

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 27 May to 6 June 2013. The report also sets out the committee's comments on four responses to the committee's comments on civil penalty provisions made in previous reports.

Bills introduced 27 May to 6 June 2013

The committee considered 37 bills, 35 of which were introduced with a statement of compatibility. The committee has identified seven bills that it considers require further examination and for which it will seek further information. The committee's comments on these bills are set out in this report.

28 of the bills considered do not require further scrutiny as they do not appear to give rise to human rights concerns. Some of these bills do not engage human rights, some engage and promote rights and a number engage and limit rights, but are accompanied by statements of compatibility that set out an adequate justification for each of these limitations. A further two private Members' bills may engage rights and the committee leaves open the option of examining these bills further in the event that these bills proceed to further stages of debate.¹

Bills introduced without statements of compatibility

The Broadcasting Services Amendment (Advertising for Sports Betting Bill 2013 [No. 2] and the Constitution Alteration (Local Government) 2013 were not accompanied by a statement of compatibility. The committee considers that neither bill gives rise to human rights concerns, but will write to the proponent of each bill regarding the decision not to provide a statement of compatibility.

The Constitution Alteration (Local Government) 2013 seeks to establish the process for a referendum to amend section 96 of the Australian Constitution to make specific provision for the Commonwealth to grant financial assistance to local government bodies. The Explanatory Memorandum that accompanied the bill states that the proposed legislation is not within the scope of the *Human Rights (Parliamentary Scrutiny) Act 2011* and therefore does not require a statement of compatibility under that Act. The committee appreciates that a bill to alter the Constitution has some important differences from other bills considered by the Parliament, particularly with regard to the procedure for its approval and commencement. However, the committee notes that amendments to the Constitution resulting from the procedure

1 Live Animal Export Restriction Prohibition Bill 2013, introduced by Mr Wilkie MP and Australian Ownership Bill 2013, introduced by Mr Katter MP.

set out in section 128 of the Constitution are described as Acts in their long titles,² as is this bill, even though they may be cited without including the word 'Act' in the citation.³ As no further explanation has been provided in the explanatory memorandum, the committee will write to the Attorney-General seeking clarification as to why a statement of compatibility was not provided with this bill.

Examples of clearly expressed statements of compatibility

The committee notes that a number of the bills considered have been introduced with well-reasoned statements of compatibility which have greatly assisted the committee. The statement provided with the Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013 is exemplary. While the committee has raised some questions in relation to certain aspects of the bill, for the most part any limitations in the bill have been adequately explained in the statement of compatibility which has enabled the committee to conclude that these particular provisions do not raise human rights concerns.

The Charities Bill 2013 and consequential bill introduces a statutory definition of a 'charity' that does not extend to organisations engaged in or promoting activities that are unlawful, contrary to public policy or is for the purpose of promoting or opposing a political party or candidate. The bill is accompanied by a statement of compatibility that provides a clear explanation of why the measures are a necessary, reasonable and proportionate limitation on the rights to freedom of speech and political participation. The Migration Amendment (Offshore Resources Activity) Bill 2013 is another example of a statement of compatibility that provides a clearly expressed justification for the limitations on rights implemented through that bill.

Promotion of rights

A number of the bills considered in this report promote rights.⁴ The committee wishes to make specific comment on the Privacy Amendment (Privacy Alerts) Bill 2013 and the Homelessness Bill 2013, and the related consequential bill.⁵

The Privacy Amendment (Privacy Alerts) Bill 2013 requires entities regulated by the Privacy Act to notify affected individuals and the Australian Information Commissioner where there has been unauthorised access to, or disclosure of, personal information, or where personal information is lost in circumstances that

2 See, for example, the Constitution Alteration (Aboriginals) 1967, Act No 55 of 1967, the long title of which is 'An Act to alter the Constitution so as to omit certain words relating to the People of the Aboriginal Race in any State and so that Aboriginals are to be counted in reckoning the Population'.

3 See, for example, Constitution Alteration (Aboriginals) 1967, section 1.

4 See, for example, Australian Capital Territory Water Management Legislation Amendment Bill 2013, Early Years Quality fund Special Account Bill 2013, and Social Security Amendment (Supporting More Australians Into Work) Bill 2013.

5 Homelessness (Consequential Amendments) Bill 2013.

could give rise to unauthorised loss or disclosure. The committee welcomes this response to concerns regarding the risks associated with the storage of large amounts of personal information in electronic form raised by the Australian Law Reform Commission in its 2008 report⁶ which advances the right to privacy.

The committee notes that the Homelessness Bill 2013 is aspirational in nature as no rights are created. The committee endorses the commitment to increase recognition and awareness of people experiencing or at risk of homelessness, as housing is an important right under the International Covenant on Economic, Social and Cultural Rights. The committee notes, however, that the bill does not create a legislative right to housing as recommended by the United Nations Committee on Economic, Social and Cultural Rights.⁷

Human rights compatibility and civil penalty provisions

Since commencing its work in August 2012, the committee has noted a number of bills containing civil penalty provisions and has sought clarification regarding the consistency of these provisions with the guarantees relating to criminal proceedings contained in articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR).

In this report, the committee has set out its comments on the civil penalty provisions in four such bills, indicating the type of analysis that it considers may be appropriate to include in statements of compatibility accompanying bills that introduce or incorporate civil penalty regimes. The committee thanks the Ministers concerned for their detailed responses to the committee's comments and for their forbearance while the committee gave detailed consideration to this issue. The committee has concluded that the civil penalty provisions in two of the bills are unlikely to be considered criminal.⁸ The remaining two bills contain civil penalty provisions that the committee considers may properly be characterised as 'criminal' in nature.⁹ As such the committee has expressed concerns that where a person may be subject to a pecuniary penalty for a civil penalty contravention in addition to punishment under a

6 Australian Law Reform Commission Report 108, 'For Your Information: Australian Privacy Law and Practice' 2008,

7 CESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, E/C.12/AUS/CO/4, 42nd session, Geneva, para 11 (22 May 2009). For an earlier recommendation to similar effect, see CESCR, *Concluding Observations of the Committee on Economic, Social and Cultural Rights*, UN Doc E/2001/22, para 379 (2001). See CESCR, *General Comment No. 4: The Right to Adequate Housing (art 11)*, 6th sess, UN Doc E/1992/23 (13 December 1991).

8 Australian Sports Anti-Doping Authority Amendment Bill 2013, pp 41- 49; Biosecurity Bill 2012, pp 50 - 56.

9 Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012, pp 23 - 40; Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Bill 2012, pp 57 - 67.

criminal offence for the same or substantially the same conduct, this may be inconsistent with the right not to be tried twice for the same offence (article 14(7) of the ICCPR).

To assist those involved in policy development, drafting and human rights scrutiny of these types of provisions, the committee has developed an interim practice note setting out its understanding of the human rights law position. *Practice Note 2* forms Appendix 2 to this report.

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