



Parliamentary Joint Committee on Human Rights

Examination of legislation in accordance with the
Human Rights (Parliamentary Scrutiny) Act 2011

Bills introduced 14–23 August 2012

Legislative Instruments registered with the
Federal Register of Legislative Instruments
22 July–23 August 2012

Second Report of 2012

September 2012

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ISBN 978-1-74229-694-4

This document was prepared by the Parliamentary Joint Committee on Human Rights and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

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Functions of the committee

The Committee has the following functions:

- a) to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- b) to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- c) to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.

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Abbreviations

Abbreviation	Definition
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	International Convention on the Elimination of all forms of Racial Discrimination
FRLI	Federal Register of Legislative Instruments
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights

Executive Summary

This report provides the Parliamentary Joint Committee on Human Rights' view on the compatibility with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011* for bills and delegated instruments introduced into the Parliament during the period 14 to 23 August 2012.

Part 1 — Bills introduced 14–23 August 2012

The following bills engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*

Australian Charities and Not-for-profits Commission Bill 2012	3
Aviation Legislation Amendment (Liability and Insurance) Bill 2012	8
Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012	11
Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012	14

The following bills do not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*

International Monetary Agreements Amendment (Loans) Bill 2012	19
National Portrait Gallery of Australia (Consequential and Transitional Provisions) Bill 2012	19
Statute Law Revision Bill 2012	20

The committee has sought clarification of claims that the following bill does not engage human rights

National Portrait Gallery of Australia Bill 2012	21
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The following bill was introduced without a statement of compatibility

Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012	22
--	----

Part 2 — Legislative Instrument registered with FRLI 22 July–23 August 2012

The committee has sought clarification of claims that the following legislative instruments do not engage human rights

Broadcasting Services (Simulcast Period End Date - Remote Licence Areas) Determination 2012	26
Defence Determination 2012/33, Salary, bonuses, allowances, relocation, housing and meals – amendment	27
Fair Work Amendment Regulation 2012 (No. 2)	28
Road Safety Remuneration Regulation 2012	28
Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 2)	29
Tobacco Advertising Prohibition Amendment Regulation 2012 (No. 1)	30

Appendices

Appendix 1 — Full list of Legislative Instruments registered with FRLI 22 July–23 August 2012	31
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Mr Harry Jenkins MP
Chair

Part 1

Bills introduced 14–23 August 2012

The following bills engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*

Australian Charities and Not-for-profits Commission Bill 2012

Introduced into the House of Representatives on 23 August 2012

Portfolio: Treasury

Committee view

1.1 The committee notes that the investigation and monitoring powers of the Australian Charities and Not-for-profits Commission (ACNC) override the privilege against self-incrimination. However, as bill provides for use and derivative use immunities in these circumstances, the committee considers that bill appears to be compatible with the right to be free from self-incrimination in Article 14(3) of the International Covenant on Civil and Political Rights (ICCPR).

1.2 Before forming a view on the compatibility of this bill with the right to privacy in article 17 of the ICCPR, the committee seeks clarification from the Treasurer with regard to:

- the privacy safeguards referenced in the statement that would be applicable to the investigative regime established in the bill;
- why it is considered that the standard of ‘reasonably necessary’ is an appropriate threshold for the ACNC Commissioner to exercise information-gathering powers and how this is considered to be consistent with article 17 of the ICCPR, which requires interferences with the right to privacy to be *necessary* for a legitimate objective;
- whether the explanation provided in the statement of compatibility with regard to the issue of whether the powers in question are reasonable, necessary and proportionate to the legitimate objective of regulating the NFP sector could be reviewed and strengthened.

1.3 Before forming a view on the compatibility of this bill with the presumption of innocence in article 14(2) of the ICCPR, the committee draws the attention of the Treasurer to the limited detail in the statement about the specific offence provisions being discussed. The committee seeks further information about the precise operation of these provisions and their impact on the presumption of innocence, including whether the burden relates to an essential element of the offence. The committee also seeks clarification from the Treasurer with regard to the absence of justification for the strict liability offences in the bill.

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Purpose of the bill

1.4 This bill establishes a new independent statutory office, the Australian Charities and Not-for-profits Commission (ACNC) as the Commonwealth regulator for the not-for-profit (NFP) sector. The explanatory memorandum to the bill describes the NFP sector as broadly consisting of entities that seek to achieve a community, altruistic or philanthropic purpose.

1.5 The bill also establishes a new regulatory framework for the NFP sector by:

- charging the ACNC with registering NFP entities (initially charities) and maintaining a register;
- making registration with the ACNC as a necessary precondition for access to certain Commonwealth taxation concessions and a prerequisite for other exemptions, benefits and concessions provided under other Australian laws.
- providing for the powers of the ACNC Commissioner in relation to the regulation of registered entities; and
- setting out the obligations and responsibilities of registered entities.

1.6 Subsections 15-5(1) set out the objects of the bill, which are ‘to maintain, protect and enhance the public trust and confidence in the NFP sector; to support and sustain a robust, vibrant, independent and innovative NFP sector; and to promote the reduction of unnecessary regulatory obligations on the NFP sector’.

Compatibility with human rights

Right to privacy (Article 17 ICCPR)

Right to be free from self-incrimination (Article 14(3)(g) ICCPR)

Presumption of innocence (Article 14(2) ICCPR)

1.7 The statement of compatibility identifies that the bill engages the right to privacy in article 17 of the ICCPR, the right to be free from self-incrimination in article 14(3)(g) of the ICCPR, and the presumption of innocence in article 14(2) of the ICCPR.

Right to privacy

1.8 The bill provides the ACNC with broad ranging powers to gather information and monitor compliance with the new Act:

- Division 70 of Part 4-1 of the bill sets out the information gathering powers that may be exercised by the ACNC Commissioner to obtain information and documents for the purposes of determining compliance with the Act or determining whether information that is the subject of monitoring is correct.

- Division 75 of Part 4-1 of the bill sets out the monitoring powers that may be exercised by ACNC officers, including the power to enter premises, for the purposes of monitoring compliance with the Act or determining whether information that is the subject of monitoring is correct.

1.9 Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. Information gathering and monitoring powers, as well as collecting, using, storing, disclosing or publishing personal information, amount to an interference with privacy. In order for the interference not to be 'arbitrary', the interference must be for a legitimate objective and be reasonable, necessary and proportionate to that objective.

1.10 The statement states that these powers are intended to meet the legitimate objective of regulating the NFP sector:

Information contained in the ACN Register must be correct and accurate for the report-once, use-often framework to function effectively and reduce the red-tape faced by NFPs.... [In addition,] to function effectively as a one-stop-shop regulator for the sector, the ACNC will need to have appropriate powers to takes (sic) samples of products or inspect items on premises with a view to sharing the information gathered with authorities.

