the Privacy Rules, and in particular the general requirement to prohibit the linking of MBS and PBS data except in prescribed circumstances, continue to accurately reflect community expectations about how such data should be handled. The OAIC noted that they had raised these matters with the department in discussion dating back to 2009.

Concluding comments

Committee view

2.124 The committee thanks the minister for this response. The committee welcomes the minister's indication that the Government will consider a foundational review of the Acts that are sought to be amended for their compatibility with the right to privacy, including whether the Acts contain adequate safeguards to ensure that any limitation on the right to privacy is permissible.

2.125 The committee also welcomes the minister's explanation of the safeguards that Services Australia has in place for disclosure of information, including mandatory training; the policies and systems in place to ensure ongoing compliance with privacy and secrecy obligations; and the technical and governance frameworks in place to protect the security of personal information.

Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025[72]

Purpose	This bill seeks to amend the *Social Security Act 1991* to provide a legal basis for the method of apportioning employment income that was applied to entitlement periods between 1 July 1991 and 6 December 2020 and clarify methods for apportioning employment income in entitlement periods from 1 July 1991 to 6 December 2020 to determine a debt or rate of payment following the commencement of the bill. This bill also seeks to amend the *Social Security Act 1991*, the *A New Tax System (Family Assistance) (Administration) Act 1999*, the *Student Assistance Act 1973* and the *Paid Parental Leave Act 2010* to expand instances in which the special circumstances waiver may be applied to waive debts incurred under each respective Act and increase the threshold for waiving a small debt. This bill also seeks to establish the Income Apportionment Resolution Scheme.
Portfolio	Social Services
Introduced	House of Representatives, 4 September 2025
Rights	Effective remedy; social security

2.126 The committee requested a response from the minister in relation to the bill in *Report 5 of 2025*.[73]

Validation of income apportionment method

2.127 The bill seeks to insert a new Part into the *Social Security Act 1991* (Social Security Act) to provide express legislative authority for the income apportionment method used to determine income during entitlement periods between 1 July 1991

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72 This entry can be cited as: Parliamentary Joint Committee on Human Rights, Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, *Report 7 of 2025*; [2025] AUPJCHR 59.

73 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 71-81.

and 6 December 2020.[74] As a result, debts incurred that were calculated using the income apportionment method during that time will be validated and recoverable by the Commonwealth.

2.128 Income apportionment is a method of calculating the rate of a means-tested social security payment by averaging income over the days or time period that an individual worked and then apportioning it to the relevant entitlement period where the evidence available did not allow Services Australia to work out the exact amount earned by a person in each entitlement period. This may arise, for example, where payslips did not show the amount earned per working day or where payslip periods did not align with the dates of entitlement periods.[75]

2.129 By way of background, income apportionment was used during the period from 1 July 1991 to 6 December 2020. On 7 December 2020, amendments under the *Social Services and Other Legislation Amendment (Simplifying Income Reporting and Other Measures) Act 2020* came into effect and simplified income reporting.[76]

2.130 In mid-2021, Services Australia stopped raising and reviewing debts for entitlements pre-7 December 2020 'due to concerns raised about the use of income apportionment.'[77] The Commonwealth Ombudsman conducted two own-motion investigations into income apportionment in August 2023 and December 2023. Recovery of debts potentially affected by income apportionment were paused in October 2023, and more affected debts were identified and paused in April 2024.[78]

2.131 The bill seeks to rectify the invalidity of the income apportionment method that has resulted in the 'pausing' of certain debts. The bill also seeks to validate the flow-on effects of income apportionment to other benefits and payments, including the youth training allowance (YTA) and the former farm household support (FHS).[79]

2.132 The bill also seeks to provide a lawful method to determine the amount of employment income that should be allocated to an entitlement period when making a decision after the commencement of this bill in respect of relevant social security benefits received during 1 July 1991 to 6 December 2020.[80] The explanatory material

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74 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, Schedule 1, item 2 defines 'entitlement period' as (a) in relation to a specified pension for a period ending before 1 July 1999–a period starting on a pension payday and ending on the day before the next pension payday; or (b) otherwise–a period determined by the relevant Secretary in relation to which an instalment of a social security benefit or social security pension is paid and that ends before 7 December 2020.

75 Explanatory memorandum, p. 1.

76 Explanatory memorandum, p. 2.

77 Explanatory memorandum, p. 3.

78 Explanatory memorandum, p. 3.

79 Schedule 1, item 2, division 2, proposed sections 1117A and 1117B.

80 Schedule 1, item 2, division 3.

sets out that this may be necessary, for example, where a debt decision has been on hold, a past debt decision is subject to merits review on another basis than the use of income apportionment, or where the Secretary obtains evidence after this bill is enacted that a person may have incurred an overpayment.[81] The bill also seeks to provide for a lawful method of determining employment income for decisions made after the commencement of this bill for YTA and former FHS payments for entitlement periods before 1 July 1998 and 1 July 2014 respectively.[82]

2.133 Further, the bill seeks to establish the Income Apportionment Resolution Scheme (the Resolution Scheme), which would require the Commonwealth to pay an amount of reparation to a person who owes a debt to the Commonwealth under social security laws, where the debt was raised as a result of an overpayment, relates to a period between 20 September 2003 and 6 December 2020, and arose because the person's income was calculated using the apportionment methods set out in the bill.[83] An eligible person would need to apply for a resolution payment. If a person was offered a resolution payment and accepted the payment under the Resolution Scheme, they would release and forever discharge the Commonwealth from all liability in relation to any claim against the Commonwealth that arises as a result of the person's income being worked out using the apportionment method.[84] The minister may determine matters for and in relation to the Resolution Scheme through a legislative instrument, and the determination must provide for the review of any decision under the scheme.[85]

Summary of initial assessment

Preliminary international human rights legal advice

Right to social security

2.134 To the extent that the bill validates debt decisions that limited a person's entitlement to social security benefits, the measure engages and may limit the right to social security. The right to social security recognises the importance of adequate social benefits in reducing the effects of poverty and plays an important role in realising many other economic, social and cultural rights, in particular the right to an adequate standard of living[86] and the right to health (this could be relevant here if the measure resulted in a person being unable to afford basic necessities such as food, housing and healthcare and the debt recovery process adversely affected an individual's health).[87] Social security benefits must be adequate in both amount and

81 Explanatory memorandum, p. 9.

82 Schedule 1, item 2, division 3, proposed sections 1117E and 1117F.

83 Schedule 3, item 2.

84 Schedule 3, item 2.

85 Schedule 3, item 3.

86 International Covenant on Economic, Social and Cultural Rights, article 11.

87 International Covenant on Economic, Social and Cultural Rights, article 12(1).

duration and public authorities are responsible for ensuring the effective administration or supervision of a social security system.[88] The right also includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage.

2.135 Australia has obligations under international human rights law to progressively realise the right to social security (and other social and economic rights) using the maximum of resources available. Australia has a corresponding duty to refrain from taking retrogressive measures, or backwards steps, in relation to the realisation of this right.[89] If deliberate retrogressive measures are taken, the state has the burden of proving that they have been introduced after the most careful consideration of all alternatives.[90] Retrogressive measures, a type of limitation, may be permissible under international human rights law providing that they address a legitimate objective, are rationally connected to that objective and are a proportionate way to achieve that objective. States may limit economic, social and cultural rights only insofar as this may be compatible with the nature of those rights, and 'solely for the purpose of promoting the general welfare in a democratic society'.[91] In addition, the UN Committee on Economic, Social and Cultural Rights has advised that the benefits of any limitation in promoting the general welfare must outweigh the impacts on the enjoyment of the right being limited.[92] The term 'general welfare' refers primarily to the economic and social well-being of the people and the community as a whole.[93] In this regard, the UN Committee on Economic, Social and Cultural Rights has indicated that references to broad concepts like 'economic development' cannot easily justify limitations of economic, social and cultural rights, particularly noting that policies directed towards economic development often limit the rights of certain individuals or groups without

88 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security* (2008).

89 International Covenant on Economic, Social and Cultural Rights, article 2.

90 UN Committee on Economic, Social and Cultural Rights, *General Comment 13: the Right to education* (1999) [45].

91 International Covenant on Economic, Social and Cultural Rights, article 4.

92 *Pardo v Spain*, UN Committee on Economic, Social and Cultural Rights, Communication No. 52/2018, E/C.12/67/D/52/2018 [9.4].

93 Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights, June 1986 [52]. See also, Amrei Muller, 'Limitations to and derogations from economic, social and cultural rights', *Human Rights Law Review*, vol. 9, no. 4, 2009, p. 573; Erica-Irene A Daes, The Individual's Duties to the Community and the Limitations on Human Rights and Freedoms under Article 29 of the Universal Declaration of Human Rights, *Study of the Special Rapporteur of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities*, E/CN.4/Sub.2/432/Rev.2 (1983) pp. 123–4.

'promoting general welfare'.[94] As to when a limitation will be compatible with the nature of economic, social and cultural rights, the UN Committee on Economic, Social and Cultural Rights has stated that there exists 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights'.[95]

Right to effective remedy

2.136 Insofar as the validation of the apportionment method limits the right to social security, effective remedies should be available to individuals. The right to an effective remedy requires the availability of a remedy which is effective with respect to violations of rights and freedoms recognised by the International Covenant on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights provides guidance as to the duty to give effect to the rights contained in the Covenant, explaining that the Covenant adopts a flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account[96] and this flexibility 'coexists with the obligation upon each State party to use all the means at its disposal to give effect to the rights recognized in the Covenant'. The Covenant on Economic, Social and Cultural Rights does not require the provision of judicial remedies for violations of the right to social security, however, effective remedies will be absent where a primary administrative decision about a person's right to social security is final and no provision is made for review by either a court or a (well-designed and sufficiently fair and independent) administrative tribunal.[97]

Committee's initial view

2.137 The committee noted that the retrospective validation of income apportionment as a lawful method of assessing employment income for the purposes of certain social security entitlements to enforce debts owed to the Commonwealth engages and limits the right to social security. As the validation of the income

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94 See, for example, UN Committee on Economic, Social and Cultural Rights, *Concluding observations: Egypt* (23 May 2000) E/C.12/1/Add.44 [10]; and *Concluding observations: Kyrgyzstan* (1 September 2000) E/C.12/1/Add.49 [29]. In addition, comparative jurisprudence from the European Court of Human Rights would appear to indicate that where a limitation relates to a right which is vital for a person's immediate survival (such as the right to an adequate standard of living), the more a state will be required to demonstrate that there is a pressing social need justifying that interference. See, for example, *Dudgeon v United Kingdom*, European Court of Human Rights (1981) [52].

95 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3: the nature of states parties' obligations* (14 December 1990) E/1991/23(Supp) [10].

96 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 9: the domestic application of the covenant* (1998) [1].

97 Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases and materials*, Oxford University Press, Oxford, 2014, p. 719.

apportionment method may limit the right to social security, the committee further noted that effective remedies should be available.

2.138 The committee considered that further information was required to assess the compatibility of the measure with the right to social security and the right to an effective remedy and therefore sought the advice of the minister.

2.139 The full initial analysis is set out in *Report 5 of 2025*.[98]

Minister's response[99]

2.140 The minister advised:

> I refer to my Department's submission to the Community Affairs Legislation Committee's inquiry into the Bill, where the Department highlighted exploratory sampling of affected debts conducted by Services Australia. This sampling suggested:
>
> - the impact of income apportionment on a debt amount was relatively small, with the median change when recalculated less than $100;
> - 73% of debts affected by income apportionment increased or decreased by less than $200; and
> - most debts affected by income apportionment would still exist, albeit at a smaller or larger amount, if recalculated to not use income apportionment.
>
> The resolution amounts offered under the Income Apportionment Resolution Scheme (the Scheme) are consistent with this understanding of the impact of income apportionment on the correctness of debt amounts. The Scheme payment scale is expected to result in the vast majority of claimants affected by income apportionment being made better off overall, compared to if their debt was recalculated to remove the use of income apportionment.
>
> The Committee also raised concerns that the alternative pathway to the Scheme – being bringing actions against the Commonwealth – may not be effective in practice if people are unaware of the effect of accepting a resolution payment. The effect of accepting a resolution payment will be clearly outlined to those applying to the Scheme, including in the notice outlining any resolution offer. This will be made clear in the determination outlining the rules of the Scheme, as per section 3(1)(i) and 3(1)(j) of Schedule 3 of the Bill.

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98 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 71-81.

99 The minister's response to the committee's inquiries was received on 20 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

Response to Questions from Committee

Q(a) – what is the cost to the Commonwealth in recovering the 'paused' debts [*potentially* affected by income apportionment]

If the practice of income apportionment is retrospectively validated with the enactment of the Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025 (the Bill), recovery and review of around 160,000 debts can recommence with only minor changes to existing procedures at Services Australia. The cost of this repayment is less than $20 million for Services Australia.

Debts with recovery and review paused represent over $1.1 billion in overpayments.

Q(b) – whether the decision to pursue recovery of a debt calculated using the income apportionment method would take account of the merits of an individual case

The Government has clearly indicated that the cost of recalculating all affected debts would be prohibitive and not in the public interest. The exploratory sampling conducted by Services Australia of income apportioned debts indicates debt amounts were overstated or understated; moreover, the margin of error in calculating debts was generally modest in the context of the debt amounts raised.

Debtors have significant flexibility to work with Services Australia to determine repayment arrangements which reflect their capacity to repay the debt, including pausing recovery of a debt when they are experiencing financial hardship.

Debts can also be waived in certain circumstances provided by legislation, including in cases of sole administrative error, or where the debtor has special circumstances which make it desirable to waive the debt.

Q(c) – whether the validation of income apportionment limits the basis, or the likelihood of success, to challenge affected debt decisions

The effect of the validation measure set out in Schedule 1 of the Bill on the possibility of a successful review differs between different types of challenges to affected debt decisions:

1. For merits review, it will remain possible for a person to seek internal or external merits review of an affected decision regardless of the validation. The merits reviewer will adopt the scope of the original decision-maker and make a fresh decision. In making their decision on the review, the merits reviewer will be required to assess the employment of income in accordance with Division 3 of the Bill.
2. For judicial review, the validation of income apportionment will limit the basis to challenge an affected debt decision. This is because of the validation in Schedule 1 to the Bill once enacted

will mean a Court will not be able to quash an affected debt decision purely on the basis that the decision involved the use of income apportionment. It will still be possible for a person to successfully challenge an affected debt decision through judicial review on the basis the decision is affected by some error other than the use of income apportionment alone.

