

## **Bills unlikely to raise human rights concerns**

### **High Speed Rail Planning Authority Bill 2013**

*Sponsor: Mr Albanese*

*Introduced: House of Representatives, 9 December 2013*

1.323 This bill proposes to establish the High Speed Rail Planning Authority. The purpose of the Authority would be to advise on, plan and develop high speed rail on the east coast of Australia.

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

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

## Landholders' Right To Refuse (Gas And Coal) Bill 2013

*Sponsor: Senator Waters*

*Introduced: Senate, 9 December 2013*

1.326 This bill proposes to provide Australian landholders with the right to refuse the undertaking of gas and coal mining activities on food producing land. The purpose of the bill is to address the likely impacts of coal and gas mining activities on Australia's food security.

1.327 The bill is accompanied by a statement of compatibility that states that this bill has no negative human rights implications.

1.328 The committee notes that the bill is likely to promote the right to an adequate standard of living,<sup>1</sup> which includes the right to food and requires States to take steps to ensure the availability, adequacy and accessibility of food, and the right not to be subjected to arbitrary or unlawful interference with one's home.<sup>2</sup>

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

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1 Article 11 of the International Covenant on Economic, Social and Cultural Rights.

2 Article 17 of the International Covenant on Civil and Political Rights.

## Marriage Equality Amendment Bill 2013

*Sponsor: Senator Hanson-Young*

*Introduced: Senate, 12 December 2013*

1.330 This bill proposes to amend the definition of 'marriage' in the *Marriage Act 1961* (Marriage Act) to enable two people, regardless of their sex, sexual orientation or gender identity, to have the opportunity to marry. The bill also proposes to remove from the Marriage Act the prohibition on recognising a marriage between same-sex couples entered into in a foreign country.

1.331 The bill is accompanied by a statement of compatibility that states that the bill promotes a number of rights, including the right to marry,<sup>3</sup> the right to equality and non-discrimination<sup>4</sup> and the right to health.<sup>5</sup>

1.332 Our predecessor committee has already examined and set out its views in relation to a number of the human rights issues relevant to same-sex marriage in its consideration of two bills introduced in the 43<sup>rd</sup> Parliament containing measures identical to those in this bill.<sup>6</sup>

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

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3 Article 23 of the International Covenant on Civil and Political Rights (ICCPR).

4 Article 26 of the ICCPR.

5 Article 12 of the International Covenant on Economic, Social and Cultural Rights.

6 See PJCHR comments on the Marriage Equality Amendment Bill 2013, *Third Report of 2013*, p 79 and the Marriage Act Amendment (Recognition of Foreign Marriage for Same-Sex Couples) Bill 2013, *Seventh Report of 2013*, p 31.

## Migration Amendment (Visa Maximum Numbers Determinations) Bill 2013

*Sponsor: Senator Hanson-Young*

*Introduced: Senate, 9 December 2013*

1.334 This bill proposes to subject instruments made under section 85 of the *Migration Act 1958* to disallowance. Section 85 of the *Migration Act* allows the Minister to determine the maximum number of visas of a specified class or visas of specified classes that may be granted in a specified financial year.<sup>7</sup> The bill provides that the amendments made by the bill apply retrospectively to each legislative instrument made under section 85 on or after 2 December 2013.

1.335 The bill also seeks to disallow the instrument made by the Minister under section 85 on 2 December 2013, entitled *Determination of Granting of Protection Class XA Visas in 2013/2014 Financial Year – IMMI 13/156*. This instrument capped the maximum number of visas that may be granted in the financial year 1 July 2013 to 30 June 2014 for Protection (Class XA) visas at 1650.

1.336 The bill is accompanied by a statement of compatibility that states that the bill does not engage any human rights 'as it simply creates a mechanism for the Parliament to disallow legislative instruments determined [under] section 85 of the *Migration Act 1958*'.<sup>8</sup>

1.337 The committee notes that since this bill was introduced, the instrument sought to be disallowed by the bill (*Determination of Granting of Protection Class XA Visas in 2013/2014 Financial Year – IMMI 13/156*) has been revoked by the Minister.<sup>9</sup> Despite the fact that the instrument has been revoked, the committee has examined the instrument as part of this report, as legislation which has come before the Parliament.

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

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7 Instruments made under Part 2 of the *Migration Act 1958* are not subject to disallowance (see section 44(2) of the *Legislative Instruments Act 2003*).

8 Statement of compatibility, p 5.

9 *Revocation of IMMI13/156 'Granting of Protection Class XA Visas in 2013/2014 Financial Year' – IMMI 13/159*.