1.11 The statement of compatibility concludes that these provisions are consistent with Article 17 of the ICCPR because privacy interests are protected 'through having specific conditions that are required to be satisfied prior to using these powers' and that 'by providing these additional safeguards, the provisions that facilitate investigation are reasonable and necessary in the circumstances and required to meet the objects of the Bill'. The committee notes that the statement does not specify what these conditions and safeguards may encompass.

1.12 The committee notes that the ACNC Commissioner can exercise information gathering powers if 'reasonably necessary' for the purposes prescribed in the bill (subsection 70-5). The standard of 'reasonably necessary' would appear to be lower than the standard of 'necessary' and may not fully reflect the requirement that interferences with the right to privacy must be necessary to achieve a legitimate objective.

Right to be free from self-incrimination

1.13 The statement of compatibility identifies that the investigation and monitoring powers of the ACNC override the privilege against self-incrimination by providing that, a person is not excused from producing information or documents or answering a question on the grounds that doing so would incriminate him or herself.

1.14 Article 14(3)(g) of the ICCPR protects the right to be free from self-incrimination by providing that a person may not be compelled to testify against him or herself or to confess guilt. The right to be free from self-incrimination may be

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

subject to permissible limitations, provided that the limitations are for a legitimate objective, and are reasonable, necessary and proportionate to that objective.

1.15 Generally, limitations on the right to be free from self-incrimination are more likely to be permissible where the legislation includes constraints on the subsequent use of the incriminating information, such as ‘use’ or ‘derivative use’ immunities. The bill provides for both these immunities (ss 70-25(2) and 75-40(5)) and having regard to the regulatory functions exercised by the ACNC, the committee considers that overriding the privilege against self-incrimination in these circumstances would appear to be compatible with article 14(3) of the ICCPR.

Presumption of innocence

1.16 Without referencing or discussing the specific offence provisions at issue, the statement of compatibility states that a defendant bears an evidential burden in circumstances where the bill:

- provides for certain exceptions that apply to the general prohibition on the use, disclosure and on-disclosure of information protected under the secrecy framework; or
- places certain obligations and liabilities placed on the responsible entities of registered entities in order to ensure that registered entities and responsible entities are accountable for fulfilling their obligations under this law.

1.17 Article 14(2) of the ICCPR states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

1.18 Referring to paragraph 30 of General Comment No 32 by the UN Human Rights Committee, the statement of compatibility says that article 14(2) of the ICCPR 'is normally engaged where public authorities make public statements affirming the guilt of the accused, shackle or keep defendants in cages during trials indicating that they may be dangerous criminals or allow the media to show news coverage that undermines the presumption of innocence' but that it 'could potentially be argued that where legislation places an evidential burden on the defendant, this may engage the [presumption of innocence]'.

1.19 The committee notes that paragraph 30 of General Comment No 32 clearly states that:

The presumption of innocence, which is fundamental to the protection of human rights, **imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt**, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. [emphasis added]

1.20 Generally, consistency with the presumption of innocence requires the prosecution to prove each element of a criminal offence beyond reasonable doubt. An offence provision which requires the defendant to carry an evidential or legal burden of proof with regard to the existence of some fact will engage the presumption of innocence because a defendant's failure to discharge the burden of proof may permit their conviction despite reasonable doubt as to their guilt.

1.21 However, reverse burden offences will not necessarily be inconsistent with the presumption of innocence provided that they are within reasonable limits which take into account the importance of objective being sought and maintain the defendant's right to a defence. In other words, the reverse burden must pursue a legitimate aim and be reasonable, necessary and proportionate to that aim. Human rights case-law has established that relevant factors to consider when determining if a reverse burden provision is justified include whether:

- the penalties are at the lower end of the scale;
- the offences arise in a regulatory context where participants may be expected to know the duties and obligations;
- the offences only impose an evidential burden; and
- the burden relates to facts which are readily provable by the defendant as matters within their own knowledge or to which they have ready access.

1.22 While provisions which impose only an evidential burden are more likely to be considered compatible with the presumption of innocence, they will still require to be properly justified, particularly where the burden relates to an essential element of the offence. The committee notes that the statement does not specify or discuss the particular provisions at issue.

1.23 The committee notes that the bill also creates several strict liability offences (see for example, ss 55-5(7), 75-95(4), and 100-25(3)). Strict liability offences engage the presumption of innocence because they allow for the imposition of criminal liability without the need to prove fault. The statement does not mention these offences or provide any justification for them.

Aviation Legislation Amendment (Liability and Insurance) Bill 2012

Introduced into the House of Representatives/Senate on 22 August 2012

Portfolio: Infrastructure & Transport

Committee view

1.24 The committee considers that this bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.25 The committee notes that the bill engages right to equality and non-discrimination in article 26 of the International Covenant on Civil and Political Rights (ICCPR) and Article 5 of the Convention on the Rights of Persons with Disabilities (CPRD). The committee considers that the Minister for Infrastructure and Transport appears to have discharged the burden of demonstrating that the removal of compensation for purely mental injuries involved in items 1 and 5 of the bill is, in the circumstances, justified and therefore consistent with article 26 of the ICCPR and article 5 of the CPRD.

Purpose of the bill

1.26 This bill amends the framework established by the *Civil Aviation (Carriers' Liability) Act 1959* (CACL Act) and the *Damage by Aircraft Act 1999* (DBA Act) for the liability of air carriers in the event of an aircraft accident by:

- narrowing the scope of air carriers' liability to:
 - preclude accident victims who suffer 'pure mental injury' from claiming compensation under the CACL Act unless they can show that they have also suffered a physical injury (Item 1); and
 - preclude potential claimants under the DBA Act, which contains the arrangements for compensating third party (ie non-passenger) damage, from claiming compensation for mental injuries where that person has not suffered additional personal or property damage (Item 5);
- raising the liability cap (and associated minimum insurance requirements) for domestic passenger death or injury from to reflect increases in the cost of living (Items 2, 4); and
- amending the DBA Act to include the principle of contributory negligence and allowing defendants to seek a right of contribution from other parties who may have contributed to the damage suffered by the person bringing the claim (Item 6).

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Compatibility with human rights

Right to equality and non-discrimination (Article 26 ICCPR and Article 5 CRPD)

1.27 The statement of compatibility for this bill identifies that the proposed non-eligibility for damages with respect to individuals suffering purely mental injuries in items 1 and 5 of the bill engages the right to equality and non-discrimination in article 26 of the ICCPR and article 5 of the CRPD, which specifically prohibits discrimination on the basis of disability and guarantees persons with disabilities equal and effective legal protection against discrimination on all grounds.

1.28 The statement of compatibility acknowledges that any difference in treatment on the basis of disability - including physical and mental disability - must have a legitimate aim and an objective and reasonable justification to be consistent with these rights.

