

Bills unlikely to raise human rights concerns

Australian Capital Territory Water Management Legislation Amendment Bill 2013¹⁵⁶

Portfolio: Environment

Introduced: Senate, 13 November 2013

1.292 This bill proposes amendments to the *Australian Capital Territory (Planning and Land Management) Act 1988* to enable the abstraction of water on National Land and by Commonwealth agencies in the ACT to be managed by the ACT Government under the *Water Resources Act 2007 (ACT)*. This bill also seeks to amend the *Water Act 2007* to provide that the water resources of the Googong Dam Area are required to be included in a water resource plan area for which the ACT has responsibility.

1.293 The bill is accompanied by a statement of compatibility that states that the bill itself deals with 'minor administrative and machinery matters that support the implementation of the [Murray-Darling] Basin Plan',¹⁵⁷ which overall promotes the right to water.¹⁵⁸

1.294 The committee considers that the bill does not appear to give rise to human rights concerns.

156 A similar bill was introduced and lapsed during the 43rd Parliament. That bill was examined by our predecessor committee: see *Parliamentary Joint Committee on Human Rights, Eighth Report of 2013*, p 69.

157 Statement of compatibility, p 3.

158 The right to water is encompassed by the right to an adequate standard of living and the right to health in articles 11(1) and 12 respectively of the International Covenant on Economic, Social and Cultural Rights.

Australian Civilian Corps Amendment Bill 2013

Portfolio: Foreign Affairs and Trade

Introduced: House of Representatives, 20 November 2013

1.295 This bill seeks to amend the *Australian Civilian Corps Act 2011* to take account of the machinery of government change that abolished AusAID and, consequently, the position of the Director-General of AusAID, with effect on and from 1 November 2013. The bill will transfer the powers and functions of the Director-General of AusAID to the Secretary of the Department of Foreign Affairs and Trade and substitute other references to these positions accordingly.

1.296 The bill is accompanied by a statement of compatibility that states that the bill does not engage any human rights.

1.297 The committee considers that the bill does not appear to give rise to human rights concerns.

Australian Research Council Amendment Bill 2013

Portfolio: Education

Introduced: House of Representatives, 14 November 2013

1.298 This bill seeks to update the special appropriation funding cap administered by the Australian Research Council (ARC) to include policy approvals, indexation adjustments and an additional forward estimate for existing schemes within the National Competitive Grants Program. The explanatory memorandum explains that 'indexation adjustments and adding the last year of the forward estimate are part of the standard budget process and are administrative in nature'.¹⁵⁹

1.299 The bill is accompanied by a statement of compatibility that states that the bill does not engage any human rights as the amendments are minor and technical and they 'only impact on administered special appropriations; they do not alter the substance of the ARC Act or increase departmental funds'.¹⁶⁰

1.300 The committee notes that the additional financial support for research under ARC schemes is likely to promote a number of rights, including the right to enjoy the benefit of scientific progress and its applications,¹⁶¹ and is consistent with the obligation to respect the freedom indispensable for scientific research and creative activity.¹⁶²

1.301 The committee considers that the bill does not appear to give rise to human rights concerns.

159 Explanatory memorandum, p 2.

160 Statement of compatibility, pp 3-4.

161 Article 15 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

162 Article 15(3) of the ICESCR.

Commonwealth Electoral Amendment (Above the Line Voting) Bill 2013

Sponsor: Senator Xenophon

Introduced: Senate, 13 November 2013

1.302 This bill proposes to amend the *Commonwealth Electoral Act 1918* to implement an optional preferential voting system above and below the line for Senate elections.

1.303 The bill is accompanied by a statement of compatibility that states that the bill promotes the right to take part in public affairs,¹⁶³ as it gives 'voters greater control over their vote'.¹⁶⁴

1.304 The committee considers that the bill does not appear to give rise to human rights concerns.

163 Article 25 of the International Covenant on Civil and Political Rights (ICCPR).

164 Statement of compatibility, p 9.

Commonwealth Inscribed Stock Amendment Bill 2013

Portfolio: Treasury

Introduced: House of Representatives, 13 November 2013

1.305 This bill seeks to increase the Treasurer's standing borrowing authority from \$300 billion to \$500 billion.

1.306 The bill is accompanied by a statement of compatibility that states that it does not engage any human rights.

1.307 The committee considers that the bill does not appear to give rise to human rights concerns.

Education Services for Overseas Students Amendment Bill 2013

Portfolio: Education

Introduced: House of Representatives, 4 December 2013

1.309 This bill seeks to amend the *Education Services for Overseas Students Act 2000* (the ESOS Act) to clarify refund provisions for overseas students studying in Australia, as well as overseas students yet to arrive in Australia. The bill seeks to:

