

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 12 November to 5 December 2013 and legislative instruments received during the period 8 June and 22 November 2013. The committee has also considered 10 responses to the committee's comments made in previous reports in the 43rd Parliament.

Bills introduced 12 November to 5 December 2013

The committee considered 45 bills, all of which were introduced with a statement of compatibility. Of these 45 bills, 22 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 20 bills that it considers require further examination and for which it will seek further information.

The committee has decided to defer its consideration of the Building and Construction Industry (Improving Productivity) Bill 2013, the Building and Construction Industry (Consequential and Transitional Provisions) Bill 2013 and the Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013. The committee notes that each of these three bills has been referred to Senate committees for consideration. The committee considers that each of the three bills may give rise to human rights concerns and has decided to defer its consideration of each bill to allow for closer examination of the issues and the opportunity to take account of submissions made to the Senate committees.

Legislative instruments received between 8 June 2013 and 22 November 2013

The committee considered 1 017 legislative instruments received between 8 June 2013 and 22 November 2013. The full list of instruments scrutinised by the committee can be found in Appendix 1 to this report.

Of these 1 017 instruments, 973 (or over 95 percent) do not appear to raise any human rights concerns and are accompanied by statements of compatibility that are adequate. A further 18 instruments do not appear to raise any human rights concerns but are not accompanied by statements of compatibility that fully meet the committee's expectations. As the instruments in question do not appear to 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 has decided to seek further information from the relevant Minister in relation to the remaining 20 instruments before forming a view about their compatibility with human rights.

The committee has deferred its consideration of six instruments. Four of these raise issues in relation to Australia's sanctions and extradition regimes that the

predecessor to this committee (the former committee) commented on in the 43rd Parliament. The former committee wrote to the former Minister for Foreign Affairs and Trade to request a review of the sanctions regime in light of Australia's international human rights obligations and to report back to the committee in the 44th Parliament. The former Minister responded stating that he had instructed the department to carefully consider the committee's recommendation. The committee has decided to draw the current Minister for Foreign Affairs' attention to the former committee's request and defer consideration of these instruments until it has received the Minister's response.

The committee has decided to defer a further two instruments while it considers the former committee's recommendation that a 12-month review of the Stronger Futures package of legislation be undertaken in the 44th Parliament to evaluate the latest evidence and consider the continuing necessity for the Stronger Futures measures.¹

Responses

The committee has considered ten responses to comments made in previous reports by the former committee in the 43rd Parliament. The committee has concluded its consideration of two bills and two instruments as the responses relating to them appear to have adequately addressed the committee's concerns.

The committee has decided to write to the relevant Ministers seeking further information, or suggesting the inclusion of safeguards, in relation to five bills and one instrument.

The committee makes a general observation that the quality of a number of statements of compatibility accompanying legislation considered during this reporting period fell short of the committee's expectations. Statements of compatibility perform a significant role in the legislative process. They provide an important starting point for the committee's, and the Parliament's, assessment of human rights compatibility. However, the committee does not regard statements of compatibility as definitive and does not consider them to be exclusive in the consideration of human rights compatibility. The committee routinely looks beyond the stated objective of the legislation provided in the statement of compatibility to consider the likely practical effect of the legislation and whether the explanations offered for decisions to limit rights are evidence based.

While the committee is able to consider the human rights compatibility of legislation in the absence of a statement of compatibility, such statements often provide valuable information that cannot be gained from the legislation and the explanatory memorandum or explanatory statement. A good statement of compatibility will set

1 Social Security (Administration) (Recognised State/Territory Authority – NT Alcohol Mandatory Treatment Tribunal) Determination 2013, pp 172-173 of this report, and Stronger Futures in the Northern Territory Regulation 2013, pp 174-175 of this report.

out the objective of the legislation and the manner in which human rights have been considered in framing the legislation to achieve this objective. This is particularly important when, in order to achieve a particular objective, certain rights are to be limited. The statement of compatibility should set out how the objectives being sought have been weighed against any limitations on rights. The statement should set out a clear justification for each limitation and demonstrate that there is a rational and proportionate connection between the limitation and the policy objective. The statement should also set out the safeguards that will be applied to ensure that any limitations are implemented in the least restrictive form. The committee will continue to write to the sponsors of bills and instruments to draw their attention to the committee's expectations for statements of compatibility when it considers that particular statements do not adequately meet these expectations.

The committee considers, however, that the overall quality of statements of compatibility continues to improve and that there were many examples of good statements of compatibility accompanying the legislation considered in this report. For example, the detail provided in the statement of compatibility accompanying the Clean Energy Legislation (Carbon Tax Repeal) Bill 2013 on the engagement of civil penalties introduced by the bill with criminal process rights was extremely useful in assisting the committee with its task.

Senator Dean Smith
Chair