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## Private Health Insurance Legislation Amendment Bill 2013

*Portfolio: Health*

*Introduced: House of Representatives, 12 December 2013*

1.339 This bill proposes to amend the *Private Health Insurance Act 2007* (PHI Act) to make clear that a single rebate adjustment factor, to be determined in accordance with the *Private Health Insurance (Incentives) Rules*,<sup>10</sup> will be applied to all Australian government rebates on private health insurance.

1.340 According to the explanatory memorandum, previous amendments made to the PHI Act (the June 2013 amendments)<sup>11</sup> capped the rebate by

setting a base premium for every type of insurance product on the market and then indexing the rebate payable for every type of private health insurance product subgroup by the lesser of the increase in the Consumer Price Index (CPI) or the increase in the commercial premium for each product subgroup.<sup>12</sup>

1.341 The purpose of this bill is to simplify implementation of the June 2013 amendments by applying a single rebate adjustment factor to all types of insurance products.

1.342 The bill is accompanied by a statement of compatibility stating that the proposed amendments are 'in the interests of reducing regulatory burden'.<sup>13</sup> The statement of compatibility refers to the right to health and states that there is no incompatibility with the right to health because the bill simplifies the process for consumers and insurers and is 'for the legitimate objective of reducing costs for insurers and consumers'.<sup>14</sup> The statement of compatibility also states that the process for purchasing health insurance and claiming the rebate will remain unchanged.<sup>15</sup>

1.343 The committee notes that our predecessor committee examined and set out its views in relation to the human rights issues relevant to the June 2013 amendments.<sup>16</sup> The statement of compatibility accompanying the June 2013

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10 Made under section 333-20 of the *Private Health Insurance Act 2007*.

11 The *Private Health Insurance Legislation Amendment (Base Premium) Act 2013* received Royal Assent on 29 June 2013. The measure is due to take effect from 1 April 2014.

12 Explanatory memorandum, p 1.

13 Statement of compatibility, p 2.

14 Statement of compatibility, p 3.

15 Statement of compatibility, p 3.

16 See comments of the PJCHR on the *Private Health Insurance Legislation Amendment (Base Premium) Bill 2013*, *Seventh Report of 2013*, p 34.

amendments recognised that the amendments may have the effect of increasing the cost of obtaining private health insurance.<sup>17</sup>

1.344 The committee concluded that to the extent that the amendments led to an increase in the cost of private health insurance, the amendments constituted a limitation on the right to health. However, it considered that such a limitation may be justified under article 4 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) because the purpose of the bill, to make the private health insurance rebate expenditure sustainable, was a legitimate objective.

1.345 It is not clear what will be the likely impact on consumers of this bill will be and whether the amendments may have a similar substantive effect to the June 2013 amendments. As with the June 2013 amendments, the committee notes that any such impact may be justified under article 4 of the ICESCR. However, the committee would have been aided in its scrutiny of this bill had the statement of compatibility more clearly explained the potential impact on consumers.

**1.346 The committee considers that this bill does not appear to give rise to human rights concerns.**

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17 Statement of compatibility accompanying the Private Health Insurance Legislation Amendment (Base Premium) Bill 2013, p 4.

## Veterans Affairs Legislation Amendment (Miscellaneous Measures) Bill 2013

*Portfolio: Veteran's Affairs*

*Introduced: House of Representatives, 12 December 2013*

1.347 This bill proposes to make a number of minor and technical amendments to veterans' affairs legislation and the *Social Security Act 1991*. The bill seeks to:

- clarify arrangements for the payment of travel expenses for treatment under the *Veterans' Entitlements Act 1986* and the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*;
- provide for the more timely provision of special assistance under the *Military Rehabilitation and Compensation Act 2004* by way of a legislative instrument in place of the current arrangement requiring a regulation;
- ensure that the debt recovery provisions will be applicable to all relevant provisions of the *Veterans' Entitlements Act*, the regulations and any legislative instrument made under the *Veterans' Entitlements Act*;
- make technical amendments to provisions in the *Military Rehabilitation and Compensation Act* that refer to legislative instruments to reflect the enactment of the *Legislative Instruments Act 2003*;
- amend the *Military Rehabilitation and Compensation Act* to replace obsolete references to pharmaceutical allowance and telephone allowance with references to the MRCA Supplement (which became payable from 20 September 2009 and replaced the telephone and pharmaceutical allowances that were payable under the Act prior to that date); and
- repeal redundant definitions and operative provisions relating to the maintenance income provisions of the *Veterans' Entitlements Act* and align the remaining definitions with those used in the *Social Security Act*.

1.348 The bill is accompanied by a statement of compatibility that states that most of the amendments do not engage any human rights but that the amendments to clarify the arrangements for the payment of travel expenses for persons receiving treatment under the *Veterans' Entitlements Act* and the *Australian Participants in British Nuclear Tests (Treatment) Act* advance the right to health as they ensure that eligible persons will be able to access the health services provided under the Acts.

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

