

## 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 9 December to 12 December 2013 and legislative instruments received during the period 23 November 2013 and 31 January 2014. The committee has also considered responses to the committee's comments made in previous reports.

### **Bills introduced 9 December to 12 December 2013**

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

The committee also commented on three bills deferred from its First Report of the 44<sup>th</sup> Parliament.

### **Legislative instruments received between 23 November 2013 and 31 January 2014**

The committee considered 315 legislative instruments received between 23 November 2013 and 31 January 2014. The full list of instruments scrutinised by the committee can be found in Appendix 1 to this report.

Of these 315 instruments, 294 (or over 93 percent) do not appear to raise any human rights concerns and are accompanied by statements of compatibility that are adequate. A further six 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 12 instruments before forming a view about their compatibility with human rights.

The committee has deferred its consideration of three instruments. One of these raises issues in relation to Australia's sanctions and extradition regimes that our predecessor committee commented on in the 43<sup>rd</sup> Parliament.<sup>1</sup> The 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 44<sup>th</sup> Parliament. The former Minister responded

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1 Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Democratic People's Republic of Korea) Amendment List 2013, pp 148-149 of this report.

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 committee's request and defer consideration of this instrument until it has received the Minister's response.

The committee has decided to defer a further two instruments while it considers our predecessor committee's recommendation that a 12-month review of the Stronger Futures package of legislation be undertaken in the 44<sup>th</sup> Parliament to evaluate the latest evidence and consider the continuing necessity for the Stronger Futures measures.<sup>2</sup>

## Responses

The committee has considered six responses, four of which were in response to the committee's comments in its *First Report of the 44<sup>th</sup> Parliament* and two responses to comments made in previous reports by our predecessor committee in the 43<sup>rd</sup> Parliament. The committee has concluded its consideration of two bills and three 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 two bills.

The committee notes that a number of responses to comments in its *First Report of the 44<sup>th</sup> Parliament* were not received in time to be considered in this report. The committee will consider these responses in its next report.

In its *First Report of the 44<sup>th</sup> Parliament*, the committee highlighted the importance it places on statements of compatibility and observed that the quality of a number of statements of compatibility accompanying legislation considered in that report fell short of the committee's expectations. The committee set out its expectation that statements of compatibility should provide a clear justification for each limitation and demonstrate that it is aimed at a legitimate objective and that there is a rational and proportionate connection between the limitation and the policy objective.

In particular, the statement of compatibility should set out how the objectives being sought have been weighed against any limitations on rights. The statement should also set out the safeguards that will be applied to ensure that the implementation of any limitations is compatible with human rights.

Regrettably, the committee notes that the statements of compatibility accompanying some significant bills and instruments considered during this current reporting

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2 Aboriginal Land Rights (Northern Territory) Amendment (Delegation) Regulation 2013, pp 145-147 of this report and Social Security (Administration) (Recognised State/Territory Authority – Qld Family Responsibilities Commission) Determination 2013, pp 150-151 of this report.

period have fallen short of the committee's minimum expectations so as to restrict a full and proper examination of the human rights compatibility of the measures.

The committee is particularly concerned to note that some statements of compatibility provide assertions with no supporting evidence.<sup>3</sup> The committee emphasises that it is not enough for a statement of compatibility to merely claim that a measure will contribute to the achievement of a particular objective or that a measure is 'necessary, reasonable and proportionate'. The committee considers that the sponsor of a bill or instrument bears the onus of demonstrating that this is the case. Where the matter is capable of evaluation in the light of empirical evidence, the statement of compatibility should set this evidence out in sufficient detail to facilitate the committee's consideration of the compatibility of the measure with human rights.

The committee will continue to write to the sponsors of bills and instruments to draw attention to the committee's expectations for statements of compatibility when it considers that particular statements do not adequately meet these expectations.

At the same time, the committee notes that some statements of compatibility have assisted the committee in its work. The statement of compatibility that accompanied the Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013 is a case in point.<sup>4</sup>

**Senator Dean Smith**  
**Chair**

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3 See for example the committee's comments on the Building and Construction Industry (Improving Productivity) Bill 2013 and a related bill, pp 1-30 of this report; Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013, pp 45-62; Migration Amendment (Bridging Visas-Code of Behaviour) Regulation 2013 and Code of Behaviour for Public Interest Criterion 4022 - IMMI 13/155, pp107-119; and Migration Amendment (Unauthorised Maritime Arrival) Regulation 2013, pp 127-134.

4 Defence Legislation Amendment (Woomera Prohibited Area) Bill 2013, pp 39-43.