Q(d) – whether the validation of the income apportionment method is consistent with the right to an effective remedy

For the reasons given in response to Question (e) below, the Bill is consistent with the right to effective remedies recognised at international law.

Q(e) – what remedies are available to persons where the validation of income apportionment results in a violation of their right to social security, and in particular, what actions may be brought against the Commonwealth

The Bill makes express provision for effective legal and administrative remedies for individuals who may be detrimentally affected by the retrospective validation of decisions under the social security law that were affected by the historical practice of income apportionment.

Most relevantly, as noted in the response to Question (c), the Bill does the following things:

1. New s 1117C of the Social Security Act 1991 would expressly preserve individuals' rights to bring legal proceedings and pursue legal remedies in respect of any existing cause of action. Crucially, therefore, the Bill does not prevent a person from accessing the courts to vindicate general law rights said to arise under the social security law.
2. Schedule 3 to the Bill would establish the Income Apportionment Resolution Scheme (Scheme), being a mechanism for administrative remedies that is a *new* and *additional* form of relief for affected individuals.

While an affected individual would effectively need to choose between *either* accepting an administrative remedy offered to them under the Scheme *or* pursuing the legal remedies preserved under new s 1117C, allowing individuals to pursue *both* forms of relief would seem to go further than any substantive right to an effective remedy would ordinarily require.

In any event, the Scheme is likely to be more accessible, convenient and more economical than the pursuit of legal remedies before the courts, from the perspective of affected individuals. While the Committee raises concerns about the abilities of vulnerable individuals to understand the legal implications of accepting relief under the Scheme, it is intended the statutory concept of 'effective acceptance' (Sch 3, items 1 3(1)(i) and (j)) will ensure that acceptance can only be given on an appropriately informed basis.

Concluding comments

International human rights legal advice

2.141 The minister advised that if income apportionment is retrospectively validated with the enactment of this bill, recovery and review of around 160,000 debts can recommence with only minor changes to existing procedures at Services Australia and the cost of this repayment is less than $20 million for Services Australia, whereas the debts represent $1.1 billion in overpayments owed to the Commonwealth. The minister further stated that the payment scale is expected to result in a vast majority of claimants affected by income apportionment being made better off overall, compared to a recalculation of the debt. The minister also referred to exploratory sampling of affected debts conducted by Services Australia, which suggested that the median change when a debt was recalculated was less than $100 and 73 per cent of debts affected by income apportionment increased or decreased by less than $200. The sampling further indicated that most debts affected by income apportionment would still exist at either a smaller or larger amount if recalculated using an alternative method (other than income apportionment).

2.142 Noting the debts owed to the Commonwealth with recovery and review paused as a result of the use of income apportionment represent a significant amount of public money, enabling the recovery of these debts may promote the general welfare, that is, the economic and social well-being of the community as a whole. In this way, the benefits of the potential limitation on the right to social security (for those individuals who are not better off overall) may outweigh the impacts on the enjoyment of the right being limited. Insofar as recovery of these debts may assist with ensuring the social security system provides essential benefits to individuals, the measure may be rationally connected to this stated objective.

2.143 However, as set out in the initial analysis, the other stated objective of the measure is to avoid recalculation as the 'significant cost and effort that would be involved in recalculating all affected debts would detract from the resources required to ensure that Australia's social security system continues to provide essential benefits to individuals and families'.[100] While the minister advised the estimated cost of repayment of reviewed debts if this bill were to be enacted, it remains unclear what the cost to the Commonwealth would be to recover debts potentially affected by income apportionment if this bill is not enacted (namely, if affected debts were recalculated not using income apportionment). In the absence of this information, it is difficult to assess the necessity of the measure and the adequacy of the current legislation to achieve the stated objective of recovering the debts.

2.144 While the general objective of facilitating the recovery of debts may be capable of constituting a legitimate objective for the purposes of international human rights

[100] Statement of compatibility, p. 2.

law, it is not clear that the other stated objectives of the measure would necessarily promote the general welfare.

2.145 With respect to proportionality, the minister stated that debtors would have significant flexibility to work with Services Australia to determine repayment arrangements that reflect their capacity to repay the debt. The minister also advised that debts can be waived in certain circumstances including where the debtor has special circumstances which make it desirable to waive the debt. This flexibility to treat different cases differently assists with proportionality. The safeguard value of the debt waiver process will depend on how it operates in practice, for example whether the process of applying for a waiver is accessible and the likelihood that a waiver will be granted.

2.146 Further information was also sought as to whether the validation of income apportionment limits the basis, or the likelihood of success, of challenging affected debt decisions. The minister advised that in regard to merits review, it will remain possible for a person to seek internal or external merits review of an affected decision and in making their decision on the review, the merits reviewer will be required to assess employment income in accordance with Division 3 of the bill, which deals with calculations after the validation time. In regard to judicial review, the minister advised that income apportionment will limit the basis to challenge an affected debt decision as the court will not be able to quash an affected debt decision purely on the basis that the decision involved the use of income apportionment. It will remain possible for a person to challenge an affected debt decision on the basis that the decision is affected by some other error.

2.147 While access to merits review is an important safeguard that assists with the proportionality of the measure, applying new calculations of employment income that did not apply at the relevant time of accruing the debt may limit the effectiveness of the review in practice. It appears that the original affected decision would have applied the previous calculation and the new calculation must be used upon review. This may result in a higher debt and therefore greater limitation on the right to social security. However, the minister's information that most claimants affected by income apportionment will be made better off overall by the measure, compared to a recalculation of the debt, is relevant in this regard. The grounds for review would then be limited to some other error in the affected decision. Overall, these restrictions on merits review, combined with the limitations of judicial review in practice, could weaken the overall safeguard value of access to review.

2.148 A further consideration with respect to proportionality is the extent of any interference with human rights. As noted in the preliminary analysis, the average debt amount of those potentially affected by the bill is $810.[101] The minister advised that

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101 Department of Social Services, Resolution Approach to Income Apportionment: Impact Analysis (attached to the explanatory memorandum), p. 7.

the impact of income apportionment on the debt amount is likely to be relatively small, with the median change when the debt was recalculated by Services Australia being less than $100. This may mean that the extent of the interference with the right to social security is not too significant. However, as noted in the preliminary analysis, it is difficult to assess whether a debt would be considered substantial for each individual, as this is dependent on various factors.

2.149 Consequently, while the measure may promote the general welfare to the extent that it facilitates the recovery of a substantial amount of debt owed to the Commonwealth and is accompanied by some safeguards, such as the debt waiver process, it remains unclear whether these safeguards would be adequate in practice such that the measure is likely to constitute a proportionate limit on the right to social security in all circumstances.

2.150 With respect to the right to an effective remedy, the minister stated that the bill expressly preserves individuals' rights to bring legal proceedings and pursue legal remedies in respect of any existing cause of action and the Resolution Scheme is a mechanism for administrative remedy that is a new and additional form of relief for affected individuals. The minister advised that affected individuals would need to choose between either accepting an administrative remedy or pursuing the preserved legal remedies.

2.151 In regard to the ability of vulnerable individuals to understand the legal implications of accepting relief under the Scheme, the minister stated that the 'effective acceptance' provisions in the bill will ensure that acceptance can only be given on an appropriately informed basis. The minister advised that the effect of accepting a resolution payment will be clearly outlined to those applying to the Resolution Scheme and will be made clear in the determination which outlines the rules of the Resolution Scheme. This may ensure that individuals are adequately informed of the remedy and its effect.

2.152 The minister's advice confirms that there are remedies available – namely, pursuing an action against the Commonwealth or accepting a Resolution Scheme payment. Regarding the former, as set out above, there are limitations on the availability and effectiveness of merits and judicial review. In relation to the Resolution Scheme, as set out in the initial analysis, the amount of resolution payment will likely be substantially less than the amount of debt incurred and the payment does not take into account other impacts of the debt on an individual, such as adverse impacts on an individual's mental health as addressed in the Impact Analysis.[102] As such, it is not clear that the available remedies would be considered effective for the purposes of international human rights law.

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[102] Department of Social Services, Resolution Approach to Income Apportionment: Impact Analysis (attached to the explanatory memorandum, p. 7.

Committee view

2.153 The committee thanks the minister for this response. The committee considers that by enforcing debts owed to the Commonwealth that were made without a legal basis, the bill engages and limits the right to social security. The committee also notes that as the validation of the income apportionment method may limit the right to social security, effective remedies should be available.

2.154 The committee notes the minister's advice that the debts with recovery and review paused represent over $1.1 billion in overpayments. The committee considers that the measure may promote the general welfare to the extent that it facilitates the recovery of a substantial amount of debt owed to the Commonwealth.

2.155 The committee notes that the department would have flexibility to determine repayment arrangements or waivers of affected debts for different circumstances, which assists with proportionality. However, the committee notes that the review rights available may not be effective in practice and an individual's ability to bring a legal action regarding a debt decision are limited. Consequently, it remains unclear whether the safeguards accompanying the measure would be adequate in practice such that the measure is likely to constitute a proportionate limit on the right to social security in all circumstances.

2.156 The committee notes that if the validation of the income apportionment method impermissibly limits the right to social security, effective remedies should be available. The committee notes that there appear to be remedies available – namely, pursuing an action against the Commonwealth or accepting a Resolution Scheme payment. Regarding the former, the committee notes that there are limitations on the availability and effectiveness of merits and judicial review in practice. In relation to the Resolution Scheme, the committee notes that the amount of resolution payment will likely be substantially less than the amount of debt incurred and the payment does not take into account other impacts of the debt on an individual. The committee considers that the effectiveness of the Resolution Scheme will be dependent on the ability of vulnerable individuals to be adequately informed of the legal implications of accepting relief under the Resolution Scheme and on the content of the future rules. The committee notes that it will assess the compatibility of any rules made pursuant to this legislation. Noting the limitations of the available remedies, the committee considers that it is not clear whether these remedies would be considered effective for the purposes of international human rights law.

Suggested action

2.157 The committee considers the proportionality of this measure may be assisted were the bill amended to include further safeguards for vulnerable individuals in understanding the effect of income apportionment, including the provision of financial or legal services to potential applicants to the Resolution Scheme.

2.158 The committee recommends that the statement of compatibility be updated to reflect the information provided by the minister.

2.159 The committee draws these human rights concerns to the attention of the minister and the Parliament.

Benefit restriction notices

2.160 On 29 October 2025, the government made an amendment to the bill that passed the House of Representatives.[103] The government amendment added new Schedule 5 to the bill, which seeks to amend the Social Security Act to introduce a broader power to cancel a person's social security payments or concession cards if persons are the subject of an arrest warrant in respect of a serious violent or sexual offence, or might prejudice the security of Australia or a foreign country.[104] The AFP Minister may give the minister a 'benefit restriction notice' if the person is the subject of an arrest warrant for a serious violent or sexual offence,[105] and the person has not been arrested under the warrant, and a cancellation request for the person has been made.[106] A cancellation request is a request to cancel the person's social security payments or concession card made in writing by a senior police force member to the relevant minister or department.[107]

2.161 Before giving a notice restricting a person's benefit, the AFP Minister must have regard to the extent to which the person is likely to be a threat or danger to the community while the person is not under arrest and the likely effect of the operation of the notice on the person's dependants, if the AFP Minister is aware of those

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103 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, sheet FE107.

104 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, sheet FE107, item 5.

105 *Criminal Code Act 1995* (Criminal Code), Division 395 defines 'serious violent or sexual offence' to mean an offence against a law of the Commonwealth, a State or a Territory where: (a) it is an offence punishable by imprisonment for life or for a period, or maximum period, of at least 7 years; and (b) the particular conduct constituting the offence involved, involves or would involve, as the case requires: (i) loss of a person's life or serious risk of loss of a person's life; or (ii) serious personal injury or serious risk of serious personal injury; or (iii) sexual assault; or (iv) sexual assault involving a person under 16; or (v) the production, publication, possession, supply or sale of, or other dealing in, child abuse material (within the meaning of Part 10.6); or (vi) consenting to or procuring the employment of a child, or employing a child, in connection with material referred to in subparagraph (v); or (vii) acts done in preparation for, or to facilitate, the commission of a sexual offence against a person under 16.

106 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, sheet FE107, item 10.

107 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, sheet FE107, item 10.

dependants.[108] The secretary of the department administered by the AFP Minister must seek the advice of the Human Services Secretary in relation to the likely effect of the notice on the person's dependants and inform the AFP Minister of that advice.[109]

2.162 The government amendment also seeks to amend the *A New Tax System (Family Assistance) Act 1999* and the *Paid Parental Leave Act 2010* in the same way regarding family assistance[110] and parental leave pay.[111]

Preliminary international human rights legal advice

Right to social security

2.163 To the extent that the measure results in social security payments not being payable to a person wanted for a serious offence, the measure engages and limits the right to social security. The right to social security recognises the importance of adequate social benefits in reducing the effects of poverty.[112] Social security benefits must be adequate in both amount and duration. Public authorities are responsible for ensuring the effective administration or supervision of a social security system.[113] States must also have regard to the principles of human dignity and non-discrimination to avoid any adverse effect on the levels of benefits and the form in which they are provided, and must guarantee the equal enjoyment by all of minimum and adequate protection. The right also includes the right not to be subject to arbitrary and unreasonable restrictions of existing social security coverage.

2.164 As noted above, Australia has obligations under international human rights law to progressively realise the right to social security (and other social and economic rights) using the maximum of resources available. Australia has a corresponding duty to refrain from taking retrogressive measures, or backwards steps, in relation to the realisation of this right.[114] In this context, the United Nations (UN) Committee on Economic, Social and Cultural Rights has stated that there is a 'strong presumption of

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108 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, sheet FE107, item 10.

109 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, sheet FE107, item 10.

110 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, sheet FE107, Part 2.

111 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, sheet FE107, Part 3.

112 International Covenant on Economic, Social and Cultural Rights, article 9. See also, UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security* (2008).

113 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security* (2008).

