

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*) of bills introduced into the Parliament during the period 5 to 28 February 2013 and legislative instruments registered with the Federal Register of Legislative Instruments (FRLI) during the period 5 January to 15 February 2013. The report also provides the committee's comments on a number of responses to comments made in previous committee reports.

Bills introduced 5 to 28 February 2013

The committee considered 29 bills all but one of which were introduced with a statement of compatibility. Twelve of the bills considered do not require further scrutiny as they do not appear to give rise to human rights concerns. The committee has identified 17 bills that it considers require further examination and for which it will seek further information.

Instruments registered between 5 January 2013 and 15 February 2013

The committee considered 300 legislative instruments. The full list of instruments scrutinised by the committee can be found in Appendix 1.

The majority of these instruments do not appear to raise any human rights concerns and have statements of compatibility that are adequate. The committee will seek further information in relation to four instruments before forming a view about their compatibility. The committee has deferred consideration of two instruments.¹

The remaining 83 instruments do not appear to raise any human rights concerns but have statements of compatibility that do not fully meet the committee's expectations. The committee proposes to write to the relevant Ministers in a purely advisory capacity to provide guidance on preparing statements of compatibility.

Ministerial responses

The committee considered 16 ministerial responses to comments made in various previous reports. The committee has concluded its examination of seven bills and instruments and has decided to seek further clarification in relation to two bills².

1 Social Security (Administration) – Queensland Commission (Family Responsibilities Commission) Specification 2012, p 93, and Work Health and Safety Act 2011 (application to Defence activities and Defence members) Declaration 2012, p. 94.

2 Customs Amendment (Miscellaneous Measures) Bill 2012, p. 125, and the Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Bill 2012, p 153.

The committee has suggested modifications to the explanatory memorandum in its comments on one bill³ and has suggested the inclusion of safeguards for two bills.⁴ The committee regrets that two bills had long been passed by the Parliament before the committee received the Minister's response.⁵

The committee has decided to defer its consideration of responses in relation to five bills and instruments to enable closer examination of the issues in light of the information provided in the response.

Issues arising

A number of the bills considered by the committee in this report have led it to reflect on some fundamental principles with regard to the role of this committee in the scrutiny of legislation.

Human rights scrutiny of appropriation bills

In commenting on the two appropriation bills considered in this report,⁶ the committee has noted that it does not anticipate it will generally be necessary for it to make substantive comments on such bills. Nonetheless, the committee has set out its expectation that the incorporation of human rights considerations in the underlying budgetary processes, where appropriate, would provide the most practical approach to ensuring that human rights are taken into account in the development of policy and legislation. The committee has stated that it would find it helpful if the statements of compatibility that accompany appropriation bills identified any proposed cuts in expenditure which may amount to retrogression or limitations on human rights.

Human rights scrutiny of principal acts

The committee has noted a tendency for proponents of legislation to suggest that, where an amending bill incorporates by reference the provisions of an existing Act, such amendments do not raise any human rights concerns by virtue of this reference to existing legislation.

In this report, the committee sets out its expectation that in such circumstances the statement of compatibility should include an analysis of the human rights implications and compatibility of the provisions of the existing or parent Act as they

3 Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012, p 95.

4 Australian Sports Anti-Doping Authority Amendment Bill 2013, p. 113, and Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2013, p 176.

5 Tax Laws Amendment (2012 Measures No. 4) Bill 2012, p. 168, and Tax Laws Amendment (2012 Measures No. 5) Bill 2012, p. 172.

6 Appropriation Bill (No.3) 2012-2013 and Appropriation Bill (No. 4) 2012-2013, p 65.

are applied or extended by the amendment.⁷ The committee expects that this practice will be adopted even where the parent Act commenced operation before the commencement of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Act).

This approach is consistent with the committee's functions under the Act in two respects. First, the operation of amendments have to be analysed in terms of their legal effect and practical impact, which can only be done by reviewing their operation in the statutory framework of which they form part. Second, such a review contributes to the committee's performance of its mandate 'to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue'.⁸

Human rights scrutiny of national co-operative or uniform schemes of legislation

The committee has taken the opportunity provided by the Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2013, to set out its concerns regarding areas of activity regulated under national schemes of legislation resulting from intergovernmental agreements. While the minor amendments proposed by this bill do not give rise to any human rights concerns, the committee considers that the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* gives rise to human rights concerns. The committee has noted the challenges for human rights scrutiny posed by national co-operative schemes of legislation and has stated its view that the issue of compatibility with human rights should be an integral part of the development of any national scheme.

The committee has determined that I should draw attention to each of these issues in my tabling statement.

Mr Harry Jenkins MP
Chair

7 Refer to comments on the Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2013, p. 29, and Royal Commissions Amendment Bill 2013, p. 42.

8 *Human Rights (Parliamentary Scrutiny) Act 2011 (the Act)*, section 7(b).