- ensure refunds required to be made by registered providers to overseas students can encompass tuition fees paid by students both before and after the commencement of a study period;
- clarify existing arrangements relating to refunds where an overseas student is refused a student visa, to ensure providers must refund both unspent tuition fees and unspent non-tuition fees where the student is yet to commence their course; and
- make a minor amendment to ensure the title of the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students* properly reflects its content and that its scope is appropriate to its function and consistency with the ESOS Act.

1.310 The bill is accompanied by a statement of compatibility that states that to the extent that the bill engages the right to education, the bill promotes this right, in that the purpose of the bill is to clarify refund provisions to ensure that refunds to overseas students can encompass tuition fees paid by students both before and after the commencement of a study period.

1.311 The committee considers that the bill does not appear to give rise to human rights concerns.

Grape and Wine Legislation Amendment (Australian Grape And Wine Authority) Bill 2013

Primary Industries (Customs) Charges Amendment (Australian Grape and Wine Authority) Bill 2013

Primary Industries (Excise) Levies Amendment (Australian Grape and Wine Authority) Bill 2013

Portfolio: Agriculture

Introduced: House of Representatives, 14 November 2013

1.312 This package of three bills seeks to implement the merger of the Grape and Wine Research and Development Corporation (GWRDC) and the Wine Australia Corporation to create a new wine statutory authority – the Australian Grape and Wine Authority. The explanatory memorandum explains that the new Authority is intended to commence on 1 July 2014, and will undertake the functions of the GWRDC and Wine Australia without a change in the structure or amounts of the levies that currently fund both authorities.¹⁶⁵ The assets, staff and functions of GWRDC and Wine Australia will transfer to the new Authority.¹⁶⁶

1.313 The bills are accompanied by statements of compatibility, each of which states that the respective bill does not engage any human rights.

1.314 The committee considers that these bills do not appear to give rise to human rights concerns.

165 Explanatory memorandum, p 2.

166 Explanatory memorandum, p 2.

Import Processing Charges Amendment Bill 2013

Portfolio: Immigration and Border Protection

Introduced: House of Representatives, 21 November 2013

1.315 This bill seeks to amend the *Import Processing Charges Act 2001* to increase the import processing charges levied on air, sea and post consignments with a value of \$10,000 or more. The explanatory memorandum states that the 'Import Processing Charges have not increased since 2005-06'.¹⁶⁷

1.316 The bill is accompanied by a statement of compatibility that states that the bill does not engage any human rights.

1.317 The committee considers that the bill does not appear to give rise to human rights concerns.

167 Explanatory memorandum, p 2.

Indigenous Education (Targeted Assistance) Amendment Bill (No. 2) 2013

Portfolio: Indigenous Affairs

Introduced: Senate, 13 November 2013

1.318 This bill proposes amendments to the *Indigenous Education (Targeted Assistance) Act 2000* (IETA) to enable the Minister to enter into contracts with education providers in respect of 2014 and beyond. Currently, the IETA only refers to funding under the special appropriation non-ABSTUDY payments up until June 2014.

1.319 The bill is accompanied by a statement of compatibility that states that the bill does not engage any human rights as it only makes technical amendments.

1.320 The statement of compatibility also states that the principal Act, the IETA, promotes a number of rights, including the right to an adequate standard of living,¹⁶⁸ the right to education,¹⁶⁹ and the right to non-discrimination on the ground of race under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The statement of compatibility claims that the provision can be viewed as a special measure of advancement, within the meaning of article 1(4) of the ICERD.