114 International Covenant on Economic, Social and Cultural Rights, article 2.

impermissibility of any retrogressive measures taken' in relation to economic, social and cultural rights. If deliberate retrogressive measures are taken, the state:

> has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the State party's maximum available resources.[115]

2.165 Retrogressive measures, a type of limitation, may be permissible under international human rights law providing that they address a legitimate objective, are rationally connected to that objective and are a proportionate way to achieve that objective. The UN Committee on Economic, Social and Cultural Rights has stated that 'the withdrawal, reduction or suspension of benefits should be circumscribed, based on grounds that are reasonable, subject to due process, and provided for in national law.'[116]

2.166 With respect to a legitimate objective, states may limit economic, social and cultural rights only insofar as this may be compatible with the nature of those rights, and 'solely for the purpose of promoting the general welfare in a democratic society'.[117] This means that the only legitimate objective in the context of economic, social and cultural rights is a limitation for the 'promotion of general welfare'. In addition, the UN Committee on Economic, Social and Cultural Rights has advised that:

> the benefits of the limitation in promoting the general welfare must outweigh the impacts on the enjoyment of the right being limited. The more serious the impact on the [individual's] Covenant rights, the greater the scrutiny that must be given to the grounds invoked for such a limitation.[118]

2.167 As to when a limitation will be compatible with the nature of economic, social and cultural rights, the UN Committee on Economic, Social and Cultural Rights has stated that there exists 'a minimum core obligation to ensure the satisfaction of, at the very least, minimum essential levels of each of the rights'.[119] That is, even if a limitation were for the promotion of general welfare, if it was regarded as resulting in failure to fulfil the minimum core obligations associated with economic, social and

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115 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 13: the right to education* (1999) [45].

116 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security* (2008) [24].

117 International Covenant on Economic, Social and Cultural Rights, article 4.

118 *Pardo v Spain*, UN Committee on Economic, Social and Cultural Rights, Communication No. 52/2018, E/C.12/67/D/52/2018 [9.4].

119 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 3: the nature of states parties' obligations* (14 December 1990) E/1991/23(Supp) [10].

cultural rights, then it would go against the nature of those rights and would be impermissible.[120]

2.168 The statement of compatibility to the supplementary explanatory memorandum acknowledges that this measure engages the right to social security.[121] The stated objective of the measure is to strengthen and improve the effectiveness of the regime for ceasing social security payments in certain circumstances.[122] More specifically, the measure seeks to ensure that persons who have been charged with serious violent or sexual offences and are subject to an outstanding arrest warrant cannot continue to benefit from social security payments, which might be assisting them in evading the authorities.[123]

2.169 As discussed further below, as the potential interference with an individual's right to social security may be significant, particularly if they are deprived of the minimum essential level of benefits, greater scrutiny is required as to whether the stated objectives are legitimate for the purposes of international human rights law.[124] It is not clear that the measure seeks to promote the general welfare (namely, the economic and social well-being) of the people and the community as a whole. The term 'general welfare' should not be taken to impliedly include reference to public order, public morality and respect for the rights and freedoms of others.[125] Based on the information in the supplementary explanatory materials, it has not been demonstrated that the measure pursues a legitimate objective under international human rights law.

2.170 It is also not clear that the measure is rationally connected to (that is, effective in achieving) the stated objective. The supplementary explanatory materials do not include information or evidence that the measure would, in a significant way, be effective in preventing or making it more difficult for a person who is wanted for a serious offence to evade police arrest or continue to evade arrest, or in encouraging a person to present for arrest.

2.171 As to proportionality, a number of factors are relevant to consider including whether there are effective safeguards in place such as access to review, whether the

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120 For further discussion see, Amrei Muller, 'Limitations to and derogations from economic, social and cultural rights', *Human Rights Law Review*, vol. 9, no. 4, 2009, pp. 580–581.

121 Supplementary statement of compatibility, p. 20.

122 Supplementary explanatory memorandum, p. 7.

123 Supplementary statement of compatibility, p. 21.

124 *Pardo v Spain*, UN Committee on Economic, Social and Cultural Rights, Communication No. 52/2018, E/C.12/67/D/52/2018 [9.4].

125 Amrei Muller, 'Limitations to and derogations from economic, social and cultural rights', *Human Rights Law Review*, vol. 9, no. 4, 2009, p. 573. See also, Phillip Alston and Gerard Quinn, 'The Nature and Scope of States Parties' Obligations under the International Covenant on Economic, Social and Cultural Rights', *Human Rights Quarterly*, vol. 9 no. 2, 1987, pp. 201–202.

measure provides sufficient flexibility to treat different cases differently, the extent of any interference with the right, and the availability of less rights restrictive alternatives. Another further consideration in the context of economic, social and cultural rights is whether the measure is compatible with the nature of the right to social security.

2.172 The measure is accompanied by some safeguards. Before issuing a benefit restriction notice, the AFP Minister must have regard to the individual's circumstances, including the extent to which they are a danger to the community and any impact on their dependants.[126] The relevant secretary must also seek to notify the person of the cancellation of their benefits.[127] The power to issue a benefit restriction notice is discretionary and requires consideration of personal circumstances, which may provide some flexibility to treat individual cases differently. However, this power appears to be non-reviewable. The strength of the notification requirement as a safeguard is therefore weakened as an individual cannot seek review of the decision to issue a benefit restriction notice once notified.

2.173 A benefit restriction notice would remain in force until it is revoked,[128] and the minister is required to consider whether to revoke the notice every 12 months.[129] The extent of the interference with the right to social security is therefore broad as the measure results in the cancellation of social security payments on an ongoing basis until the notice is revoked. Lack of access to review therefore becomes more pertinent in consideration of the extent of the interference with the right.

2.174 As to the availability of less rights restrictive alternatives, it is not clear why a person's social security benefits need to be cancelled as opposed to suspended, noting that it is likely to be easier to reinstate social security payments in the event that a person presents for arrest and is granted bail or the charges are subsequently dropped, for example. There also does not appear to be any mechanism by which a person can seek backpay of their social security benefits or other form of compensation if they are ultimately found not guilty of the serious offence.

2.175 Owing to the obligation under international human rights law for a state to ensure the minimum essential levels of economic, social and cultural rights are fulfilled, any limitation on the right to social security must not go so far as to constitute a non-fulfilment of the minimum core obligations. The UN Committee on Economic, Social and Cultural Rights has stated that 'under no circumstances should an individual be deprived of a benefit on discriminatory grounds or of the minimum essential level

126 Social Security and Other Legislation Amendment (Technical Changes No. 2) Bill 2025, sheet FE107, item 10.

127 *Social Security Act 1991*, subsection 38M(6).

128 *Social Security Act 1991*, section 38S.

129 *Social Security Act 1991*, section 38SA.

of benefits'.[130] There is a risk that cancelling an individual's access to social security in its entirety may go against the nature of the right. If the cancellation of social security payments also results in an individual not being able to access the essential levels of health care, basic shelter and housing, water and sanitation, food and basic education, there is a real risk the minimum core obligations of the right to social security will not be fulfilled.

2.176 If the measure results in the deprivation of the minimum essential level of benefits, the measure would constitute an impermissible limit on the right to social security. If the minimum core obligations are fulfilled, there nevertheless appears to be a risk that the measure may not constitute a proportionate limit on the right to social security, as an individual would not have access to review of the decision made by the AFP Minister to issue a benefit restriction notice and the other safeguards present in the bill do not appear to be adequate.

Right to effective remedy

2.177 Insofar as the operation of a benefit restriction notice limits the right to social security, effective remedies should be available to individuals. The statement of compatibility does not acknowledge that the benefit restriction notice has implications for the right to effective remedy.

2.178 The right to an effective remedy requires the availability of a remedy which is effective with respect to violations of rights and freedoms recognised by the International Covenant on Economic, Social and Cultural Rights. The UN Committee on Economic, Social and Cultural Rights provides guidance as to the duty to give effect to the rights contained in the Covenant. It explains that:

> [by] requiring Governments to do so "by all appropriate means", the Covenant adopts a broad and flexible approach which enables the particularities of the legal and administrative systems of each State, as well as other relevant considerations, to be taken into account.[131]

2.179 However, the UN Committee on Economic, Social and Cultural Rights goes on to explain that this flexibility 'coexists with the obligation upon each State party to use all the means at its disposal to give effect to the rights recognized in the Covenant'. As such, the UN Committee on Economic, Social and Cultural Rights advises that 'appropriate means of redress, or remedies, must be available to any aggrieved

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130 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security* (2008) [78].

131 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 9: the domestic application of the covenant* (1998) [1].

individual or group, and appropriate means of ensuring governmental accountability must be put in place'.[132]

2.180 The International Covenant on Economic, Social and Cultural Rights does not require the provision of judicial remedies for violations of the right to social security, but it does require effective remedies to be available. Effective remedies will be absent where a primary administrative decision about a person's right to social security is final and no provision is made for review by either a court or a (well-designed and sufficiently fair and independent) administrative tribunal.[133]

2.181 It is unlikely that effective remedies are available for any limitation on the right to social security resulting from the measure. As set out above, review of the decision to give a benefit restriction notice is not available for individuals that are affected by these notices.

2.182 It is also unclear whether a person subject to a benefit restriction notice who may have the relevant arrest warrant revoked, or may be subsequently found not guilty of the relevant offence, would be entitled to the social security payments that were cancelled as a result of the benefit restriction notice or some other form of compensation or relief. As such, there do not appear to be effective remedies available to persons where a benefit restriction notice results in a violation of their right to social security.

Criminal process rights

2.183 A further consideration is whether the measure may be considered a criminal penalty insofar as the cancellation of social security payments could operate to punish certain individuals. If the cancellation of social security payments is regarded as 'criminal' for the purposes of international human rights law, it will engage the criminal process rights under articles 14 and 15 of the International Covenant on Civil and Political Rights, which include the right to be presumed innocent (including the application of the criminal standard of proof) and the right not to be tried and punished twice for an offence for which a person has already been finally convicted or acquitted (sometimes referred to as the principle of double jeopardy).

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132 UN Committee on Economic, Social and Cultural Rights, *General Comment No. 9: the domestic application of the covenant* (1998) [2]. The UN Committee further advises at paragraph [3] that: 'a State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not "appropriate means" within the terms of article 2.1 of the Covenant or that, in view of the other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other "means" used could be rendered ineffective if they are not reinforced or complemented by judicial remedies'.

133 Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant on Economic, Social and Cultural Rights: Commentary, cases and materials*, Oxford University Press, Oxford, 2014, p. 719. See also UN Committee on Economic, Social and Cultural Rights, *General Comment No. 19: The Right to Social Security* (2008) [77].

2.184 In assessing whether a cancellation of social security payments may be considered criminal, it is necessary to consider: the nature and purpose of the measure including whether there is an intention to punish or deter, irrespective of the severity of the measure; and the severity of the measure. The stated purpose of the measure is to strengthen and improve the effectiveness of the regime for ceasing social security payments in certain circumstances, and to prevent individuals charged with a serious offence from benefiting from social security payments.[134] It therefore appears that the measure is, at least in part, aimed at deterring individuals from evading arrest. Further, the consequences of ceasing social security payments altogether may be very significant for some individuals. As a result, it could have a punitive effect in practice, such that it could potentially be considered a criminal penalty for the purposes of international human rights law. There is therefore a risk that the measure could have implications for criminal process rights.

2.185 If the cancellation of social security payments is considered a criminal punishment, this raises issue from the perspective of criminal process rights because the punishment is imposed before the charge against the person is proven beyond reasonable doubt. As a result, the measure may not be consistent with the presumption of innocence and the prohibition on double jeopardy.

Committee view

2.186 The committee notes that this measure results in social security payments not being payable to a person wanted for a serious offence and this engages and limits the right to social security.

2.187 The committee notes the measure seeks to strengthen and improve the effectiveness of the regime for ceasing social security payments in certain circumstances, and to prevent individuals charged with a serious offence from benefiting from social security payments, which may assist them in evading arrest. While the committee acknowledges the importance of ensuring individuals charged with serious offences are arrested, the committee notes that the International Covenant on Economic, Social and Cultural Rights establishes a specific restriction on the reasons for, and the manner in which, economic, social and cultural rights may be limited. In particular, the committee notes that any limit on the right to social security must solely be for the purpose of promoting the general welfare in a democratic society and must be compatible with the nature of this right.

2.188 The committee considers that it is unclear whether this measure pursues a legitimate objective under international human rights law as it does not appear that the measure promotes the general welfare of society as a whole. The committee notes that it is also unclear if the measure is rationally connected to the stated objective, as the supplementary explanatory materials do not provide any information or evidence that cancelling a person's social security benefits would facilitate their arrest.

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134 Supplementary statement of compatibility, p. 21.

Regarding proportionality, the committee notes that there is not an avenue for an individual to review the decision to issue a benefit restriction notice and there may not be adequate safeguards to ensure any limitation on the right to social security is proportionate. Further, the committee notes that cancelling an individual's access to social security in its entirety may go against the nature of the right and there is therefore a risk that the measure may result in the minimum core obligation not being fulfilled. If the measure results in the deprivation of the minimum essential level of benefits, the measure would constitute an impermissible limit on the right to social security. It would also limit other human rights, including the rights of the child, right to an adequate standard of living, right to health and may have implications for the right to life. If the minimum core obligations are fulfilled, the committee considers that there nevertheless appears to be a risk that the measure may not constitute a proportionate limit on the right to social security.

2.189 The committee notes that as the benefit restriction notices may limit the right to social security, effective remedies should be available. The committee considers that in the absence of access to review or the ability to seek backpay or compensation, there do not appear to be effective remedies available to individuals whose right to social security has been limited. Further, the committee notes that if the cancellation of social security payments were to be considered a criminal punishment, criminal process rights should be afforded.

2.190 The committee is strongly of the view that these matters need to be considered before the Parliament determines its position on this bill. Members of Parliament need to have the benefit of this committee's advice in order to be informed of the human rights implications of this schedule. The committee considers further information is required to assess the compatibility of this measure with these rights, and as such seeks the minister's advice in relation to:

(a) how the measure promotes the general welfare of the people and the community as a whole;

(b) how cancelling a person's social security benefits would facilitate their arrest, including by reference to specific evidence demonstrating that the measure is an effective means to achieve the stated objective;

(c) what safeguards exist to ensure any limitation on the right to social security is proportionate in all circumstances;

(d) whether there is a risk that cancelling a person's social security benefits entirely would deprive them of their minimum essential needs;

(e) what avenues of review of the decision to give a benefit restriction notice are available;

(f) whether consideration has been given to less rights restrictive alternatives, such as:

- suspending, rather than cancelling, social security payments as a result of a benefit restriction notice; and
- requiring the AFP Minister to give consideration to whether all other avenues of bringing about arrest are exhausted before issuing a benefit restriction notice, such that the benefit restriction notice is only available as a last resort;

(g) whether consideration has been given to providing compensation or other remedies for individuals who are subsequently found not guilty of the serious offence which instigated the benefit restriction notice;

(h) whether on the measure may constitute a criminal punishment and if so, whether it is compatible with criminal process rights, including in regard to the presumption of innocence and the prohibition on double jeopardy; and

(i) whether the measure would have a disproportionate impact on certain vulnerable groups, including Aboriginal and Torres Strait Islander peoples and dependents.