1.29 The statement of compatibility provides the following justification for the differential treatment proposed by these amendments:

Legitimate objective

The objectives of the amendments are to balance the interests of air crash victims and air operators and to harmonise Australia's liability arrangements with international arrangements which are widely recognised as providing this balance.

In respect to the CACL Act, amendments to these provisions have the objective of ensuring that the liability framework for domestic flights is consistent with the benchmark liability framework for international flights under the 1999 Montreal Convention. The 1999 Montreal Convention is internationally recognised as providing an equitable balance between the interests of airlines and accident victims. The amendments will ensure greater consistency with this more equitable framework while removing unnecessary complexities from the overall liability structure. The 1999 Montreal Convention has been implemented by over 100 States, and covers the vast majority of international flights. Many jurisdictions, including all European countries, apply the 1999 Montreal Convention to domestic flights as well.

The current Australian domestic liability framework provides compensation for 'personal injury'. Courts have interpreted this provision as allowing compensation for 'pure mental injury'. The 1999 Montreal Convention provides compensation for 'bodily injury', which has been interpreted by courts as only allowing compensation for mental injuries when they are also accompanied by other 'physical' injuries. The amendment to section 28 of the CACL Act will therefore rectify a significant area of inconsistency between Australia's domestic liability framework and the international liability framework, while still ensuring that air crash victims are afforded equitable access to compensation.

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

In respect to the amendments to the DBA Act, these provisions also have the objective of ensuring that there is an appropriate balance between the interests of aircraft operators and the interests of air crash victims. Specifically, the amendments respond to concerns raised by airlines and insurers in the review of carriers' liability and insurance. These concerns relate to the potential for people to claim compensation under the DBA Act for 'pure' mental injury as a result of witnessing an air crash. This would expose aircraft operators to a potentially very wide group of claimants on the basis of strict and unlimited liability, thereby imposing incalculable risks on the industry.

Reasonable and proportionate

The provisions in the Bill are not 'blanket provisions' in relation to mental injuries. Mental injuries will still be compensable if the claimant can show that they have also suffered other harm. In relation to the third party victims (on the surface), a claimant may also pursue a claim for 'pure mental injuries' under the civil law.

The amendments ensure that there is an appropriate balance between the interests of aircraft operators and the interests of air crash victims. The DBA Act is generously weighted in favour of air crash victims, insofar as it provides for strict and unlimited liability - there is no requirement for air crash victims to prove fault on the part of the aircraft operator, and there is no cap on the operator's potential liability. However, the aviation industry has raised concerns about the potentially large groups of claimants, who as result of having witnessed a major aviation disaster, could mount a claim under the DBA Act -without the requirement to prove fault- for 'pure mental injury' suffered as a result of having witnessed the crash.

The provisions will limit the scope of the air operators' liability, while still ensuring that victims who have suffered physical harm or property damage can access compensation for these injuries and damage, as well as compensation for any mental injury suffered. This amendment will ensure a more appropriate balance between the interests of air crash victims and aircraft operators.

Therefore, to the extent that provisions may limit the right to equality and non-discrimination, those limitations are reasonable, necessary and proportionate in achieving a legitimate objective.

Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012

Introduced into the Senate on 16 August 2012

By: Senator Xenophon

Committee view

1.30 The committee seeks further information from Senator Xenophon on the following matters before forming a view whether the bill is compatible with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- whether the proposed measures aim to achieve a legitimate objective (for example, are they addressing an area of public or social concern that is pressing and substantial enough to warrant limiting rights?);
- whether the measures are rationally connected to that objective and based on reasonable and objective criteria (for example, why are workplaces with less than 20 full-time staff considered to be an appropriate cut-off point?); and
- whether and how these measures are proportionate to the objective to be achieved (for example, are the measures likely to impact disproportionately on particular groups or individuals?).

1.31 The committee also seeks clarification as to how the bill engages the right to form and join trade unions in article 8(1)(a) of International Covenant on Economic, Social and Cultural Rights ICESCR, as claimed in the statement of compatibility.

Purpose of the bill

1.32 The bill amends the *Fair Work Act 2009* to exclude employers in the restaurant and catering or retail industries that employ fewer than 20 full-time equivalent staff from being required to pay penalty rates under an existing or future modern award unless an employee has worked more than ten hours in a 24-hour period or more than 38 hours in a week.

Compatibility with human rights

Right to work and rights in work (Article 6(1) and article 7 ICESCR)

Right to equality and non-discrimination (Article 2(2) ICESCR and article 26 ICCPR)

1.33 The statement of compatibility states that the bill engages the right to work and rights in work, in particular the right to earn a fair wage and equal remuneration for work of equal value. These rights are contained in articles 6 and 7 of the ICESCR.

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

The statement also mentions article 8(1)(a) of the ICESCR, which guarantees the right to form and join trade unions, but does not explain how the bill engages this right.

1.34 The statement of compatibility claims that the bill does not limit the right of individuals to earn fair wages or equal remuneration because it only affects the circumstances in which certain employers will be required to pay penalties above the base wage.

1.35 The committee observes that the bill arguably raises a *prima facie* issue of discrimination because the amendments differentiate between particular groups of employees – ie, certain employees will be treated less favourably than other employees in a similar situation on the basis of the size of the workplace in which they are employed. The amendments would also appear to differentiate between particular groups of employers on a similar basis.

1.36 The right to non-discrimination is protected in Article 2(2) of the ICESCR, which prohibits discrimination on prohibited grounds in the exercise of the economic, social and cultural rights guaranteed in the Covenant. In addition article 26 of the International Covenant on Civil and Political Rights (ICCPR) contains an independent guarantee of equal protection of the law. Article 26 of the ICCPR prohibits discrimination in law or in practice in any field regulated by public authorities. This means that when the Commonwealth legislates in any particular area, it must do so without discriminating on the prohibited grounds. Article 26 of the ICCPR is a ‘free-standing’ bar on discrimination and is not limited to the ICCPR rights.

1.37 Discrimination means any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of all rights and freedoms.

1.38 The grounds of prohibited discrimination are not closed, and include race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The UN Human Rights Committee (HRC) has not issued any specific guidance on the meaning of ‘other status’, preferring instead to treat it on a case by case basis. It has nevertheless indicated that a clearly definable group of people linked by their common status is likely to fall within the category of ‘other status’. Among other things, the HRC has found age to qualify as prohibited grounds under ‘other status’.

1.39 A difference in treatment on prohibited grounds, however, will not be directly or indirectly discriminatory provided that it is:

- aimed at achieving a purpose which is legitimate;

- based on reasonable and objective criteria, and
- proportionate to the aim to be achieved.

1.40 The committee is seeking further information from Senator Xenophon on these matters before forming a view on the bill's compatibility with human rights.

Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012

Introduced into the House of Representatives on 23 August 2012

Portfolio: Treasury

Committee view

1.41 The committee considers that the provisions in this bill that engage the right to privacy are compatible with Article 17 of the International Covenant on Civil and Political Rights (ICCPR).