1.321 The committee considers that the bill does not appear to give rise to human rights concerns.

168 Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

169 Article 13 of the ICESCR.

National Health Amendment (Simplified Price Disclosure) Bill 2013

Portfolio: Health

Introduced: House of Representatives, 21 November 2013

1.322 This bill seeks to amend the *National Health Act 1953* with the objective of improving the operation of the Pharmaceutical Benefits Scheme (PBS) by streamlining the price disclosure arrangements. According to the explanatory memorandum, '[p]rice disclosure arrangements seek to ensure that the price at which the government subsidises multiple-brand medicines more closely reflects the sale prices in the market'.¹⁷⁰ The changes proposed by the bill will 'allow price reductions to occur sooner, and more frequently, after medicines become subject to market competition'.¹⁷¹

1.323 The bill is accompanied by a statement of compatibility which states that the bill promotes the right to health 'because consumers will pay less for some PBS medicines as a result of these changes'.¹⁷²

1.324 The committee considers that the bill does not appear to give rise to human rights concerns.

170 Explanatory memorandum, p 1.

171 Explanatory memorandum, p 1.

172 Statement of compatibility, p 1.

Offshore Petroleum and Greenhouse Gas Storage Amendment (Cash Bidding) Bill 2013

Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Bill 2013

Portfolio: Industry

Introduced: House of Representatives, 20 November 2013

1.325 The Offshore Petroleum and Greenhouse Gas Storage Amendment (Cash Bidding) Bill 2013 proposes to amend the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* to provide an optimised 'auction style' model for allocating cash bid exploration permits in the offshore petroleum regulatory regime.

1.326 The Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment Bill 2013 proposes to amend the *Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Act 2003* to provide for the annual titles administration levy to be collected by the National Offshore Petroleum Titles Administrator in relation to cash bid petroleum exploration permits in the offshore regulatory regime.

1.327 Each bill is accompanied by a statement of compatibility that states that each respective bill does not engage any human rights.

1.328 The committee considers that these bills do not appear to give rise to human rights concerns.

Parliamentary Proceedings Broadcasting Amendment Bill 2013

Sponsor: Senator Xenophon

Introduced: Senate, 13 November 2013

1.329 This bill proposes amendments to the *Parliamentary Proceedings Broadcasting Act 1946* to prevent the Joint Committee on the Broadcasting of Parliamentary Proceedings from making a condition prohibiting the use of Parliamentary footage for the purposes of satire or ridicule. According to the explanatory memorandum, 'the new requirement [will] not prevent the Joint Committee from determining conditions that apply to all re-broadcasting of Parliamentary procedures and which cover requirements such as context, fairness and accuracy'.¹⁷³

1.330 The bill is accompanied by a statement of compatibility that states that the bill promotes the right to freedom of expression 'as it allows Parliamentary proceedings to be re-broadcast in a wider range of circumstances'.

1.331 The committee considers that the bill does not appear to give rise to human rights concerns.

173 Explanatory memorandum, p 2.

Rural Research and Development Legislation Amendment Bill 2013¹⁷⁴

Primary Industries (Excise) Levies Amendment Bill 2013¹⁷⁵

Primary Industries (Customs) Charges Amendment Bill 2013¹⁷⁶

Portfolio: Agriculture

Introduced: House of Representatives, 20 November 2013

1.332 This package of three bills proposes to make amendments to rural research and development legislation with the objective of improving the accountability, effectiveness and efficiency of rural research and development corporations.

1.333 The Rural Research And Development Legislation Amendment Bill 2013 is accompanied by a statement of compatibility which states that it promotes the right to equality and non-discrimination because it requires diversity, including diversity of experience, expertise and gender, to be taken into account when nominating members to relevant Selection Committees or when nominating candidates to the board of directors of statutory research and development corporations.

1.334 The other two bills are accompanied by statements of compatibility that state that the respective bill does not engage any human rights.

1.335 The committee considers that these bills do not appear to give rise to human rights concerns.

174 A similar bill was introduced and lapsed during the 43rd Parliament. That bill was examined by our predecessor committee: see *Parliamentary Joint Committee on Human Rights, Tenth Report of 2013*, p 1.

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Tax Laws Amendment (Research and Development) Bill 2013

Portfolio: Treasury

Introduced: House of Representatives, 14 November 2013

1.336 This bill proposes to amend the *Income Tax Assessment Act 1997* to exclude access to the research and development (R&D) tax incentive for companies with aggregated assessable income of \$20 billion or more for an income year. The explanatory memorandum states that the amendments are intended to 'better [target] the R&D tax incentive to businesses that are more likely to increase their R&D spending in response to government incentives, delivering a greater return for taxpayers'.¹⁷⁷

1.337 The bill is accompanied by a statement of compatibility that states that the bill does not engage any human rights.