Telecommunications and Other Legislation Amendment Bill 2025[135]

Purpose	The bill (now Act) amends the *Surveillance Devices Act 2004,* the *Telecommunications (Interception and Access) Act 1979* and the *Crimes Act 1914* to: • enable the disclosure and use of protected network activity warrant information and network activity warrant intercept information to meet disclosure obligations; • transfer the statutory function of the Communications Access Coordinator; • permit limited access to stored communications to enable agencies to undertake development and testing activities; • amend the operation of interception international production orders; and • clarify the threshold for authorising and varying controlled operations.
Portfolio	Home Affairs
Introduced	House of Representatives, 27 August 2025 *Finally passed both Houses, 29 October 2025* *Received Royal Assent, 4 November 2025*
Rights	Privacy; life; effective remedy

2.191 The committee requested a response from the minister in relation to the bill (now Act) in *Report 5 of 2025*.[136]

Accessing communications for developing and testing interception capabilities

2.192 Part 2–4 of the *Telecommunications (Interception and Access) Act 1979* (TIA Act) currently provides for authorisations of intercepted live communications for developing and testing capabilities. The relevant security authority may request the

135 This entry can be cited as: Parliamentary Joint Committee on Human Rights, Telecommunications and Other Legislation Amendment Bill 2025, *Report 7 of 2025*; [2025] AUPJCHR 60.

136 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 82-97.

Attorney-General to authorise interception of communications passing over a telecommunications system for developing and testing interception capabilities.[137]

2.193 The bill (now Act) amends the TIA Act to provide that interception authorisations for developing and testing interception capabilities include access to stored communications, if the authorisation would have authorised interception of the communication if it were still passing over a telecommunications system.[138] A stored communication is a communication that is not passing over a telecommunications system; is held on equipment that is operated by and is in the possession of a carrier; and cannot be accessed on that equipment (by a person who is not a party to the communication) without the assistance of an employee of the carrier.[139] This amendment in effect broadens the types of communication that may be accessed for developing and testing interception capabilities.

Summary of initial assessment

Preliminary international human rights legal advice

Rights to privacy and effective remedy

2.194 By expanding the power of an agency to access stored communications under authorisations for developing and testing interception capabilities, rather than just live communications, this measure engages and limits the right to privacy.

2.195 The right to privacy includes respect for informational privacy, including the right to respect for private and confidential information, particularly the storing, use and sharing of such information.[140] It also includes the right to control the dissemination of information about one's private life. The right to privacy 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.

2.196 Additionally, were an individual's right to privacy violated under an interception authorisation, this may engage the right to an effective remedy. The right to an effective remedy requires states parties to ensure access to an effective remedy for violations of human rights.[141] This may take a variety of forms, such as prosecutions of suspected perpetrators or compensation to victims of abuse. While limitations may be placed in particular circumstances on the nature of the remedy provided (judicial or

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137 *Telecommunications (Interception and Access) Act 1979*, section 31. Subsection 31(1) provides that the 'head (however described) of a security authority that has functions that include activities relating to developing or testing technologies, or interception capabilities, or a person acting as that head' may make the request.

138 Schedule 3, proposed subsection 31A(3) and section 31AB.

139 *Telecommunications (Interception and Access) Act 1979*, section 5.

140 International Covenant on Civil and Political Rights, article 17.

141 International Covenant on Civil and Political Rights, article 2(3).

otherwise), states parties must comply with the fundamental obligation to provide a remedy that is effective.[142]

Committee's initial view

2.197 The committee noted that by expanding the power of an agency to access stored communications, rather than just live communications, under authorisations for developing and testing interception capabilities in the TIA Act, this measure engages and limits the right to privacy. The committee further noted that if an individual's right to privacy was violated under an interception authorisation, this may engage the right to an effective remedy. The committee considered further information was required to assess the compatibility of this measure with these rights, and as such sought the minister's advice.

2.198 The full initial analysis is set out in *Report 5 of 2025*.[143]

Minister's response[144]

2.199 The minister advised:

> **Assessing communications for developing and testing interception capabilities**
>
> **(a) what further safeguards are available, including the availability of oversight and review, to ensure a proportionate limit on the right to privacy**
>
> Development and testing activities are subject to external authorisation by the Attorney-General, as well as statutory reporting requirements and independent oversight, which assist to ensure that the Attorney-General has access to all relevant information when determining whether to grant such authorisations, and whether to impose conditions on the authority under paragraph 31A(2)(b) of the TIA Act.
>
> Development and testing activities may only be authorised in writing by the Attorney-General, who must specify the duration of the authorisation, and may include conditions in the authorisation. Agencies must then report to the Attorney-General on the outcome of the development or testing activities, and on the destruction of information obtained under an authorisation.
>
> The use of powers under the TIA Act— including those powers that relate to section 31A authorisations—is subject to independent oversight, including by the Inspector-General of Intelligence and Security (Inspector

142 UN Human Rights Committee, *General Comment No. 29: States of Emergency (Article 4)* (2001) [14].

143 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 82-97.

144 The minister's response to the committee's inquiries was received on 27 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

General), who has broad powers to inspect and inquire into the legality, proportionality and propriety of intelligence agencies' conduct, and their compliance with human rights obligations. The Inspector-General is entitled to enter premises, and to have full and free access to information, documents and other property when conducting inspections, and possesses powers akin to those of a standing Royal Commission when conducting an inquiry (which may be initiated in response to a complaint or referral, or of the Inspector-General's own motion), including powers to require the production of information or documents, and to require persons to attend before the Inspector-General to answer questions relevant to the matter under inquiry—including under oath or affirmation.

In combination, these safeguards ensure that the Attorney-General has access to detailed information about the outcome of previous development or testing activities, as well as reporting and advice from oversight agencies on any issues or risks identified in relation to the exercise of powers for development and testing purposes when considering applications for testing and development authorisations.

The collection and use of information under a development and testing authorisation is also strictly controlled, to ensure that the exercise of powers under such authorisations is limited to that which is necessary to achieve the legitimate objective of developing and testing technologies and interception capabilities that will be used to protect national security and public safety. Communications can only be intercepted or accessed for the purposes of developing or testing technologies or interception capabilities. Security authorities cannot access or use communications for investigative or intelligence purposes. Information obtained in the course of developing or testing technologies or interception capabilities must then be destroyed as soon as is practicable, once it is no longer required for development and testing. Sections 7, 63, 105, 108 and 133 establish offences for the collection, use, communication or recording of such information without authority.

The aforementioned safeguards, strict controls on the use and disclosure of information obtained under a development and testing authorisation, and avenues for independent oversight and review ensure that any limitations to the right to privacy are proportionate and justified to the objective being sought.

(b) whether a person whose communications, including stored communications, were intercepted under an interception authorisation, will be made aware of that

A person whose communications were intercepted or accessed under a section 31A authorisation would not be made aware of this. There is a legitimate need to keep information about the development and testing activities undertaken by security authorities secret, to protect security authorities' capabilities and methodologies. Disclosing information

concerning access to a person's communications would invariably reveal information about the nature of interception capabilities or technologies that are being developed or tested. Disclosing such information would be likely to provide sophisticated adversaries with insights into these capabilities and technologies, as well as opportunities to adjust their behaviours and own capabilities to avoid detection and investigation. Disclosing such information would also risk inhibiting the ability of security agencies to stay ahead of advances in technology and maintain their current interception capabilities.

(c) if not, how such a person would effectively access a remedy for any violation of their right to privacy

As the Committee notes at paragraph [1.216] of its report, effective access to a remedy 'may take a variety of forms, such as prosecution of suspected perpetrators or compensation to victims'. Both of these forms of effective remedy are available in respect of testing and development authorisations.

As noted above, the Inspector-General has oversight of the activities of intelligence agencies. When reporting on the outcome of an inquiry, paragraph 22(2)(b) of the *Inspector-General of Intelligence and Security Act 1986*, provides that the Inspector-General may recommend compensation for a person who has been adversely affected by a Commonwealth agency. This power was included in the Inspector-General's framework at the recommendation on the Royal Commission on Australia's Security and Intelligence Agencies (the Second Hope Royal Commission) for a variety of purposes, including in recognition of the fact that a person may not know that an agency has acted in a particular way—in such circumstances, the Inspector-General's inspection, inquiry and reporting functions enable it to identify, inquire into and make appropriate recommendations about any potential unlawful or improper conduct of an intelligence agency, including recommendations for remedial action or compensation.

Part 2-10 and Part 3-7 of the TIA Act establish a civil remedies framework, allowing a person to seek remedial relief in respect of any unlawful interception of or access to their communications. The application may be made to the Federal Court of Australia or a court of a State or Territory, and the Court has a broad discretion to make any such orders as the Court considers appropriate. This could include a declaration that the conduct was unlawful, an injunction or damages to the aggrieved person including punitive damages.

As also noted above, the TIA Act contains offences for unlawful interception of, or access to, communications, and for the unlawful use, communication or recording of such communications. These offences are punishable by a maximum penalty of two years' imprisonment. Contraventions of the Act are able to be identified by internal agency compliance teams, as well as by independent oversight agencies, as outlined above.

Concluding comments

International human rights legal advice

2.200 The minister advised that a number of safeguards exist in the TIA Act to ensure that the interception of stored communications is limited and used specifically for the purpose of development and testing of interception capabilities. Further, the minister advised that the use of powers under the TIA Act is subject to independent oversight, including by the Inspector-General of Intelligence and Security (IGIS), who has broad powers to inspect and inquire into the legality, proportionality and propriety of intelligence agencies' conduct and their compliance with human rights obligations. The minister also advised that the collection and use of information under a development and testing authorisation is strictly controlled to ensure that the exercise of powers under such authorisations is limited to that which is necessary to achieve the legitimate objective of developing and testing technologies and interception capabilities that will be used to protect national security and public safety.

2.201 The oversight of the IGIS is an important safeguard and assists with the proportionality of the measure. However, as no foundational human rights assessment of the TIA Act has been undertaken, it remains difficult to fully assess the impact of this measure on the right to privacy and the sufficiency of the safeguards provided in Part 2–4 or the use and disclosure provisions in Part 2–6 of the TIA Act.

2.202 As to whether a person whose communications were intercepted would be made aware of that, the minister advised that they would not be, as disclosing this information would reveal information about the nature of interception capabilities or technologies that are being developed or tested. The minister advised this would risk inhibiting the ability of security agencies to stay ahead of advances in technology and maintain their current interception capabilities.

2.203 In relation to whether such a person could effectively access a remedy for any violation of their right to privacy, the minister advised that paragraph 22(2)(b) of the *Inspector-General of Intelligence and Security Act 1986* provides that the IGIS may recommend compensation for a person who has been adversely affected by a Commonwealth agency. While this provision may provide a remedy, a recommendation for compensation by the IGIS does not require that compensation be paid.[145] Whether a person has access to an effective remedy would therefore depend on whether the IGIS exercised their discretion to recommend compensation and whether compensation was paid in response to a recommendation. The minister further advised that Part 2-10 and Part 3-7 of the TIA Act establish a civil remedies framework, allowing a person to seek remedial relief in respect of any unlawful interception of or access to their communications. However, these provisions rely on an individual knowing that there has been an interception of their communications or access to their stored communications. As advised by the minister, individuals would

145 *Inspector-General of Intelligence and Security Act 1986*, section 24.

not be made aware of any interception of their communications. The United Nations (UN) High Commissioner for Human Rights has observed that 'victims' lack of knowledge or proof of undue interference [with their right to privacy] is a frequent obstacle to access to remedies'.[146] In the context of surveillance and interception measures, the UN High Commissioner for Human Rights has stated:

> Recognizing that advance or concurrent notification might jeopardize the effectiveness of legitimate surveillance measures, individuals should nevertheless be notified once surveillance has been completed…If that is not possible, the law should generously grant standing to those who may theoretically have been affected by those measures.[147]

2.204 In the absence of any notification process, the civil remedies framework does not appear to provide individuals with a remedy that would be effective in practice.

2.205 Further, these provisions would apply to *lawful* interception or access that nevertheless violated an individual's right to privacy. While interception may be lawful under domestic law, it may nonetheless amount to a violation of the right to privacy under international human rights law. It therefore appears unlikely in practice that an individual would have access to an effective remedy for any violation of the right to privacy.

Committee view

2.206 The committee thanks the minister for this response.

2.207 The committee notes that by expanding the power of an agency to access stored communications, rather than just live communications, under authorisations for developing and testing interception capabilities in the *Telecommunications (Interception and Access) Act 1979* (TIA Act), this measure engages and limits the right to privacy. The committee notes that the measure seeks to achieve a legitimate objective of national security and is likely rationally connected to that objective. The committee notes the minister's advice that the measure is accompanied by numerous safeguards, including independent oversight by the Inspector-General of Intelligence and Security over the use of powers under the TIA. The committee considers that the measure is accompanied by useful safeguards, however, notes that it is difficult to fully assess the sufficiency of these safeguards and the impact of this measure on the right to privacy without a foundational human rights assessment of the TIA Act.

2.208 The committee further notes that if an individual's right to privacy was violated under an interception authorisation, an individual has the right to an effective remedy. The committee considers that while there are some mechanisms for compensation in both the TIA Act and the *Inspector-General of Intelligence and Security Act 1986*, these

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146 UN High Commissioner for Human Rights, *The right to privacy in the digital age*, A/HRC/39/29 (2018) [54].

147 UN High Commissioner for Human Rights, *The right to privacy in the digital age*, A/HRC/39/29 (2018) [54].

mechanisms do not appear likely to constitute an effective remedy in practice, as the individual would not be made aware of the interception and would therefore be unlikely to seek remedial relief, and the IGIS's power to recommend compensation for an individual is discretionary and does not have to be actioned.

2.209 As the bill has now passed, the committee makes no further comment in relation to this measure.

Sharing personal telecommunications data under International Production Orders

2.210 The International Production Orders (IPO) framework in Schedule 1 of the TIA Act enables Australian law enforcement and national security agencies to obtain an IPO to allow them to seek content or data from a foreign communications service provider (for example, Verizon or Vodafone), where Australia has a designated international agreement with the foreign country. Currently, an agreement exists between Australia and the United States (US); the AUS-US CLOUD Act Agreement.[148] This means that Australian law enforcement and national security agencies can ask communications service providers in the US to provide content or data to investigate or prosecute serious offences in Australia, and allows US law enforcement and security agencies to similarly request access to content or data held by Australian-based communication service providers to investigate or prosecute crimes in the US.