1.42 Before forming a view whether this bill is compatible with the presumption of innocence in Article 14(2) of the ICCPR, the committee seeks clarification from the Treasurer on the following matters:

- the level of risk that the provision may allow a person to be convicted of the offence despite reasonable doubt as to their guilt and why is that risk considered justifiable;
- the justification for the application of a reversed burden offence in this bill, noting that similar conduct is the subject of a full fault offence in the Australian Charities and Not-for-profits Commission Bill (ss 180-10(2)); and
- if a full-fault offence is not considered appropriate in these circumstances, whether an evidential burden may offer a less restrictive alternative for achieving the provision's purpose?

1.43 The committee also seeks clarification regarding the description in the statement of compatibility of ss 353-30(6) as providing two defences. The committee notes that the conjunctive 'and' is used to link ss 353-30(6)(a) and (b).

Purpose of the bill

1.44 This bill:

- changes the 'in Australia' requirements for income tax exempt entities and deductible gift recipients to ensure that they must generally operate principally or solely in Australia (subject to some exceptions);
- standardises various other requirements that entities must meet to be tax exempt; and
- harmonises the meaning of 'not-for-profit' across various Acts.

Compatibility with human rights

Right to privacy (Article 17 ICCPR)

Presumption of innocence (Article 14 ICCPR)

1.45 The statement of compatibility notes that the bill engages the right to privacy in article 17 of the ICCPR and the right to be presumed innocent in article 14 of the ICCPR.

Right to privacy

1.46 Article 17 of the ICCPR provides that no one shall be subjected to arbitrary or unlawful interference with their privacy. Collecting, using, storing, disclosing or publishing personal information amounts to an interference with privacy. In order for the interference not to be 'arbitrary', the interference must be for a legitimate objective and be reasonable, necessary and proportionate to that objective.

1.47 New section 353-30 of the bill requires certain prescribed entities to provide information relating to their status as a prescribed entity to the Taxation Commissioner upon request. The statement acknowledges that 'such information may include personal information' but considers that 'this is unlikely'.

1.48 The statement provides the following reasons for concluding that any interference with the right to privacy is not arbitrary:

- The information gathered must be relevant to the status of an entity as a prescribed entity (ss 350-30(1)).
- The Commissioner is only permitted to disclose that information to the Minister if there is a change to the principal purpose of the entity, or the entity is not complying with any rules or conditions that were required in order for the entity to remain a prescribed entity (ss 350-30(2) and 350-30(4)).
- The Minister may only disclose that information for a purpose relating to the entity's status as a prescribed entity (ss 353-30(3)).

1.49 The committee considers that these provisions are unlikely to raise issues of incompatibility with the right to privacy given that any interference with the right to privacy is likely to be related to the aim of checking the status of tax exempt entities, which can be considered to be a legitimate objective. Further, the provisions appear to be drafted with sufficient precision to ensure that the degree of interference is proportionate to that objective. In particular, the information gathered must be relevant to the status of the entity as a prescribed entity and the Minister may only disclose that information for a related purpose.

Presumption of innocence

1.50 The failure to comply with the requirement to provide information to the Taxation Commissioner under new section 353-30 is an offence against section 8C of the *Taxation Administration Act 1953* (TA Act). New subsection 353-30(6) provides a defence to individuals who are prosecuted for an offence against section 8C of the TA Act. A person will not be guilty of the s8C offence if the person proves that they:

- did not aid, abet, counsel or procure the act or omission because of which the offence is taken to have been committed; and
- were not in any way, by act or omission, directly or indirectly, knowingly concerned in, or party to, the act or omission because of which the offence is taken to have been committed.

1.51 An offence against section 8C is punishable by a maximum fine of 20 penalty units. However, if a person has two or more previous relevant convictions, that penalty may be raised to a maximum fine of 50 penalty units or 12 months imprisonment, or both.

1.52 New section 353-30 creates a reverse burden offence because it places a legal burden of proof on the defendant in respect of the existence (or non-existence) of the facts set out in ss 360-30(6).

1.53 Article 14(2) of the ICCPR states that everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

1.54 The statement of compatibility refers to paragraph 30 of General Comment No 32 by the UN Human Rights Committee and contends that article 14(2) of the ICCPR 'is normally engaged where public authorities make public statements affirming the guilt of the accuses, shackle or keep defendants in cages during trials indicating that they may be dangerous criminals or allow the media to show news coverage that undermines the presumption of innocence' but 'it could be argued that where legislation places a legal burden on the defendant, this may engage [the right]'.

1.55 The committee notes that paragraph 30 of General Comment No 32 clearly states that:

The presumption of innocence, which is fundamental to the protection of human rights, **imposes on the prosecution the burden of proving the charge, guarantees that no guilt can be presumed until the charge has been proved beyond reasonable doubt**, ensures that the accused has the benefit of doubt, and requires that persons accused of a criminal act must be treated in accordance with this principle. [emphasis added]

1.56 Generally, to be consistent with the presumption of innocence, the prosecution must prove each element of a criminal offence beyond reasonable doubt. Laws which shift the burden of proof to the defendant will engage the presumption of innocence because a defendant's failure to discharge a burden of proof or to prove or establish the absence of an element of an offence may permit their conviction despite reasonable doubt as to their guilt.

1.57 However, reverse burden offences will not necessarily be inconsistent with the presumption of innocence provided that they are within reasonable limits which take into account the importance of objective being sought and maintain the defendant's right to a defence. In other words, the reverse burden must pursue a legitimate aim and be reasonable, necessary and proportionate to that aim. Human rights case-law has established that relevant factors to consider when determining if a reverse burden provision is justified include whether:

- the penalties are at the lower end of the scale;
- the offences arise in a regulatory context where participants may be expected to know the duties and obligations;
- the offences impose only an evidential burden; and
- the burden relates to facts which are readily provable by the defendant as matters within their own knowledge or to which they have ready access.

1.58 The defence in new subsection 353-30(6) requires a person to prove that s/he did not aid, abet, counsel or procure the relevant conduct and was not in any way knowingly concerned in or party to the conduct. The facts to be proven by the defendant would therefore appear to go to the core elements of an aiding and abetting offence – since the aiding and abetting conduct is 'central' to the question of culpability for an aiding and abetting offence.

1.59 However, rather than requiring the prosecution to prove the central elements of the offence, ss 353-30(6) requires the defendant to prove that they did not engage in the alleged conduct. The committee notes that reverse legal burdens, even to the standard of balance of probabilities, which do not effectively preserve the right of the defendant to a defence, risk being an unjustifiable limitation on the presumption of innocence.