1.338 The committee considers that the bill does not appear to give rise to human rights concerns.

177 Explanatory memorandum, p 3.

Telecommunications Legislation Amendment (Consumer Protection) Bill 2013¹⁷⁸

Portfolio: Communications

Introduced: House of Representatives, 14 November 2013

1.339 This bill proposes to make amendments to telecommunications legislation; in particular, the bill:

- makes amendments to the *Do Not Call Register Act 2006* to tighten laws around the making of telemarketing calls and sending marketing faxes;
- streamlines the process for amending registered industry codes under the *Telecommunications Act 1997*; and
- clarifies the Telecommunications Industry Ombudsman's (TIO) role and expected standards of operation, and requires periodic review of the TIO scheme.

1.340 The bill is accompanied by a statement of compatibility which states that the bill is compatible with human rights as it does not engage any rights. The statement notes that, in coming to this conclusion, consideration was given to any impact the bill may have on the right to privacy and the right to freedom of expression.

1.341 In light of the explanations provided in the statement of compatibility, the committee considers that these provisions do not appear to give rise to concerns with regard to the right to privacy or the right to freedom of expression.

178 A similar bill was introduced and lapsed during the 43rd Parliament. That bill was examined by our predecessor committee: see Parliamentary Joint Committee on Human Rights, *Sixth Report of 2013*, pp 84-85.

Telecommunications Legislation Amendment (Submarine Cable Protection) Bill 2013

Portfolio: Communications

Introduced: House of Representatives, 14 November 2013

1.342 The *Telecommunications Act 1997* sets out a regulatory regime for the protection of telecommunications submarine cables that connect Australia to places outside Australia. The aim of the regime is to minimise the risk to submarine cables from human activity, particularly some kinds of fishing, anchoring and dredging. The regime gives the industry regulator, the Australian Communications and Media Authority (ACMA), the power to declare protection zones around existing or planned submarine cables of national significance, regulate activities of ships and persons within protection zones, and establishes an installation permit system for international submarine cables that connect to Australia.

1.343 The bill proposes amendments to that regime to:

- modify how the regime applies to foreign nationals and foreign ships to ensure consistency with the United Nations Convention on the Law of the Sea (UNCLOS);¹⁷⁹
- include domestic submarine cables within the scope of the regime;
- provide a process for consideration of the Attorney-General's Department's portfolio matters such as international law, native title or security matters in relation to proposed submarine cable installations;
- streamline the installation permit regime; and
- make several administrative and technical changes to improve the overall operation of the regime.

1.344 The bill is accompanied by a detailed statement of compatibility that identifies a number of rights engaged by the bill. The rights identified include the right to a fair hearing;¹⁸⁰ the presumption of innocence;¹⁸¹ the right to privacy;¹⁸² and the right to non-discrimination¹⁸³.

1.345 The committee considers that the statement of compatibility adequately addresses the issues it raises and provides sufficient justifications for any proposed limitations. The committee accepts that ensuring the protection of submarine cable

179 UNCLOS is the international agreement that establishes the rights and duties of nations in relation to the seas and oceans. Australia ratified UNCLOS on 5 October 1994.

180 Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR).

181 Article 14(2) of the ICCPR.

182 Article 17 of the ICCPR.

183 Article 26 of the ICCPR.

infrastructure is a legitimate objective and considers that, in general, the bill appropriately confines the powers that ACMA and the Minister may exercise.

1.346 The committee notes that the changes proposed by the bill would expand the application of existing civil penalty provisions in the Telecommunications Act. As our predecessor committee has noted, a penalty which is described as 'civil' under domestic law may nonetheless be classified as 'criminal' for the purposes of human rights law because of its purpose, character or severity. Given that these civil penalty provisions appear in a regulatory context, it is arguable that the penalties are not 'criminal' in nature. Although the penalties are substantial, it may be considered that they are not excessive in terms of a business and in view of the national interests that are being protected.

Veterans' Affairs Legislation Amendment Bill 2013

Portfolio: Prime Minister

Introduced: House of Representatives, 12 November 2013

1.347 This bill proposes to change the title of the *War Precautions Act Repeal Act 1920* to the 'Protection of Word 'Anzac' Act 1920'.

1.348 The bill is accompanied by a statement of compatibility that states that it does not engage any human rights.

1.349 The committee considers that the bill does not appear to give rise to human rights concerns.