2.211 The bill amends Schedule 1 of the TIA Act to replace the term 'intercepting' with 'accessing' in relation to IPOs.[149] The effect of this is to broaden when an IPO may be issued—an eligible judge or nominated administrative review tribunal member must consider the agency's 'access' to communications, messages, voice calls or video calls in relation to IPOs, rather than the technical method by which the information is captured, stored or retrieved.[150]

2.212 The bill also provides that, in relation to B-party IPOs, interception must be 'as permitted under an international production order',[151] rather than the current definition of 'intercept' in the TIA Act.[152] B-party IPOs are IPOs aimed at services used by a person other than the target (for example, an associate of a person of interest). As 'intercept' is currently defined to mean record, or live stream to a single destination, by amending the definition of interception to mean 'as permitted under an international production order', interception is able to include stored

148 Telecommunications (Interception and Access) Amendment (International Production Orders) Regulations 2022.

149 Schedule 4, items 1, 2, 4, 10 and 11.

150 Explanatory memorandum, p. 17.

151 Schedule 4, items 3, 4, 7, 8 and 12.

152 *Telecommunications (Interception and Access) Act 1979*, Schedule 1, section 2.

communications. The effect of this is that an eligible judge or nominated administrative review tribunal member must consider whether the agency could receive information on the target by means of a provider complying with an interception IPO by providing a copy of stored communications of a person other than the target, not just 'recording' or 'live streaming' those messages, voice calls or video calls.[153]

2.213 The bill further provides that if a prescribed communications provider is directed to intercept communications, messages, voice calls or video calls, they can do so by copying stored communications that consist of communications, messages, voice calls or video calls.[154]

Summary of initial assessment

Preliminary international human rights legal advice

Right to privacy

2.214 By broadening the scope of when a target's information can be intercepted through an interception IPO, and by providing for prescribed communications providers to copy stored communications (rather than only intercepting live communications), this measure engages and limits the right to privacy.

2.215 The right to privacy includes respect for informational privacy, including the right to respect for private and confidential information, particularly the storing, use and sharing of such information.[155] It also includes the right to control the dissemination of information about one's private life. The right to privacy 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.

Right to an effective remedy

2.216 Were an individual's right to privacy violated under an interception authorisation, this may engage the right to an effective remedy. The right to an effective remedy requires states parties to ensure access to an effective remedy for violations of human rights.[156] This may take a variety of forms, such as prosecutions of suspected perpetrators or compensation to victims of abuse. While limitations may be placed in particular circumstances on the nature of the remedy provided (judicial or

153 Explanatory memorandum, p. 18.

154 Schedule 4, items 5, 9 and 14.

155 International Covenant on Civil and Political Rights, article 17.

156 International Covenant on Civil and Political Rights, article 2(3).

otherwise), states parties must comply with the fundamental obligation to provide a remedy that is effective.[157]

2.217 United Nations (UN) bodies and the European Court of Human Rights have provided specific guidance as to what constitutes an effective remedy where personal information is being collected in the context of covert surveillance activities. The UN High Commissioner for Human Rights has explained that in the context of violations of privacy through digital surveillance, effective remedies may take a variety of judicial, legislative or administrative forms, but those remedies must be known and accessible to anyone with an arguable claim that their rights have been violated.[158] The European Court of Human Rights has also stated that if an individual is not subsequently notified of surveillance measures which have been used against them, there is 'little scope for recourse to the courts by the individual concerned unless the latter is advised of the measures taken without his knowledge and thus able to challenge their legality retrospectively'.[159] The court acknowledged that, in some instances, notification may not be feasible where it would jeopardize long-term surveillance activities.[160] However, it explained that '[a]s soon as notification can be carried out without jeopardising the purpose of the restriction after the termination of the surveillance measure, information should, however, be provided to the persons concerned'.[161]

Right to life

2.218 The TIA Act provides that an agreement with a foreign government cannot be specified as a designated agreement unless the minister has received a written assurance from the foreign government relating to the use or non-use of Australian sourced information in connection with any proceeding by way of a prosecution for a death penalty offence.[162]

2.219 However, by providing that communications data can be shared with a foreign country where there is a designated agreement to investigate or prosecute an offence and where that country has the death penalty, this measure engages and may limit

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157 UN Human Rights Committee, G*eneral Comment No. 29: States of Emergency (Article 4)* (2001) [14].

158 UN Human Rights Council, *Report of the Office of the United Nations High Commissioner for Human Rights on the right to privacy in the digital age*, A/HRC/27/37 (2014) [40].

159 *Roman Zakharov v Russia*, European Court of Human Rights (Grand Chamber), Application No. 47143/06 (2015) [234]. See also, *Klass and Others v Germany*, European Court of Human Rights (Plenary Court). Application No. 5029/71 (1978) [57].

160 *Roman Zakharov v Russia*, European Court of Human Rights (Grand Chamber), Application No. 47143/06 (2015) [287].

161 *Roman Zakharov v Russia*, European Court of Human Rights (Grand Chamber), Application No. 47143/06 (2015) [287]. See also, *Klass and Others v Germany*, European Court of Human Rights (Plenary Court). Application No. 5029/71 (1978) [58].

162 *Telecommunications (Interception and Access) Act 1979*, Schedule 1, section 3.

the right to life.[163] As noted, an agreement exists between Australia and the US, a country which has the death penalty.

2.220 The right to life imposes an obligation on Australia to protect people from being killed by others or from identified risks. While the International Covenant on Civil and Political Rights does not completely prohibit the imposition of the death penalty, international law prohibits States which have abolished the death penalty (such as Australia) from exposing a person to the death penalty in another state.[164] The provision of information or assistance in the investigation of crimes that may lead to the imposition of the death penalty in another state is also prohibited.[165] In 2009, the UN Human Rights Committee stated its concern that Australia lacks 'a comprehensive prohibition on the providing of international police assistance for the investigation of crimes that may lead to the imposition of the death penalty in another state', and concluded that Australia should take steps to ensure it 'does not provide assistance in the investigation of crimes that may result in the imposition of the death penalty in another State'.[166]

Committee's initial view

2.221 The committee noted that the International Production Orders (IPO) framework in Schedule 1 of the *Telecommunications (Interception and Access) Act 1979* enables Australian law enforcement and national security agencies to obtain an IPO to allow them to seek content or data from a foreign communications service provider, where Australia has a designated international agreement with the foreign country. The committee noted that currently only one agreement exists, between Australia and the United States (the AUS-US CLOUD Act Agreement).

2.222 The committee noted that by broadening the scope of private telecommunications data that can be intercepted through an interception IPO, and by providing for prescribed communications providers to copy stored communications, this measure engages and limits the right to privacy. Were an individual's right to privacy violated under an interception authorisation, this may engage the right to an effective remedy. The committee further noted that where information is shared with a foreign country where that country has the death penalty, as is the case with the United States, this measure may engage and limit the right to life.

2.223 The committee noted that it has previously raised concerns regarding the compatibility of the IPO framework with the rights to privacy and an effective remedy, and the right to life. In relation to the right to privacy, the committee previously

163 International Covenant on Civil and Political Rights, article 6.

164 Second Optional Protocol to the International Covenant on Civil and Political Rights.

165 UN Human Rights Committee, *Concluding observations on the fifth periodic report of Australia*, CCPR/C/AUS/CO/5 (2009) [20].

166 UN Human Rights Committee, *Concluding observations on the fifth periodic report of Australia*, CCPR/C/AUS/CO/5 (2009) [20].

concluded that the IPO framework is not sufficiently circumscribed and does not contain sufficient safeguards to ensure the measures do not arbitrarily limit the right.[167] In relation to the right to life, the committee previously noted that there is nothing in the framework that would prohibit mutual assistance where it may lead to the imposition of the death penalty and as such the framework would be incompatible with Australia's right to life obligations.[168] The committee made recommendations to assist with the compatibility of the framework with the rights to privacy and life.[169] The committee noted that the explanatory materials to the current bill do not refer to the committee's previous comments or recommendations in relation to the IPO framework.

2.224 The committee considered further information was required to assess the compatibility of this measure with these rights, and as such sought the minister's advice.

2.225 The full initial analysis is set out in *Report 5 of 2025*.[170]

Minister's response[171]

2.226 The minister advised:

> **Sharing personal telecommunications data under International Production Orders**
>
> **(a) why is it considered necessary to enable more IPOs to be made and for prescribed communications providers to share stored communications data**

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167 Parliamentary Joint Committee on Human Rights, *Report 7 of 2020* (17 June 2020) pp. 114-115.

168 Parliamentary Joint Committee on Human Rights, *Report 7 of 2020* (17 June 2020) p. 123 and *Report 2 of 2022* (25 March 2022) p. 64.

169 The committee previously recommended that it may be more likely to be compatible with the right to privacy if: a mechanism is established for independent experts (such as a Public Interest Monitor) to appear at the hearing for an IPO in all jurisdictions; the role of AAT members in issuing IPOs is removed or at least restricted to senior members; all IPOs issued are required to have regard to whether this method of surveillance would likely have the least interference with any person's privacy; and some of the exceptions to the prohibition on the use, recording and disclosure of protected information obtained pursuant to an IPO were removed. In relation to the right to life, the committee recommended that information only be provided to a foreign government where an assurance has been received that the information will not be used in relation to proceedings for an offence which may be punishable by the death penalty, or may only be used in circumstances where such a penalty will not be sought. See Parliamentary Joint Committee on Human Rights, *Report 7 of 2020* (17 June 2020) pp. 114-115 and 123; and *Report 2 of 2022* (25 March 2022) p. 64.

170 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 82-97.

171 The minister's response to the committee's inquiries was received on 27 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

The TOLA Bill does not 'broaden the scope of private telecommunications data that can be intercepted through an interception IPO'. The amendment does not entail a widening of the circumstances where an IPO can be sought, the types of data which can fall within such an order, or the providers which can be targeted by such an order. Rather, the amendment relates to the acts which can be done by a provider to comply with an **interception** IPO—that is, allowing a prescribed communications provider to produce prospective content data by sending it to agencies intermittently throughout the relevant period rather than 'live'.

The amendment addresses a technologically-specific assumption in the framework—being that prescribed communications providers would comply with an interception IPO by creating a 'livestream' of data—that could result in a provider being unable to lawfully comply with an interception IPO. The amendment does not alter the scope of the information that the provider would be required to deliver, in accordance with such an IPO.

Consequential amendments have been made to make clear that an issuing person needs to consider the appropriateness of 'accessing' the communications, rather than 'intercepting' them, to ensure that the focus on interference on privacy is on law enforcement having access to the communications at all, rather than having access to them by means of a 'livestream'.

The amendment gives effect to the original intent of the legislation which was to allow agencies access to prospective content data through the IPO framework, in circumstances where this is appropriate.

(b) how many IPOs have been issued since the framework was introduced

126 stored communications and telecommunications data IPOs have been sent to US providers as at 3 October 2025. Zero interception IPOs have been issued or sent to US providers, due to the legal risk associated with a provider's ability to lawfully comply with such orders.

The number of IPOs that are actually sent to US providers may differ from the number of IPOs issued by issuing authorities where, for example, the IPO is cancelled before it is sent to the provider following review by the Australian Designated Authority in the Attorney-General's Department (for example, because the IPO does not comply with a requirement of the Australia-US Data Access Agreement) or revoked by the relevant agency prior to being sent to the provider (for example, because the grounds on which the IPO was issued have ceased to exist). The number of occasions on which IPOs are cancelled or revoked is typically small, and will be detailed in the TIA Act Annual Report.

(c) how does this measure affect the role of Public Interest Monitors in relation to IPO requests

This measure makes no changes to the role of Public Interest Monitors in relation to IPO requests.

(d) what safeguards exist to protect individuals subject to an IPO against arbitrary interference with their right to privacy, particularly in relation to oversight and review

IPOs are subject to robust oversight to ensure that the interference with a person's privacy is not arbitrary. These safeguards are:

- Agencies are only able to use the framework when the Australian Designated Authority has independently assessed they have adequate procedures to ensure compliance with the mandated safeguards in the Australia-US Data Access Agreement, including:
    - the requirement that the communications are relevant to the prevention, detection, investigation, or prosecution of a Covered Offence;
    - that data obtained subject to an IPO is segregated and sealed to only be accessed by staff trained in the requirements of the Australia-US Data Access Agreement; and
    - only data which has been assessed by the agency as relevant to the prevention, detection, investigation, or prosecution of a Covered Offence (or relevant to understand the context of relevant information), or necessary to protect against a threat of death or serious bodily harm to any person is disseminated outside of that secure environment.
- In the case of law enforcement agencies, the issuing authority is required to consider a range of factors relating to the likely privacy impact and proportionality of the proposed exercise of powers, including:
    - subparagraph 30(5)(a)(i) and (b)(i) which requires consideration of how much the privacy of any person or persons would be likely to be interfered with by intercepting, under an international production order, communications that are being carried by those services
    - subparagraph 30(5)(a)(iv) and (b)(iv) which requires consideration of to what extent methods of investigating the serious category 2 offence or serious category 2 offences that do not involve so intercepting communications have been used by, or are available to, the interception agency.
- In the case of the Australian Security Intelligence Organisation (ASIO), the issuing authority is required to consider the availability of less intrusive methods of obtaining intelligence, and the *Guidelines to be observed by the Australian Security Intelligence Organisation in the performance of its functions and the exercise of*

its powers, made under section 8A of the *Australian Security Intelligence Organisation Act 1979* (ASIO Act), contain proportionality requirements that apply to the exercise of all powers by ASIO, including IPOs. These requirements include that:

- Any means used for obtaining and analysing information must be appropriate and proportionate to the gravity of the threat posed and the likelihood of its occurrence, including by having regard to potential impacts on other parties
- Inquiries and investigations into individuals and groups must be undertaken using as little intrusion into the privacy of affected individuals as is reasonably required, consistent with the performance of ASIO's functions, and
- Where possible, the least intrusive techniques or methods for collection information should be used before more intrusive techniques or methods.

- The Australian Designated Authority is independently satisfied the order has been sought to assist the prevention, detection, investigation, or prosecution of a Covered Offence, was issued in compliance with Australia's domestic law, and otherwise complies with the Australia-US Data Access Agreement;
- The agency is only able to disseminate data outside of its secure environment which is relevant to the prevention, detection, investigation, or prosecution of a Covered Offence, avoiding disseminations of irrelevant personal information which may have been inadvertently collected; and
- Agencies' use of the Australia-US Data Access Agreement and the Schedule is independently inspected by the Commonwealth Ombudsman or IGIS, in the case of ASIO, for compliance with the Schedule, and by the Australian Designated Authority, for compliance with the Agreement. In the case of ASIO, the IGIS's inspections also cover compliance with the *Guidelines*.
  - The Australian Designated Authority is in turn subject to inspection by the Commonwealth Ombudsman.
- Agencies are under an ongoing obligation to destroy contents of communications where an agency is satisfied they are not required for a purpose outlined in clauses 153, 157 or 158 of the Schedule (Clause 140).