1.60 The statement of compatibility provides the following justification for placing the legal burden on the defendant in these circumstances:

Information required under section 353-30 is necessary for determining whether an entity is still meeting the conditions of its prescription. This may affect the collection of revenue. In tax provisions, the burden tends to fall on the taxpayer. It is common amongst Commonwealth revenue regimes to place the legal burden on the defendant where the defendant seeks to rely on an exception or defence to the general prohibition on

disclosure of information (an offence-specific defence). This is appropriate because the defendant (in these situations) holds all of the evidence which is uniquely in their possession.

1.61 The committee notes that an analogous offence in the Australian Charities and Not-for-Profits Commission Bill 2012 (see Part 7-4 of the ACNC Bill on 'Application of the Act to entities', subsection 180-10(2)) is drafted as a full-fault offence.

The following bills do not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*

International Monetary Agreements Amendment (Loans) Bill 2012

Introduced into the House of Representatives on 15 August 2012

Portfolio: Treasury

Purpose of the bill

1.62 This bill amends the *International Monetary Agreements Act 1947* to allow for the reduction of Australia's current credit arrangement under the International Monetary Fund's New Arrangements to Borrow (NAB); and make other minor technical changes to the NAB.

National Portrait Gallery of Australia (Consequential and Transitional Provisions) Bill 2012

Introduced into the House of Representatives on 23 August 2012

Portfolio: Regional Australia, Local Government, Arts and Sport

Purpose of the bill

1.63 This bill contains consequential amendments and transitional arrangements related to the establishment of the National Portrait Gallery of Australia (the Gallery) as a new statutory authority by the proposed National Portrait Gallery of Australia 2012 Bill.

1.64 The bill makes a number of minor consequential amendments to the *Archives Act 1983* and contains transitional provisions involving the transfer of assets and liabilities from the Commonwealth to the Gallery.

Statute Law Revision Bill 2012

Introduced into the House of Representatives on 15 August 2012

Portfolio: Attorney-General

Purpose of the bill

1.65 This is a housekeeping bill, which, among other things, corrects technical errors and modernizes language in various Acts, and repeals obsolete provisions and Acts.

The committee has sought clarification of claims that the following bill does not engage human rights

National Portrait Gallery of Australia Bill 2012

Introduced into the House of Representatives on 23 August 2012

Portfolio: Regional Australia, Local Government, Arts and Sport

Committee view

1.66 The committee notes that the statement of compatibility claims that this bill does not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. The committee seeks clarification from the Minister for The Arts whether the bill, by its nature, could be said to promote the right to take part in cultural life in article 15(1) (a) of the International Covenant on Economic, Social and Cultural Rights.

Purpose of the bill

1.67 This bill establishes the National Portrait Gallery of Australia (the Gallery) as a Commonwealth statutory authority subject to the *Commonwealth Authorities and Companies Act 1997* (the CAC Act). As a consequence, the Gallery will cease to operate as a Branch within the Department of Regional Australia, Local Government, Arts and Sport.

1.68 The second reading speech notes that the establishment of the Gallery as a statutory authority is intended to support and deliver on the goals of the Government's National Cultural Policy.

The following bill was introduced without a statement of compatibility

Australian Charities and Not-for-profits Commission (Consequential and Transitional) Bill 2012

Introduced into the House of Representatives on 23 August 2012

Portfolio: Treasury

Committee view

1.69 The committee notes that a statement of compatibility was not provided for this bill.

1.70 The *Human Rights (Parliamentary Scrutiny) Act 2011* requires each bill and disallowable legislative instrument to be accompanied by a statement of compatibility. Proposed legislation that is not considered to raise any human rights issues is not exempt from the statement requirement.

1.71 The committee seeks an explanation from the Treasurer for the absence of a statement of compatibility for this bill.

Purpose of the bill

1.72 This bill contains consequential amendments and transitional arrangements related to the new regulatory framework for the not-for-profit sector established by the proposed Australian Charities and Not-for-profits Commission Bill 2012.

1.73 Among other things, the bill makes consequential amendments to Commonwealth legislation to alter references to 'charities' and like terms so that concessions, exemptions and benefits that are available to charities are now available only to charities which are registered. The bill also makes amendments to Commonwealth legislation that provide concessions, exemptions and benefits to not-for-profits entities (NFPs) to ensure that benefits earmarked for NFPs are only accessed by charities which are registered.

Part 2

**Legislative Instrument registered with
FRLI 22 July–23 August 2012**

Consideration of legislative instruments

2.1 The committee has considered 145 legislative instruments registered with the Federal Register of Legislative Instruments (FRLI) between 23 July and 22 August 2012.

2.2 Most of these instruments do not raise human rights concerns and have been registered with statements of compatibility that the committee considers to be adequate.

2.3 A number of instruments have been introduced with statements of compatibility that do not fully meet the committee's expectations. As the instruments in question do not raise human rights compatibility concerns, the committee has written to the relevant Ministers in a purely advisory capacity providing guidance on the preparation of statements of compatibility. The committee hopes that this approach will assist in the preparation of future statements of compatibility that conform more completely to the committee's expectations.

2.4 The committee has identified six instruments that it considers to be compatible with human rights, but for which it seeks clarification from the relevant Minister.

2.5 The full list of instruments scrutinised by the committee can be found in Appendix 1.

The committee has sought clarification of claims that the following legislative instruments do not engage human rights

Broadcasting Services (Simulcast Period End Date - Remote Licence Areas) Determination 2012

FRLI ID: F2012L01725

Introduced into the House of Representatives and the Senate on 22 August 2012

Portfolio: Broadband, Communications & the Digital Economy

Committee view

2.6 The committee understands that Australia does not have any declarations or reservations with regard to the right to freedom of expression in article 19(2) of the International Covenant on Civil and Political Rights (ICCPR). The committee therefore seeks clarification from the Minister about whether and how the determination may engage article 19(2) before forming a view whether this determination is compatible with the human rights defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Purpose of the bill

2.7 The Determination sets 10 December 2013 as the date by which each holder of a commercial television broadcasting licence in a remote licence area is to cease transmitting the commercial television broadcasting service concerned in analog mode.

Compatibility with human rights

2.8 The statement of compatibility states that the determination is compatible with the human rights defined in the *Human Rights (Parliamentary Scrutiny) Act 2011* because it does not engage any of the applicable rights and does not raise any human rights issues.

2.9 The statement also claims that Australia has made a reservation to article 19(2) of the ICCPR. Article 19(2) of the ICCPR protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, and the means of their dissemination.

2.10 According to the statement:

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

This determination is consistent with such reservation, which states that the regulation of television broadcasting in the public interest with the object of providing the best possible broadcasting services to the Australian people is compatible with Article 19 of the ICCPR.

2.11 The committee understands that the declaration (rather than reservation) in question was withdrawn by the Australian Government on 6 November 1984.

