

Part 2

**Legislative Instruments
introduced 10–14 September 2012**

Consideration of legislative instruments

2.1 The committee has considered 113 legislative instruments introduced in the Parliament between 10 and 14 September 2012. The full list of instruments scrutinised by the committee can be found in Appendix 2.

2.2 Most of these instruments appear not to 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 proposes to write 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 one instrument that it considers to be compatible with human rights, but for which it seeks clarification from the relevant Minister.

Customs Act 1901 - CEO Directions No. 1 of 2012

FRLI ID: F2012L01684

Introduced into the House of Representatives and the Senate on 16 August 2012

Portfolio: Attorney-General

Committee view

2.2 The committee considers that this instrument is likely to be consistent with human rights standards for the use of force as required by articles 6(1) and 7 of the ICCPR. However, the committee seeks clarification from the Attorney-General regarding the reason why CEO Order 1 (2010) - Use of Force, which sets out the applicable Customs and border Protection policy for the use of force, is not a publicly available document and how this may be considered to meet the requirement for laws authorising limits on rights to be publicly accessible.

Purpose of the instrument

2.3 These directions impose the same obligations on customs officers of the Indian Ocean Territories Customs Service (IOTCS) as those which apply to mainland officers of the Australian Customs and Border Protection Service (ACBPS) under CEO Order 1 (2010) - Use of Force in relation to the deployment and use of firearms and items of personal defence equipment, and the use of force in the performance of duties.

2.4 Consequently, an IOTCS officer may only use force in accordance with the same procedures that apply to an ACBPS officer, including in any of the following circumstances:

- aiming or discharging a firearm, other than for the purpose of destroying an animal or signalling a vessel to heave to;
- drawing or using a baton against another person;
- aiming or using a chemical agent;
- using any compliance or restraint hold, strike, kick or other operational safety application against another person; or
- using handcuffs or similar restraint against a person.

Compatibility with human rights

Right to life and Prohibition against torture, or cruel, inhuman or degrading treatment

2.5 The statement of compatibility states that the directions do not raise any human rights issues and are compatible with the human rights defined in the Human Rights (Parliamentary Scrutiny) Act 2011.

2.6 The committee notes that use of force provisions engage the right to life in article 6 of the International Covenant on Civil and Political Rights (ICCPR) and the prohibition against torture, or cruel, inhuman or degrading treatment in article 7 of the ICCPR.

2.7 Human rights standards require that there must be clear and detailed laws governing the use of force by public officials. In particular, force should only be used when strictly necessary and in a manner proportionate to a legitimate purpose.

2.8 The explanatory statement to the directions states that the applicable Customs and Border Protection policy on the use of force is contained in the 2010 Order but does not provide any relevant information as to what these might encompass. The committee notes that the 2010 Order is a classified document.

2.9 In order to form a view whether these directions are compatible with the human rights engaged, the committee obtained a copy of the CEO Order 1 (2010) - Use of Force from Australian Customs and Border Protection Service and reviewed the applicable policy on the use of force.

2.10 The committee considers that the 2010 Order is likely to be consistent with human rights standards for the use of force as required by articles 6(1) and 7 of the ICCPR.

2.11 However, the committee notes that limitations on human rights must have a clear legal basis, which is accessible and foreseeable. This means that the law authorising the limit of the right must be:

- publicly accessible so that people have an adequate indication of how the law limits their rights; and
- sufficiently precise to enable people to regulate their behaviour accordingly.

2.12 The committee proposes to write to the Attorney-General to seek clarification as to why the 2010 order is not available publicly and how this may be considered to meet the requirement for laws authorising limits on rights to be publicly accessible.

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.