(e) how the measure is compatible with the right to life in relation to agreements with states that have the death penalty

This measure has no impact on IPOs sent to Australian Providers under the Australia-US Data Access Agreement, the relevant provisions for which are solely contained in Part 13 of Schedule 1 to the Act. Accordingly, the

measure in no way alters the existing, robust safeguards in relation to death penalty matters in the Australia-US Data Access Agreement and the Schedule.

The TIA Act requires that the Australian Government cannot ratify an agreement with a foreign government that has death penalty offences unless the foreign government has provided written assurance relating to the use or non-use of Australian-sourced information obtained by virtue of the Agreement, in connection with any proceeding by way of a prosecution for a death penalty offence in the foreign country.

The US Government has provided such assurances, which are contained in an exchange of letters, which are publicly available on the Department's website. These letters detail that the US Government undertakes that in the event "that authorities in the US receive such data and intend to introduce such data as evidence in the prosecution's case for an offence for which the death penalty is sought, the Designated Authority of the United States is required to obtain permission from the Designated Authority of Australia prior to any use of the data in a manner that is or could be contrary to those essential interests, as described in Article 9(4)."

In accordance with Australia's longstanding opposition to the death penalty in all circumstances and in relation to all people, any such requests would be considered consistently with longstanding international crime cooperation practice with retentionist countries to require a credible diplomatic assurance which, at a minimum, assures Australian authorities that:

- the death penalty will not be sought or imposed in the matter, and
- if the death penalty is imposed in the matter, it will not be carried out.

As detailed by the Attorney-General's Department in its joint submission with the Australian Federal Police in response to the *2024 Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Australia's efforts to advocate for the worldwide abolition of the death penalty*, in the context of extradition, 'the use of death penalty diplomatic assurances is a well-established and commonly accepted practice in international extradition. A breach of a diplomatic assurance would have serious consequences for both Australia's extradition relationship and broader bilateral relationship with the relevant foreign country' … and 'no breaches of death penalty diplomatic assurances have been recorded to date.' The same principles apply in relation to the IPO framework.

As at 7 October 2025, the Australian Designated Authority has not received any such requests for consent to use Agreement data in a US prosecution which implicates the death penalty essential interest.

(f) why previous Parliamentary Joint Committee on Human Rights recommendations have not been implemented in relation to the right to privacy and the right to life;

The Parliamentary Joint Committee on Human Rights recommended that consideration be given to amending the Telecommunications Legislation Amendment (International Production Orders) Bill 2020, which introduced the IPO regime, to:

- establish a mechanism to provide for an independent expert (such as a Public Interest Monitor) to appear at the hearing for an IPO in all jurisdictions, for both the interception of communications and stored communication data, to test the content and sufficiency of the information relied on, to question any person giving information, and to make submissions as to the appropriateness of granting the application
- limit the issuing of IPOs to a role performed by senior members of the Administrative Appeals Tribunal (AAT)
- require that when determining whether to issue an IPO, it is necessary to consider how much the privacy of the person would be likely to be interfered with by issuing the order
- refine the exceptions to the prohibition on the use, recording and disclosure of protected information obtained pursuant to an IPO, including removing some of the exceptions and expanding the IGIS and Ombudsman's ability to use protected information to perform their functions and duties
- provide that information may only be provided to a foreign government where an assurance has been received that the information will not be used in relation to proceedings for an offence which may be punishable by the death penalty, or may only be used in circumstances where such a penalty will not be sought.[172]

Parliament passed the Telecommunications Legislation Amendment (International Production Orders) Act 2020, notwithstanding the above recommendations.

The then-Minister for Home Affairs, the Hon Peter Dutton MP, addressed the comments raised by the Parliamentary Joint Committee on Human Rights in his response to Report 7 of 2020. A further response to these recommendations is set out, below.

Establish a mechanism for independent experts to test the content and sufficiency of the information relied on in the application

[172] Parliamentary Joint Committee on Human Rights, *Report 7 of 2020* (17 June 2020) pp. 114-115 and 123.

The IPO framework facilitates the role of Public Interest Monitors (PIMs) in jurisdictions that have established such offices (Victoria and Queensland). There is also scope in the IPO framework to accommodate similar oversight bodies in other jurisdictions, should they be established in the future.

The TOLA Bill makes targeted, technical amendments to the IPO regime to ensure that it operates in the manner intended and it is not the appropriate vehicle for considering the development of a Commonwealth PIM. The question of whether to establish such a role would appropriately be considered in relation to the electronic surveillance framework as a whole, rather than in relation to the IPO framework.

The Australian Government is progressing comprehensive reforms to the electronic surveillance framework, which involves holistic consideration of the safeguards that apply to electronic surveillance powers, including issuing arrangements and procedures for electronic surveillance warrants and IPOs.

Limit the role of issuing authority to senior members of the Administrative Review Tribunal (ART), formerly the Administrative Appeals Tribunal (AAT)

It is appropriate that nominated members of the ART be able to issue IPOs under Schedule 1 of the TIA Act.

A member of the ART is only eligible to be nominated by the Attorney-General if they are currently enrolled as a legal practitioner of a federal court or of the Supreme Court of a State or a Territory and have been so enrolled for at least 5 years.

Members of the ART are appointed through merit-based selection processes, and are responsible for independently reviewing Governmental decisions. Legally-qualified, nominated members of the ART are experienced in scrutinising the merits of complex Government decisions, are appointed for fixed terms, and are statutorily independent.

The Australian Government is progressing comprehensive reforms to the electronic surveillance framework, which involves holistic consideration of the safeguards that apply to electronic surveillance powers, including issuing arrangements and procedures for electronic surveillance warrants and IPOs. Any consideration of who should issue warrants would appropriately be considered as part of this process, to ensure consistency across the framework.

Require issuing authorities to consider the likely interference on a person's privacy before issuing the order

The issuing criteria already ensure that issuing authorities conduct a thorough assessment of the privacy impacts before issuing an order.

- For IPOs in relation to enforcement of the criminal law, the issuing authority must consider 'how much the privacy of any person may be interfered with' (see subclause 30(5) of Schedule 1 to the TIA Act

for interception IPOs, subclauses 39(3) for IPOs relating to stored communications and subclause 48(5) for IPOs relating to telecommunications data).

- For IPOs in relation to Part 5.3 supervisory orders, the issuing authority must consider 'how much the privacy of any person would be likely to be interfered with' (see subclause 60(5) for interception IPOs, subclauses 69(3) for IPOs relating to stored communications and subclause 78(5) for IPOs relating to telecommunications data).
- For IPOs for national security, the issuing authority must consider whether there are less intrusive methods for carrying out the functions (see subclause 89(5) for interception IPOs, subclauses 98(3) for IPOs relating to stored communications and subclause 107(5) for IPOs relating to telecommunications data). In addition, as noted above, the *Guidelines to be observed by the Australian Security Intelligence Organisation in the performance of its functions and the exercise of its powers*, issued under section 8A of the ASIO Act, provide that information must be collected in accordance with the following principles:
    - any means used for obtaining and analysing information must be appropriate and proportionate to the gravity of the threat posed and the likelihood of its occurrence, including by having regard to potential impacts on other parties inquiries and investigations into individuals and groups must be undertaken using as little intrusion into individual privacy as possible, consistent with the performance of ASIO's functions, and
    - wherever possible, the least intrusive technique or method for collecting information should be used, and their intrusiveness must be considered in determining approval levels for their use (more intrusive methods must generally require a higher level of approval).

As the Department noted in its submission to the comments raised by the Parliamentary Joint Committee on Human Rights in their response to Report 7 of 2020, 'these considerations ensure that the decision maker conducts a thorough assessment of the privacy impacts of the order, and that actions taken under the international production … are proportionate to the relevant conduct'.

The Department also notes the amendments in this Bill only relate to interception IPOs. Any changes to the issuing criteria would appropriately be considered as part of broader electronic surveillance reforms, and would appropriately be undertaken in consultation with the US Government to ensure continued compliance with the Australia-United States Data Access Agreement.

Refine the exceptions to the prohibition on the use, recording and disclosure of protected information obtained pursuant to an IPO

Remove some of the exceptions

As noted in the Department's previous response, Part 11 of Schedule 1 to the TIA Act contains a strict prohibition on the use, disclosure and recording of protected information obtained pursuant to an IPO (punishable by a term of imprisonment of up to two years), subject to limited exceptions.[173] All of these limited exceptions are appropriate and proportionate, and serve a legitimate objective. Broadly, these situations:

- enable agencies to use, disclose and record the information where necessary to investigate or prosecute serious criminal offences, such as outlined in subclause 153(1)(a) – thereby serving the legitimate objective of protecting national security and public safety;
- enable the disclosure of information to foreign countries, the International Criminal Court and international war crimes tribunals under relevant international crime cooperation frameworks, such as subclauses 153(5)-(7) – thereby supporting the objectives of protecting national security and public safety;
- enable the use, recording, disclosure or admittance into evidence of stored communications and telecommunications data (but not interception IPOs) for a proceeding for recovery of a pecuniary penalty, or for the protection of the public revenue, such as paragraphs 158(f) and 159(1)(e) – thereby serving the legitimate interests of protecting community from suspected criminal conduct, misconduct and anti-competitive behaviour, such as making a contract or arrangement containing a cartel provision, which attracts a penalty of up to $2.5 million; and
- enable appropriate records to be kept, and oversight bodies and Ministers to access the information required to provide oversight of agencies' use of the powers and their compliance with legislative requirements (for example, paragraphs 153(1)(o) and 153(1)(p)) – thereby support accountability and transparency by supporting oversight mechanisms.

The amendments in this Bill are technical in nature and only relate to interception IPOs, whereas a number of the above exceptions (including those relating to the recovery of a pecuniary penalty, or the protection of the public revenue) do not apply to interception IPOs. Any consideration of simplifying and streamlining the use and disclosure provisions would appropriately be considered holistically across the entire electronic

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173 Parliamentary Joint Committee on Human Rights, *Response to Parliamentary Joint Committee on Human Rights report into the Telecommunications Legislation Amendment (International Production Orders) Bill 2020*, p 9.

surveillance framework, through the electronic surveillance reform process, to ensure consistency.

Broaden the exceptions allowing the information to be used by the Ombudsman and the IGIS

The former Committee also recommended that use and disclosure provisions relating to Ombudsman and Inspector-General officials should be broadened to allow them to use and disclosure protected information when exercising powers under Acts other than the *Ombudsman Act 1976* and the *Inspector-General of Intelligence and Security Act 1986,* and raised concerns about these officials bearing the evidential burden.

Parliamentary Amendments 451 and 452 were moved to Telecommunications Legislation Amendment (International Production Orders) Bill 2020 on 23 June 2021 to broaden the exceptions to subclauses 153(1)(p)-(q) so that they permitted Inspector-General and Ombudsman officials to use protected information for the purpose of the performance of a function or duty, or the exercise of a power, under any Act. This includes exercising powers under the ASIO Act, *Freedom of Information Act 1982*, and the *Public Interest Disclosure Act 2013*. The Supplementary Explanatory Memorandum noted that 'the new paragraph does not require that the function, duty or power be performed or exercised under the *Inspector-General of Intelligence and Security Act 1986*…or the *Ombudsman Act 1976*'.[174]

Further, section 34C of the *Inspector-General of Intelligence and Security Act 1986* provides that an Inspector-General official does not bear an evidential burden in relation to the disclosure, recording or use of information in connection with the official. This provision covers the field in terms of secrecy offences and reverses the default position under section 13.3 of the Criminal Code.

Provide that information may only be provided to a foreign government where an assurance has been received that the information will not be used in relation to proceedings for an offence which may be punishable by the death penalty, or may only be used in circumstances where such a penalty will not be sought

The Department notes its response to question (e) above relating to the measure's compatibility with the right to life in relation to agreements with states that have the death penalty. As previously mentioned, this measure has no impact on IPOs sent to Australian Providers under the Agreement and in no way alters the existing, robust safeguards in relation to death

174 Commonwealth, *Supplementary Explanatory Memorandum to the* Telecommunications Legislation Amendment (International Production Orders) Bill 2020 - Schedule of the Amendments made by the House of Representatives, 37-38.

penalty matter in the Australia-United States Data Access Agreement and the Schedule.

Clause 3 of Schedule 1 of the TIA Act prohibits the Australian Government from ratifying an international agreement in connection with the International Production Order Framework with a foreign government that has death penalty offences, unless the foreign government has provided written assurance relating to the use or non-use of Australian sourced information obtained by virtue of the Agreement, in connection with any proceeding by way of a prosecution for a death penalty offence in the foreign country.

Any request from a retentionist foreign country to share information originally obtained under an IPO would be considered in accordance with these same principles, and where received in the form of a mutual assistance request, would be subject to the safeguards on the death penalty in the *Mutual Assistance in Criminal Matters 1987* (Cth).

(g) what remedies are available to individuals whose human rights have been violated.

As outlined above in response to question (c) for Schedule 3, Part 2-10 and Part 3-7 of the TIA Act contain a detailed civil remedies framework, allowing a person to seek remedial relief in respect of any unlawful interception of their communications or unlawful access to their stored communications that occurs within Australia's jurisdiction. Oversight bodies may also recommend that compensation be provided, where a person has been adversely affected by the conduct of an agency. Such compensation may be provided on an *ex gratia* basis, or sought through the abovementioned framework. Persons seeking compensation for unlawful interceptions or accessing of stored communication by a prescribed communication provider in the US would need to rely on the remedies available in the US.

Aggrieved persons may also seek judicial review of a decision to issue an IPO under subsection 39B(1) of the *Judiciary Act 1903*.

Further, where evidence gathered under an IPO is used in a prosecution, a defendant can challenge the order and the admissibility of evidence gathered under it on the basis that the evidence was improperly or illegally obtained.

Concluding comments

International human rights legal advice

2.227 The minister advised that the bill does not broaden the scope of data that can be intercepted, the circumstances where an IPO can be sought or the providers that can be targeted by such an order. The minister advised that the measure relates to the acts which can be done by a provider to comply with an interception IPO. The minister advised this gives effect to the original intent of the legislation which was to allow agencies access to prospective content data through the IPO framework where

appropriate. While this may have been the original intent of the legislation, it nevertheless appears in practice to broaden the scope of what can be accessed, as it includes copying stored communications rather than just recording or live streaming communications, and therefore has implications for the right to privacy.