Defence Determination 2012/33, Salary, bonuses, allowances, relocation, housing and meals – amendment

Introduced into the House of Representatives and the Senate on 14 August 2012
Portfolio: Defence

Committee view

2.12 The committee considers that this determination is compatible with human rights.

2.13 The committee however seeks clarification from the Minister as to the claim in the statement of compatibility that the determination engages and limits article 11(1) of the International Covenant on Economic, Social and Cultural Rights and articles 12 and 13 of the International Covenant on Civil and Political Rights.

Purpose of the instrument

2.14 This Determination:

- amends the bonus framework to allow for retention bonuses to be paid in return for one year of service (instead of every two and three years);
- introduces a new tied residence for a senior ADF officer;
- reduces charges for casual meals taken by ADF members in the mess; and
- corrects several minor typographical or grammatical errors in the Principal Determination.

Fair Work Amendment Regulation 2012 (No. 2)

FRLI ID: F2012L01708

Introduced into the House of Representatives and the Senate on 21 August 2012

Portfolio: Employment and Workplace Relations

Committee view

2.15 The committee considers that this regulation is compatible with human rights.

2.16 The committee however notes that the statement of compatibility claims that the regulation does not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. The committee seeks clarification from the Minister whether the regulation could be said to promote the right to the enjoyment of just and favourable conditions of work contained in article 7 of the International Covenant on Economic, Social and Cultural Rights.

Purpose of the instrument

2.17 The purpose of the instrument is to amend the Fair Work Regulations 2009 consequential on the commencement of the *Coastal Trading (Revitalising Australian Shipping) Act 2012* and associated regulations and the *Coastal Trading (Revitalising Australian Shipping) consequential Amendments and Transitional Provisions) Act 2012*. The effect of the regulation is to ensure that the *Fair Work Act 2009* continues to apply to certain ships engaged in coastal trading in Australia's territorial sea, in the EEZ and in the waters above the continental shelf.

Road Safety Remuneration Regulation 2012

FRLI ID: F2012L01712

Introduced into the House of Representatives and the Senate on 21 August 2012

Portfolio: Employment and Workplace Relations

Committee view

2.18 The committee considers that this regulation is compatible with human rights.

2.19 The committee however notes that the statement of compatibility claims that the regulation does not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. The committee seeks clarification from the

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Minister whether the regulation could be said to engage the right to the enjoyment of just and favourable conditions of work contained in article 7 of the International Covenant on Economic, Social and Cultural Rights, the right to a fair hearing contained in article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) and the right to privacy contained in article 17 of the ICCPR .

Purpose of the instrument

2.20 The purpose of the instrument is to prescribe the work health and safety laws of the States and Territories as capable of acting concurrently with the Road Safety Remuneration Act 2012.

2.21 The regulation:

- allows for representation by an industrial association in small claims matters in the Federal Magistrates Court or a court of a State;
- prescribes the information which the President of the Tribunal must provide to the Minister and the Fair Work Ombudsman regarding the operation of the Act and the functions of the Tribunal; and
- sets out the record keeping requirements for employers and hirers of road transport drivers, as well as for participants in the supply chain.

Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 2)

FRLI ID: F2012L01654

Introduced into the House of Representatives and the Senate on 14 August 2012

Portfolio: Treasury

Committee view

2.22 The committee considers that this regulation is compatible with human rights.

2.23 The committee however notes that the statement of compatibility claims that the regulation does not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. The committee seeks clarification from the Treasurer whether the regulation could be said to promote the right to social security contained in article 9 of the International Covenant on Economic, Social and Cultural Rights.

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Purpose of the instrument

2.24 The purpose of the regulation is to amend the *Superannuation Industry (Supervision) Regulations 1994* to require:

- trustees of self managed superannuation funds (SMSFs) to consider insurance for their members as part of the fund's investment strategy;
- money and other assets of an SMSF to be kept separate from those held by a trustee personally and by a standard employer-sponsor or an associate of a standard employer-sponsor; and
- SMSF assets to be valued at market value for reporting purposes.

Tobacco Advertising Prohibition Amendment Regulation 2012 (No. 1)

FRLI ID: F2012L01714

Introduced into the House of Representatives and the Senate on 21 August 2012

Portfolio: Health and Aging

Committee view

2.25 The committee considers that this regulation is compatible with human rights.

2.26 The committee however notes that the statement of compatibility claims that the regulation does not engage human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*. The committee seeks clarification from the Minister whether the regulation could be said to engage the right to health contained in article 12 International Covenant on Economic, Social and Cultural Rights and the right to freedom of expression contained in article 19(2) of the International Covenant on Civil and Political Rights.

Purpose of the instrument

2.27 This regulation amends the Tobacco Advertising Prohibition Regulations to prescribe content and format requirements for internet point-of-sale tobacco advertisements. The amendments require advertisements to be presented in a plain, text-only format with health warnings and age warnings.

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Appendix 1

**Full list of Legislative Instruments
registered with FRLI 22 July–23 August 2012**

Legend: C – Comments made; A – Advisory Letter; N – No further action required.

Instrument Name	FRLI ID	Action Required
AD/B737/197 Amdt 3 - Flight Control Modules (FCM) - Replacement	F2012L01609	N
AD/B737/228 Amdt 1 - Honeywell Start Converter Unit	F2012L01608	N
AD/GA8/6 - Pitot Heat Wiring	F2012L01667	N
AD/OH-58/8 - Main Rotor Mast Cracking	F2012L01630	N
AD/SA-TP/23 Amdt 2 - Structural Components Fatigue Lives	F2012L01734	N
AD/TRENT 700/1 - Engine - IP Turbine Bearing Oil Vent & Scavenge Tube	F2012L01699	N
AD/TRENT 700/2 - Engine - IP Turbine Bearing Oil Feed Tube	F2012L01700	N
AD/TRENT 700/3 - Engine - HP/IP Turbine Bearing Oil Vent Tubes	F2012L01701	N
AD/TRENT 700/4 - Engine - IP Compressor Shaft - Inspection	F2012L01702	N
Agricultural and Veterinary Chemicals (Administration) Amendment Regulation 2012 (No. 1)	F2012L01647	N
Airports (Control of On-Airport Activities) Amendment Regulation 2012 (No. 1)	F2012L01665	N
Airports (Environment Protection) Amendment Regulation 2012 (No. 1)	F2012L01664	N
Airports Amendment Regulation 2012 (No. 1)	F2012L01668	N
Airports Amendment Regulation 2012 (No. 2)	F2012L01669	N
Airports Legislation Amendment Regulation 2012 (No. 1)	F2012L01663	N
Amendment of List of Exempt Native Specimens - Queensland Mud Crab Fishery (10/08/2012)	F2012L01717	A
Amendment of List of Exempt Native Specimens - Southern and Eastern Scalefish and Shark Fishery (28/06/2012)	F2012L01596	A
Amendment of List of Exempt Native Specimens - Southern and Eastern Scalefish and Shark Fishery (29/06/2012)	F2012L01619	A
Amendment of List of Exempt Native Specimens - Torres Strait Finfish Fishery (26/06/2012)	F2012L01597	A
Amendment of List of Exempt Native Specimens - Torres Strait Prawn Fishery (30/07/2012)	F2012L01659	A
Amendment of List of Exempt Native Specimens - Western Australian Trochus Fishery (02/08/2012)	F2012L01677	A
Amendment of List of Exempt Native Specimens - Western Australian Western Rock Lobster Fishery (20/07/2012)	F2012L01629	A
ASA 2012-1 - Amending Standard to ASA 570 Going Concern - July 2012	F2012L01671	A
ASIC Class Order [CO 12/1110]	F2012L01736	A
ASIC Class Order [CO 12/752]	F2012L01674	A
Australian National Railways Commission Act 1983 - Notice under section 67AZR of the ANRC Act	F2012L01692	N
Australian Prudential Regulation Authority (Commonwealth Costs) Determination 2012	F2012L01595	N