2.228 As to why it is considered necessary for prescribed communications providers to share stored communications data (rather than just live data), it appears that providers may not have been able to comply with the interception IPO if they could only share a livestream of data. The minister advised that 126 stored communications and telecommunications data IPOs have been sent to US providers as of 3 October 2025 and zero interception IPOs have been issued or sent to US providers, due to the legal risk associated with a provider's ability to lawfully comply with such orders. This information is useful to understand the broader context in which these amendments have been made. As the IPO framework appeared to be preventing IPOs from being issued, the measure appears necessary in order to achieve the intent of the legislation and to pursue the legitimate objective of national security.

2.229 In relation to proportionality, the minister advised of various safeguards that exist. The minister advised that the issuing authority of IPOs is limited to nominated members of the Administrative Review Tribunal (ART), and to be eligible to be nominated they must currently be enrolled as a legal practitioner of a federal court or of the Supreme Court of a state or territory and have been so enrolled for at least five years. As noted in the initial analysis, the committee has previously raised concerns that enabling non-judicial officers to issue an IPO may be inadequate for the purposes of safeguarding the right to privacy, noting that judicial authorisation is considered to be 'best practice'[175] in authorising surveillance methods at international law.[176] The minister advised that any consideration of who should issue warrants would appropriately be considered as part of comprehensive reforms to the electronic surveillance framework.

2.230 The minister also advised that the IPO framework facilitates the role of Public Interest Monitors (who are independent lawyers who appear at a hearing of an IPO application) in jurisdictions that have established such offices and that this measure makes no changes to the role of Public Interest Monitors in relation to IPO requests. The minister advised that this bill is not the appropriate vehicle to consider the development of a Commonwealth Public Interest Monitor but that it may be considered in relation to comprehensive reforms to the electronic surveillance framework as a whole. As Public Interest Monitors are only currently available in Queensland and Victoria, in most jurisdictions there is no equivalent safeguard.

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175 See *Case of Big Brother Watch and Others v The United Kingdom*, European Court of Human Rights, Application Nos. 58170/13, 62322/14 and 24960/15 (13 September 2019) [320].

176 Parliamentary Joint Committee on Human Rights, *Report 7 of 2020* (17 June 2020) p. 107.

2.231 As to other safeguards, the minister advised that IPOs are subject to robust oversight and provided a list of safeguards including that:

- agencies can only use the IPO framework when the Australian Designated Authority (the Secretary of the Attorney-General's Department) has independently assessed they have adequate procedures in place to ensure compliance with the safeguards in the AUS-US CLOUD Act Agreement;
- in the case of law enforcement agencies, the issuing authority is required to consider a range of factors relating to the likely privacy impact, including the extent of privacy interference under an IPO and consideration of the extent to which methods of investigating the relevant offences that do not involve intercepting communications have been, or are available to be, used;
- in the case of the Australian Security Intelligence Organisation (ASIO), the issuing authority is required to consider the availability of less intrusive methods of obtaining intelligence and the *Guidelines to be observed by the Australian Security Intelligence Organisation in the performance of its functions and the exercise of its powers*;
- the Australian Designated Authority is independently satisfied the order has been sought to assist the prevention, detection, investigation, or prosecution of a relevant offence, was issued in compliance with Australia's domestic law, and otherwise complies with the AUS-US CLOUD Act Agreement;
- the agency is only able to disseminate data outside of its secure environment which is relevant to the prevention, detection, investigation, or prosecution of a relevant offence, avoiding disseminations of irrelevant personal information which may have been inadvertently collected;
- agencies are independently inspected by the Commonwealth Ombudsman or IGIS, in the case of ASIO, for compliance with the Schedule, and by the Australian Designated Authority, for compliance with the AUS-US CLOUD Act Agreement ; and
- agencies are under an ongoing obligation to destroy contents of communications where an agency is satisfied they are not required.

2.232 Many of these safeguards assist the proportionality of the measure by providing some oversight of the IPO framework, requiring consideration of the extent of any privacy impact, and requiring the content of communications to be destroyed where not required. However, while requiring the Australian Designated Authority to assess compliance with the IPO framework provides some oversight, this would not seem to be *independent* oversight as the Australian Designated Authority is part of the executive. As such, the safeguard value of this oversight is weakened. Further, these

safeguards only apply to agencies within Australia issuing an IPO. While the AUS-US CLOUD Act Agreement includes some safeguards to ensure that US orders do not arbitrarily interfere with the right to privacy, the committee has previously commented that much would depend on the exact laws that apply in the US to this data, and considered that it is not possible to conclude that designating the AUS-US CLOUD Act Agreement is compatible with the right to privacy.[177] The safeguards operating to ensure compliance with the AUS-US CLOUD Act Agreement may therefore not themselves be enough to protect against arbitrary interference with the right to privacy.

2.233 As to whether an individual whose privacy has been violated under an interception authorisation has access to an effective remedy, the minister advised that Part 2-10 and Part 3-7 of the TIA Act contain a detailed civil remedies framework which allows a person to seek remedial relief in respect of any unlawful interception or access of their communications within Australia's jurisdiction. The minister further advised that oversight bodies may also recommend that compensation be provided where a person has been adversely affected by the conduct of an agency. However, as noted above, a recommendation for compensation does not require that compensation be paid, and therefore whether a person has access to an effective remedy would depend on whether the IGIS exercised their discretion to recommend compensation and whether compensation was paid in response to a recommendation. In relation to Part 2-10 and Part 3-7 of the TIA Act, these provisions rely on an individual knowing that there has been an interception of their communications or access to their stored communications. However, the committee has previously been advised that persons subject to covert investigatory powers are not notified of the use of that power, unless there is a specific obligation to do so (for example, where they are being prosecuted for a related offence).[178] Further, these provisions would not seem to apply to lawful interception or access that nevertheless violated an individual's right to privacy under international human rights law. It is therefore not clear that an individual whose privacy has been violated would have access to an effective remedy in practice.

2.234 In relation to how the measure is compatible with the right to life, the minister advised that the measure does not alter the existing safeguards in relation to death penalty matters in the AUS-US CLOUD Act Agreement. The minister noted that the use of death penalty diplomatic assurances is a well-established and commonly accepted practice in international extradition, and a breach of such an assurance would have serious consequences for Australia's extradition relationship and broader relationship with the relevant foreign country, and that the same principles apply in relation to the IPO framework. The receipt of diplomatic assurances and the requirement to obtain

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177 Parliamentary Joint Committee on Human Rights, *Report 2 of 2022* (25 March 2022) p. 61.

178 Parliamentary Joint Committee on Human Rights, *Report 7 of 2020* (17 June 2020) pp. 115-117.

permission from the Australian Designated Authority prior to introducing data as evidence in the prosecution's case for an offence carrying the death penalty are important safeguards. In this regard, the UN Human Rights Committee has stated that:

> In cases involving allegations of risk to the life of the removed individual emanating from the authorities of the receiving State, the situation of the removed individual and the conditions in the receiving States need to be assessed, inter alia, based on the intent of the authorities of the receiving State, the pattern of conduct they have shown in similar cases, and the availability of credible and effective assurances about their intentions...When relying upon assurances from the receiving State of treatment upon removal, the removing State should put in place adequate mechanisms for ensuring compliance with the issued assurances from the moment of removal onwards.[179]

2.235 It is also relevant in considering proportionality to note the minister's advice that, as of 7 October 2025, the Australian Designated Authority has not received any requests for consent to use data under the AUS-US CLOUD Act Agreement in a US prosecution which implicates the death penalty.

2.236 Nevertheless, the committee's previous concerns remain relevant, that the use of such data to investigate a death penalty offence would not require Australian government permission (only if it was used as evidence in the case) and also that permission to use data as evidence in a death penalty case would rely solely on the discretion of the Australia government. Discretionary or administrative safeguards alone may not be sufficient for the purpose of a permissible limitation under international human rights law. This is because administrative and discretionary safeguards are less stringent than the protection of statutory processes. Similarly, while diplomatic assurances would impact diplomatic relationships with foreign countries and Australia's foreign policy more broadly, it would not necessarily provide protection for an individual's human rights depending on the context, and is not as stringent as legislative safeguards. It is also not clear whether there are adequate mechanisms in place for ensuring compliance with the issued assurances, as recommended by the UN Human Rights Committee.

2.237 In relation to the consideration of previous committee recommendations regarding the right to privacy and the right to life, the minister provided a detailed response to specific recommendations and advised that the government is progressing comprehensive reforms to the electronic surveillance framework, which involves holistic consideration of the safeguards that apply to electronic surveillance powers, including issuing arrangements and procedures for electronic surveillance warrants and IPOs. The minister advised that any consideration of the development of a Commonwealth Public Interest Monitor, altering IPO issuing arrangements and criteria, and simplifying and streamlining the use and disclosure of protected

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179 UN Human Rights Committee, *General Comment No. 36, Article 6: right to life* (2019) [30].

information provisions would more appropriately be considered through this process to ensure consistency.

Committee view

2.238 The committee thanks the minister for this response.

2.239 The committee notes that by allowing a prescribed communications provider to copy stored communications rather than just intercept live communications under an interception International Production Order (IPO), this measure engages and limits the right to privacy. Were an individual's right to privacy violated under an interception authorisation, this engages the right to an effective remedy. The committee further notes that where information is shared with a foreign country where that country has the death penalty, as is the case with the United States (US), this measure may engage and limit the right to life.

2.240 The committee notes that it has previously raised concerns regarding the compatibility of the IPO framework with the rights to privacy and an effective remedy, and the right to life, both when this framework was introduced in 2020 and when the agreement with the US was designated in regulations in 2022. The committee notes that many of its previous broader concerns with the IPO framework remain relevant to this measure as it relates to facilitating compliance with interception IPOs. As such, the committee welcomes the advice that the government is progressing comprehensive reforms to the electronic surveillance framework as a whole.

2.241 In relation to this bill (now Act), the committee notes that, with regard to the necessity of the measure, no interception IPOs have been issued or sent to US providers due to the legal risk associated with a provider's ability to lawfully comply with such orders. The committee considers that there may therefore be a need for this measure in order to pursue the broader stated objective of protecting national security. In light of this, the committee considers that the measure likely pursues a legitimate objective and is rationally connected to that objective for the purposes of international human rights law.

2.242 The committee notes that there are a number of safeguards around the issuing and use of IPOs and in the AUS-US CLOUD Act Agreement that assist with the proportionality of the measure. However, the committee reiterates its view that it is not possible to conclude that the AUS-US CLOUD Act Agreement is, in itself, compatible with the right to privacy. The committee notes that were an individual's privacy violated under an interception authorisation, the individual would not be aware of the interception of their communications or that their stored communications had been accessed, and therefore they would not be able to pursue a civil remedy under the framework in the *Telecommunications (Interception and Access) Act 1979* (TIA Act). Additionally, the remedies in the TIA Act only apply where the interception or access is unlawful and therefore they would not assist an individual who has had their right to privacy under international human rights law violated by a

lawful use of an IPO under the IPO framework. The committee further notes that while oversight bodies may recommend compensation be provided where a person has been adversely affected, there is no requirement that such compensation be paid, so it is unclear this would be an effective remedy in practice.

2.243 In relation to the right to life, the committee notes the minister's advice that the measure does not alter the existing safeguards around death penalty matters and as such reiterates its previous concerns regarding the risk of an impermissible limit on the right to life under the AUS-US CLOUD Act Agreement.

Suggested action

2.244 The committee recommends that the Government consider the committee's comments in relation to the International Production Order framework,[180] and other legislation engaging surveillance powers,[181] in its comprehensive reforms to the electronic surveillance framework.

2.245 As the bill has now passed, the committee makes no further comment in relation to this measure.

Broadening immunity from liability in controlled operations

2.246 The bill amends Part IAB of the *Crimes Act 1914* to clarify the threshold for authorising and varying controlled operations. A controlled operation is an operation involving law enforcement engaging in unlawful conduct for the purposes of gathering evidence that may lead to the prosecution of a serious Commonwealth offence or a serious state offence with a federal aspect.[182] Currently, an authorising officer (which includes an authorising officer, appropriate authorising officer or nominated Tribunal

180 Parliamentary Joint Committee on Human Rights, Telecommunications Legislation Amendment (International Production Orders) Bill 2020, *Report 4 of 2020*, pp. 9-26; *Report 7 of 2020*, pp. 87-129; Telecommunications (Interception and Access) Amendment (International Production Orders) Regulations 2022, *Report 2 of 2022* (25 March 2022) pp. 59-61.

181 See, for example, Parliamentary Joint Committee on Human Rights, Australian Security Intelligence Organisation Amendment Bill 2020, *Report 7 of 2020*, pp. 64-68; *Report 9 of 2020*, pp. 100-114; Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020, *Report 11 of 2020*, pp. 26-29; Surveillance Legislation Amendment (Identify and Disrupt) Bill 2020, *Report 1 of 2021*, pp. 20-43; *Report 3 of 2021*, pp. 63-112; Foreign Intelligence Legislation Amendment Bill 2021, *Report 11 of 2021*, pp. 22-41; National Anti-Corruption Commission Bill 2022, *Report 5 of 2022*, pp. 26-31; *Report 6 of 2022*, pp. 81-84; Telecommunications (Interception and Access) Amendment Bill 2023, *Report 9 of 2023*, pp. 34-44; Identity Verification Services Bill 2023, *Report 12 of 2023*, pp. 31-66; Telecommunications (Interception and Access) (Criminal Law-Enforcement Agency – ACT Integrity Commission) Declaration 2024, *Report 6 of 2024*, pp. 16-24.

182 *Crimes Act 1914*, subsection 15GD(1).

member) must not grant an authority to conduct a controlled operation unless the authorising officer is satisfied on reasonable grounds that any conduct involved in the controlled operation will not seriously endanger the health or safety of any person; cause the death of, or serious injury to, any person; involve the commission of a sexual offence against any person; or result in significant loss of, or serious damage to, property (other than illicit goods).[183] Participants are protected from criminal and civil liability for conduct in accordance with the authority to conduct the controlled operation and where, among other matters, the conduct does not involve the participant engaging in any conduct that is likely to involve the commission of a sexual offence against any person.[184]

2.247 The bill provides that, when authorising or varying a controlled operation, an authorising officer is only required to be satisfied as to the direct and reasonably foreseeable consequences of the unlawful conduct of participants in the controlled operation.[185] A consequence is a 'direct consequence' if the unlawful conduct causes or produces, and is not merely a minor influence on, the consequence without there being any intervening conduct or events.[186] As an authorising officer must be satisfied on reasonable grounds that certain things will not happen, this measure clarifies that an authorising officer only needs to consider direct and reasonably foreseeable consequences, and not indirect consequences which a reasonable person may consider foreseeable as well as those that are far-fetched or fanciful.[187]

2.248 The bill further provides that a participant is immune from criminal and civil liability in relation to dealing with material depicting, describing, or otherwise involving a sexual offence against any person, or facilitating a person to deal with such material, where the participant is participating in a relevant controlled operation.[188]

Summary of initial assessment

Preliminary international human rights legal advice

Right to privacy, right to an effective remedy and rights of the child

2.249 Depending on the nature of a controlled operation, it may engage and limit various human rights. For example, it may engage and limit a person's right to privacy where their personal information is collected or their private life interfered with; the right to physical security where a criminal act may involve physical contact; or the rights of the child to protection from sexual abuse and exploitation where child abuse material is shared online.

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183 *Crimes Act 1914,* paragraph 15GI(2)(g).

184 *Crimes Act 1914*, subparagraph 15HA(2)(d)(ii) and paragraph 15HB(d)(ii).

185 Schedule 5, items 1-3, proposed subsections 15GI(2A), 15GQ(2A) and 15GV(2A).

186 Schedule 5, items 1-3, proposed subsections 15GI(2B), 15GQ(2B) and 15GV(2B).

187 Statement of compatibility, p. 41.

188 Schedule 5, items 4 and 6, proposed subsections 15HA(3) and 15B(2).

2.250 A controlled operation cannot authorise participants to engage in any conduct that will seriously harm a person or involve the commission of a sexual offence against a person. However, by providing that an authorising officer need only consider direct and reasonably foreseeable consequences before authorising a controlled operation, this measure appears to mean that controlled operations may be authorised even where indirect consequences (which may still engage and limit human rights) may be reasonably foreseeable.[189] For example, an indirect consequence of a controlled operation relating to the importation and sale of illicit drugs may be serious harm to people who eventually buy and consume those drugs. If the harm caused to people consuming the drugs was not considered a 'direct' and 'reasonably foreseeable' consequence, then the safeguard that the authorising officer must be satisfied on reasonable grounds that any conduct would not seriously endanger the health or life of a person would not appear to apply. The safeguard that exists in relation to when a controlled operation may be authorised is therefore significantly weakened by this measure and this means that the risk of a violation of an individual's human rights is likely greater.

2.251 Further, the conduct of a participant in a controlled operation may be protected by civil and criminal immunity, which this measure would extend to include dealing with sexual offence material. This engages the right to an effective remedy because it restricts the ability of an individual whose human rights are violated in the course of a controlled operation to seek legal recourse.

2.252 The right to an effective remedy requires the availability of a remedy which is effective with respect to any violation of rights and freedoms recognised by the International Covenant on Civil and Political Rights.[190] It includes the right to have such a remedy determined by competent judicial, administrative or legislative authorities or by any other competent authority provided for by the legal system of the state.

2.253 While limitations may be placed in particular circumstances on the nature of the remedy provided (judicial or otherwise), States parties must comply with the fundamental obligation to provide a remedy that is effective.[191]

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189 Explanatory memorandum, p. 28.

190 International Covenant on Civil and Political Rights, article 2(3). See *Kazantzis v Cyprus*, UN Human Rights Committee Communication No. 972/01 (2003) and *Faure v Australia*, UN Human Rights Committee Communication No. 1036/01 (2005): states parties must not only provide remedies for violations of the ICCPR, but must also provide forums in which a person can pursue arguable if unsuccessful claims of violations of the ICCPR. Per *C v Australia*, UN Human Rights Committee Communication No. 900/99 (2002), remedies sufficient for the purposes of article 5(2)(b) of the ICCPR must have a binding obligatory effect.

191 See UN Human Rights Committee, *General Comment No. 29: States of Emergency (Article 4)* (2001) [14].

Committee's initial view

2.254 The committee noted that the bill clarifies the threshold for authorising and varying controlled operations in the *Crimes Act 1914* by providing that only direct and reasonably foreseeable consequences must be considered. The committee noted that the bill further provides that a participant in a relevant controlled operation is immune from criminal and civil liability in relation to dealing with sexual offence material.

2.255 The committee noted that depending on the nature of the controlled operation, this may engage and limit multiple human rights. The committee further noted that as the conduct of a participant in a controlled operation may be protected by civil and criminal immunity, where an individual's human rights are violated in the course of a controlled operation, this engages the right to an effective remedy.

2.256 The committee considered further information was required to assess the compatibility of this measure with these rights, and as such sought the minister's advice.

2.257 The full initial analysis is set out in *Report 5 of 2025*.[192]

Minister's response[193]

2.258 The minister advised:

> **Broadening immunity from liability in controlled operations**
>
> **(a) whether the measure is compatible with the right to an effective remedy**
>
> While nothing in this measure alters the existing rights to remedies in the Crimes Act, section 15HA and 15HB of the Crimes Act only protects a participant from criminal responsibility and civil liability if:
>
> (a) the participant engages in conduct that is considered a Commonwealth, state or territory offence in accordance with the controlled operation authority
>
> (b) the participant is identified in the authority as a person authorised to engage in that controlled conduct
>
> (c) the conduct **does not involve** the participant intentionally inducing a person to commit a Commonwealth, state or territory offence that the person would not otherwise have intended to commit, and
>
> (d) the conduct **does not involve** the participant engaging in any conduct that is **likely** to:

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192 Parliamentary Joint Committee on Human Rights, *Report 5 of 2025* (2 October 2025) pp. 82-97.

193 The minister's response to the committee's inquiries was received on 27 October 2025. This is an extract of the response. The response is available in full on the committee's webpage.

a. cause the death of, or serious injury to, any person; or

b. involve the commission of a sexual offence against any person; and

(e) if the participant is a civilian participant in the controlled operation they act in accordance with the instructions of a law enforcement officer.

Paragraphs 15HA(c) and (d) and 15HB(c) and (d) of the Crimes Act are important safeguards which make it clear than even if a participant has engaged in conduct that is within the scope of the controlled operation, no criminal or civil protections will apply if the conduct involves the participant intentionally inducing a person to commit a Commonwealth, state or territory offence that the person would not otherwise have intended to commit nor if the conduct is **likely** to cause the death of, or serious injury to, any person or involve the commission of a sexual offence against any person.

In relation to paragraphs 15HA(d) and 15HB(d) of the Crimes Act, this means that a participant is not protected from criminal or civil liability if there is a real possibility that **any of their conduct** (whether authorised or not) would cause the death of, or serious injury to, any person or involves the commission of a sexual offence against any person.

The Committee notes at paragraph 1.253 of its Report:

> *For example, an indirect consequence of a controlled operation relating to the importation and sale of illicit drugs may be serious harm to people who eventually buy and consume those drugs. If the harm caused to people consuming the drugs was not considered a 'direct' and 'reasonably foreseeable' consequence, then the current safeguard that the authorising officer must be satisfied on reasonable grounds that any conduct would not seriously endanger the health or life of a person would not appear to apply. The safeguard that currently exists in relation to when a controlled operation may be authorised is therefore significantly weakened by this measure and this means that the risk of a violation of an individual's human rights is likely greater.*

In this circumstance while a controlled operation may be authorised, if an indirect harm was reasonably foreseeable, the participant would not be protected from criminal or civil liability given there is a real possibility that providing illicit drugs to a person would result in serious injury.

Section 15HF of the Crimes Act also provides a mechanism for a person to seek compensation if they have suffered property damage or injury as a result of a controlled operation (in some circumstances). This is discussed in more detail below.

(b) what remedies are available to individuals whose human rights have been violated

Section 15HF of the Crimes Act provides that if a person suffers loss of or serious damage to property, or personal injury, in the course of, or as a direct result of a controlled operation, the Commonwealth is liable to pay to the person compensation as agreed between the Commonwealth and the person or, in default of an agreement, as determined by action against the Commonwealth in a court of competent jurisdiction. This does not apply if the person suffered the loss, damage or injury in the course of, or as a direct result of, engaging in any criminal activity (other than criminal activity that was authorised) or the person was a law enforcement participant at the time of suffering the loss, damage or injury.

There are also a range alternative remedies available, including general Crimes Act remedies, civil remedies/tort actions such as trespass or false imprisonment, judicial review of the controlled operation authority itself (*Administrative Decisions (Judicial Review) Act 1977*), or through complaints mechanisms made available by the Commonwealth Ombudsman or Australian Human Rights Commission.

(c) will persons whose rights are violated be informed that the violation was perpetrated by police under a controlled operation

Section 15HG of the Crimes Act provides that if any loss of or serious damage to property occurs in the course of, or as a direct result of, a controlled operation (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation) or any personal injury occurs in the course of, or as a direct result of, such an operation the principal law enforcement officer for the controlled operation must report the loss, damage or injury to the chief officer of the law enforcement agency as soon as practicable. If loss or serious damage to property is reported to the chief officer, they must take all reasonable steps to notify the owner of the property of the loss or damage. If a personal injury is reported to the chief officer, they must take all reasonable steps to notify the person that the injury occurred in the course of, or as a direct result of, the controlled operation. The chief officer is not required to give a notification until the chief officer is satisfied that the notification would not:

(a) compromise or hinder the controlled operation or any related investigation; or

(b) compromise the identity of a participant in the controlled operation; or

(c) endanger the life or safety of any person; or

(d) prejudice any legal proceeding; or

(e) otherwise be contrary to the public interest.

Among a range of the other safeguards within the controlled operations regime, the chief officer of an authorising agency must also provide reports to the Commonwealth Ombudsman and the Minister which provide

comprehensive details about each authorised operation, every six months (Section 15HM of the *Crimes Act 1914*). These include (but are not limited to):

- the nature of the criminal activities which the controlled operations were directed
- the identity of each person targeted under controlled operations
- the nature of the controlled conduct engaged in for the purposes of the controlled operations
- if any of the controlled operations involved illicit goods, a statement (to the extent known) of:
    - the nature and quantity of the illicit goods; and
    - the route through which the illicit goods passed in the course of the operations; and
    - all foreign countries through which the illicit goods passed in the course of the operation
- details of any loss of or serious damage to property (other than property of the law enforcement agency on behalf of which the operation is conducted or a participant in the operation) occurring in the course of or as a direct result of the controlled operations;
- details of any personal injuries occurring in the course of or as a direct result of the operations.

The Commonwealth Ombudsman may require the chief officer of an authorising agency to give additional information covering any controlled operation to which a report relates (subsection 15HM(3)). The Commonwealth Ombudsman is also required to inspect the records of each authorising agency to determine the extent of compliance with Part IAB of the Crimes Act 1914 (section 15HS). The Commonwealth Ombudsman is also required to provide a report of the work and activities performed under Part IAB for the preceding 12 months and give a copy of the report to the Minister and to the chief officer of the law enforcement agency to which the report relates (section 15HO). Agencies are strongly expected to, and in practice do, comply with suggestions and recommendations made by the Commonwealth Ombudsman to improve their compliance.

Concluding comments

International human rights legal advice

2.259 As to whether the measure is compatible with the right to an effective remedy, the minister advised that the measure does not alter the existing remedies in the *Crimes Act 1914* (Crimes Act). The minister advised that, whether or not conduct is authorised, if it would be likely to cause the death of, or serious injury to, any person or involves the commission of a sexual offence against any person, then the participant

is not protected from criminal or civil liability. While this will likely assist a person to seek a remedy in the event that any conduct led to serious injury or a sexual offence against the person, it does not appear that this would extend to remedies for other rights violations.

2.260 The minister advised that section 15HF of the Crimes Act provides that if a person suffers loss of or serious damage to property, or personal injury, in the course of or as a direct result of a controlled operation, the Commonwealth is liable to pay compensation to the affected person. The minister further advised that there are a range of alternative remedies available, including general Crimes Act remedies, civil remedies and tort actions such as trespass or false imprisonment, judicial review of the controlled operation authority itself, or through complaints mechanisms made available by the Commonwealth Ombudsman or Australian Human Rights Commission.

2.261 In relation to whether a person whose rights are violated would be informed that the violation was perpetrated by police under a controlled operation, the minister advised that under section 15HG of the Crimes Act, if any loss of or serious damage to property occurs, or any personal injury occurs in the course of, or as a direct result of, a controlled operation, then the principal law enforcement officer of the operation must report the loss, damage or injury to the chief officer of the law enforcement agency as soon as practicable, who must then take all reasonable steps to notify the person. However, notification is not required in certain circumstances, such as where notification may compromise the controlled operation or may otherwise be contrary to the public interest.

2.262 If a person is not informed that their rights have been violated by a controlled operation, it is unclear how they may access an effective remedy. In this case, it appears that while individuals may be informed where there is damage to property or personal injury (subject to certain exceptions), it does not appear an individual would be informed if other rights were violated, for example a breach of their right to privacy. Similarly, in relation to access to compensation, it appears to only be available where there is personal injury as a result of a controlled operation, and would not extend more broadly to a remedy for breach of other human rights. While the minister has advised of other remedy mechanisms outside of the Crimes Act, this would rely on an individual knowing their right had been breached by a controlled operation. As such, it appears unlikely that a person would have access to an effective remedy in all circumstances.

Committee view

2.263 The committee thanks the minister for this response.

2.264 The committee notes that depending on the nature of the controlled operation, this may engage and limit multiple human rights. If an individual's human rights were

violated in the course of a controlled operation, this engages the right to an effective remedy.

2.265 The committee notes that a participant in a controlled operation is not protected from criminal responsibility or civil liability where their conduct is likely to lead to death, serious injury or the commission of a sexual offence against a person. The committee considers that while this will likely assist a person to seek a remedy in the event that any conduct led to serious injury or sexual offence against the person, it does not appear that this would extend to remedies for other rights violations.

2.266 The committee further notes that while there are some provisions in the *Crimes Act 1914* that require notifying an individual and providing compensation if there has been loss or serious damage to property or any personal injury as a result of a controlled operation, it does not appear an individual would be informed or have access to compensation if other rights were violated. The committee notes that access to other remedy mechanisms relies on an individual knowing their right has been breached by a controlled operation. As such, it appears unlikely that a person would have access to an effective remedy in all circumstances.

2.267 As the bill has now passed, the committee makes no further comment in relation to this measure.

Ms Zaneta Mascarenhas MP

Chair