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Instrument Name	FRLI ID	Action Required
Australian Prudential Regulation Authority (confidentiality) determination No. 14 of 2012	F2012L01705	N
Autonomous Sanctions Amendment Regulation 2012 (No. 1)	F2012L01707	N
Banking (prudential standard) determination No. 1 of 2012 - Prudential Standard APS 121 - Covered Bonds	F2012L01617	N
Bass Strait Central Zone Scallop Fishery (Closures) Direction No. 1 2012	F2012L01713	N
Bass Strait Central Zone Scallop Fishery Total Allowable Catch Determination No. 2 2012	F2012L01675	N
Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 11 of 2012)	F2012L01612	N
Broadcasting Services (Simulcast Period End Date - Remote Licence Areas) Determination 2012	F2012L01725	C
Broadcasting Services (Simulcast Period for Darwin TV1) Determination (No. 1) 2012	F2012L01687	N
Broadcasting Services (Simulcast Period for Tasmania TV1) Determination (No. 1) 2012	F2012L01686	N
Carbon Farming (Capture and Combustion of Methane in Landfill Gas from Legacy Waste) Methodology Determination 2012	F2012L01688	N
CASA 235/12 - Instructions - Qantas B-767 (P-RNAV procedures)	F2012L01680	A
CASA 239/12 - Direction - number of cabin attendants for Fokker F70 and Fokker F100 aircraft	F2012L01634	N
CASA 240/12 - Direction - number of cabin attendants in Boeing 737-800 series aircraft, Qantas Airways Limited	F2012L01632	N
CASA ADCX 016/12 - Revocation of Airworthiness Directives	F2012L01610	N
CASA ADCX 017/12 - Revocation of Airworthiness Directives	F2012L01673	A
CASA ADCX 018/12 - Revocation of Airworthiness Directives	F2012L01698	N
CASA EX115/12 - Exemption - from standard take-off and landing minima - Qantas	F2012L01628	A
CASA EX117/12 - Exemption of DAMP organisations for collection and screening of specimens	F2012L01641	N
CASA EX118/12 - Exemption - recency requirement	F2012L01633	A
CASA EX123/12 - Exemption - from Circular Error of Position Tolerance 7NM for RNAV GNSS, RNP APCH and RNP AR APCH - Exemption - Airservices Australia Operations Manual	F2012L01741	A
CASA EX126/12 - Exemption - minimum runway width	F2012L01676	A
CASA EX130/12 - Exemption - class A aircraft used in private operations	F2012L01672	A
CASA EX93/12 - Exemption - from standard take-off and landing minima - Jetstar	F2012L01593	A

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Instrument Name	FRLI ID	Action Required
Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2012 (No. 1)	F2012L01636	A
Civil Aviation Order 20.18 Amendment Instrument 2012 (No. 1)	F2012L01739	N
Clean Energy Amendment Regulation 2012 (No. 5)	F2012L01657	N
Criminal Code Amendment Regulation 2012 (No. 10)	F2012L01696	N
Criminal Code Amendment Regulation 2012 (No. 11)	F2012L01697	N
Criminal Code Amendment Regulation 2012 (No. 7)	F2012L01693	N
Criminal Code Amendment Regulation 2012 (No. 8)	F2012L01694	N
Criminal Code Amendment Regulation 2012 (No. 9)	F2012L01695	N
Customs (Prohibited Exports) Amendment Regulation 2012 (No. 2)	F2012L01645	N
Customs (Prohibited Imports) Amendment Regulation 2012 (No. 2)	F2012L01711	N
Customs Act 1901 - CEO Instrument of Approval No. 1 of 2012	F2012L01607	N
Customs Amendment Regulation 2012 (No. 6)	F2012L01646	N
Defence Determination 2012/33, Salary, bonuses, allowances, relocation, housing and meals – amendment		C
Defence Determination 2012/34, Army 1st Recruit Training Battalion recruit instructors scheme – amendment		A
Defence Determination 2012/35, Service residences – amendment		A
Defence Determination 2012/36, Reserve health support – amendment		A
Defence Determination 2012/37, Special assistance during removal		A
Defence Determination 2012/38, Post indexes – amendment		A
Defence Determination 2012/39, District Allowance – amendment		A
Defence Determination 2012/40, Meals, incidentals and short-term duty overseas travel costs – amendment		A
Defence Determination 2012/41, Removals – amendment		A
Defence Determination 2012/42, Additional recreation leave – amendment		A
Defence Determination 2012/43, Emergency Support for Families Scheme – amendment		A
Defence Determination 2012/44, Deployment allowance – amendment		N
Defence Determination 2012/45, Post indexes – amendment		A
Determination of Degrees, Diplomas and Certificates No. 2012/1	F2012L01620	N

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Instrument Name	FRLI ID	Action Required
Determination to Reduce Appropriations Upon Request (No. 1 of 2012-2013)	F2012L01622	N
Disability Discrimination Amendment Regulation 2012 (No. 1)	F2012L01648	N
Environment Protection and Biodiversity Conservation Act 1999 - section 269A - Instrument Adopting and Revoking Recovery Plans (NSW, QLD, SA, TAS and WA) (06/07/2012)	F2012L01594	A
European Bank for Reconstruction and Development Regulation 2012	F2012L01689	N
Excise Amendment Regulation 2012 (No. 2)	F2012L01649	N
Excise Amendment Regulation 2012 (No. 3)	F2012L01650	N
Fair Work Amendment Regulation 2012 (No. 2)	F2012L01708	C
Federal Court (Corporations) Amendment Rules 2012 (No. 1)	F2012L01631	N
Finance Minister's Amendment Orders (Financial Statements for reporting periods ending on or after 1 July 2011)	F2012L01600	A
Financial Management and Accountability Amendment Regulation 2012 (No. 5)	F2012L01690	A
Financial Management and Accountability Amendment Regulation 2012 (No. 6)	F2012L01742	A
Health Insurance (Section 19AB Exemptions) Guidelines 2012	F2012L01691	N
Health Insurance (Telehealth Services) Determination 2012	F2012L01678	N
High Court of Australia Rule of Court (16/08/2012)	F2012L01740	N
Higher Education Provider Approval No. 4 of 2012	F2012L01592	N
Higher Education Provider Approval No. 5 of 2012	F2012L01637	N
Higher Education Provider Approval No. 6 of 2012	F2012L01639	N
Higher Education Provider Approval No. 7 of 2012	F2012L01735	N
Legal Services Amendment Direction 2012 (No. 2)	F2012L01652	A
Legislative Instruments Amendment Regulation 2012 (No. 1)	F2012L01653	A
MRCA Treatment Principles (In-Home Telemonitoring for Veterans Initiative) Instrument 2012 (No. M11/2012)	F2012L01729	N
National Consumer Credit Protection Amendment Regulation 2012 (No. 2)	F2012L01706	N
National Greenhouse and Energy Reporting (Audit) Amendment Determination 2012 (No. 1)	F2012L01738	N
National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2012 (No. 6) (No. PB 48 of 2012)	F2012L01616	A
National Health (Efficient Funding of Chemotherapy) Special Arrangement Amendment Instrument 2012 (No. 7) (No. PB 65 of 2012)	F2012L01730	A

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Instrument Name	FRLI ID	Action Required
National Health (Growth Hormone Program) Special Arrangement Amendment Instrument 2012 (No. 2) (No. PB 66 of 2012)	F2012L01733	A
National Health (Highly specialised drugs program for hospitals) Special Arrangement Amendment Instrument 2012 (No. 6) (No. 47 of 2012)	F2012L01615	A
National Health (Listed drugs on F1 or F2) Amendment Determination 2012 (No. 5) (No. PB 53 of 2012)	F2012L01621	A
National Health (Listed drugs on F1 or F2) Amendment Determination 2012 (No. 6) (No. PB 67 of 2012)	F2012L01716	A
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2012 (No. 6) (No. PB 44 of 2012)	F2012L01605	A
National Health (Listing of Pharmaceutical Benefits) Amendment Instrument 2012 (No. 7) (No. PB 60 of 2012)	F2012L01683	N
National Health (Price and Special Patient Contribution) Amendment Determination 2012 (No. 4) (No. PB 45 of 2012)	F2012L01599	N
National Health (Price and Special Patient Contribution) Amendment Determination 2012 (No. 5) (No. PB 61 of 2012)	F2012L01682	N
National Health (Residential Medication Chart) Amendment Determination 2012 (No. 1) (No. PB 59 of 2012)	F2012L01715	A
National Health (Weighted average disclosed price - interim supplementary disclosure cycle) Determination 2012 (No. PB 58 of 2012)	F2012L01731	N
National Health (Weighted average disclosed price - third transitional disclosure cycle) Amendment Determination 2012 (No. PB 51 of 2012)	F2012L01604	N
National Health Act (Pharmaceutical Benefits - Early Supply) Amendment August 2012 - specification under subsection 84AAA(2) (No. PB 56 of 2012)	F2012L01603	A
National Health Act (Pharmaceutical Benefits - early Supply) Amendment September 2012 - specification under subsection 84AAA(2) (No. PB 69 of 2012)	F2012L01737	A
National Health Act 1953 - Amendment determination under paragraph 98C(1)(b) - conditions (No. PB 46 of 2012)	F2012L01601	A
National Health Act 1953 - Amendment determination under paragraph 98C(1)(b) - conditions (No. PB 63 of 2012)	F2012L01732	A
National Health Act 1953 - Amendment Determination under section 84AH (2012) (No. 2) (No. PB 54 of 2012)	F2012L01623	A
National Health Act 1953 - Amendment determination under sections 93 and 93AA - pharmaceutical benefits supplied by medical practitioners and authorised nurse practitioners (No. PB 62 of 2012)	F2012L01681	N

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Instrument Name	FRLI ID	Action Required
National Health Revocation Instrument 2012 (No. 1) (No. PB 55 of 2012)	F2012L01624	A
PCEHR (Participation Agreements) Rules 2012	F2012L01704	N
PCEHR Rules 2012	F2012L01703	N
Private Health Insurance (Prostheses) Rules 2012 (No. 2)	F2012L01722	N
Radiocommunications (118MHz to 137MHz Amplitude Modulated Equipment - Aeronautical Radio Service) Standard 2012	F2012L01728	N
Radiocommunications (Aircraft and Aeronautical Mobile Stations) Class Licence Variation 2012 (No. 1)	F2012L01723	N
Radiocommunications (Receiver Licence Tax) Amendment Determination 2012 (No. 2)	F2012L01655	N
Radiocommunications (Spectrum Licence Tax) Amendment Determination 2012 (No. 1)	F2012L01721	N
Radiocommunications (subsection 145(3) Certificates) Determination 2012	F2012L01719	N
Radiocommunications (Trading Rules for Spectrum Licences) Determination 2012	F2012L01718	N
Radiocommunications (Transmitter Licence Tax) Amendment Determination 2012 (No. 3)	F2012L01656	N
Radiocommunications Advisory Guidelines (Registration of Devices under Spectrum Licences without an Interference Impact Certificate) Revocation Instrument 2012	F2012L01720	N
Radiocommunications Devices (Compliance Labelling) Amendment Notice 2012 (No. 1)	F2012L01724	N
Renewable Energy (Electricity) Amendment Regulation 2012 (No. 6)	F2012L01658	N
Retained Agency Receipts Determination 2012/01: Department of Agriculture, Fisheries and Forestry	F2012L01661	N
Retirement Savings Accounts Amendment Regulation 2012 (No. 2)	F2012L01709	N
Road Safety Remuneration Regulation 2012	F2012L01712	C
Social Security (Administration) (Declared voluntary income management areas - Western Australia) Amendment Determination 2012	F2012L01611	N
Social Security (Administration) (Specified income management Territory - Northern Territory) Specification 2012	F2012L01613	N
Social Security (Administration) (Vulnerable income management areas) Specification 2012	F2012L01614	N
Social Security (Special Disability Trust - Discretionary Spending) (DIISRTE) Determination 2012	F2012L01618	N

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.

Instrument Name	FRLI ID	Action Required
Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 4 2012	F2012L01670	N
Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 2)	F2012L01654	C
Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 3)	F2012L01710	N
Telecommunications (Numbering Charges - Delegated Services) Amendment Determination 2012	F2012L01726	N
Tobacco Advertising Prohibition Amendment Regulation 2012 (No. 1)	F2012L01714	C
Veterans' Entitlements (Treatment Principles - In-Home Telemonitoring for Veterans Initiative) Instrument 2012 (No. R10/2012)	F2012L01727	N

Any Member or Senator who wishes to draw matters to the attention of the committee under the *Human Rights (Parliamentary Scrutiny) Act 2011* is invited to do so.