



Parliamentary Joint Committee  
on Human Rights

---

**Annual Report 2012-2013**

December 2013

© Commonwealth of Australia 2013

ISBN 978-1-74229-931-0

This document was prepared by the Parliamentary Joint Committee on Human Rights and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

## Membership of the committee

### Members

Senator Dean Smith, Chair	Western Australia, LP
Mr Laurie Ferguson MP, Deputy Chair	Werriwa, New South Wales, ALP
Senator Sue Boyce	Queensland, LP
Dr David Gillespie MP	Lyne, New South Wales, NAT
Mr Andrew Laming MP	Bowman, Queensland, LP
Senator the Hon Kate Lundy	Australia Capital Territory, ALP
Ms Michelle Rowland MP	Greenway, New South Wales, ALP
Senator the Hon Ursula Stephens	New South Wales, ALP
Senator Penny Wright	South Australia, AG
Mr Ken Wyatt AM MP	Hasluck, Western Australia, LP

## Functions of the committee

The Committee has the following functions:

- a) to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- b) to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- c) to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.

Parliamentary Joint Committee on Human Rights  
PO Box 6100  
Parliament House  
Canberra ACT 2600

Phone: 02 6277 3823  
Fax: 02 6277 5767

E-mail: [human.rights@aph.gov.au](mailto:human.rights@aph.gov.au)  
Internet: [http://www.aph.gov.au/joint\\_humanrights/](http://www.aph.gov.au/joint_humanrights/)



# Abbreviations

---

<b>Abbreviation</b>	<b>Definition</b>
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of Discrimination against Women
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
FRLI	Federal Register of Legislative Instruments
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination



# Table of Contents

<b>Membership of the committee .....</b>	<b>iii</b>
<b>Functions of the committee .....</b>	<b>iii</b>
<b>Abbreviations .....</b>	<b>v</b>
<b>Foreword .....</b>	<b>xi</b>
<b>Introduction.....</b>	<b>1</b>
Role of the committee.....	1
Functions and powers of the committee .....	1
Definition of human rights .....	2
Establishment of the committee .....	2
Committee membership .....	2
<b>The committee's mode of operation .....</b>	<b>4</b>
Work practices.....	4
Legal advice .....	4
Hearings, private briefings and submissions.....	4
Prioritising the committee's work .....	5
Committee publications and resources .....	9
Impact of committee's work .....	9
<b>Analysis and interpretation of human rights .....</b>	<b>11</b>
The committee's analytical framework.....	11
Statements of compatibility .....	12
<b>Work of the committee in 2012-13 .....</b>	<b>15</b>
Commonly engaged rights.....	15
<b>Right to privacy.....</b>	<b>15</b>

<b>Right to a fair trial and fair hearing .....</b>	<b>18</b>
Right to a fair hearing .....	18
Presumption of innocence .....	19
Right not to incriminate oneself.....	19
Prohibition against double jeopardy .....	20
Prohibition against retrospective punishment .....	20
Civil penalty provisions.....	21
<b>Right to non-discrimination.....</b>	<b>21</b>
<b>Freedom of expression.....</b>	<b>22</b>
<b>Right to social security .....</b>	<b>23</b>
<b>Right to work and rights in work .....</b>	<b>23</b>
<b>Right to health .....</b>	<b>25</b>
<b>Other human rights scrutiny issues .....</b>	<b>26</b>
Scrutiny of principal Acts .....	26
Human rights scrutiny of national cooperative schemes of legislation .....	26
Human rights scrutiny of appropriation bills .....	27
<b>Appendix 1 .....</b>	<b>29</b>
<b>Committee membership 2012-2013 .....</b>	<b>29</b>
<b>Appendix 2 .....</b>	<b>31</b>
<b>Outstanding correspondence .....</b>	<b>31</b>
<b>Appendix 3 .....</b>	<b>35</b>
<b>Conferences and seminars .....</b>	<b>35</b>
<b>Appendix 4 .....</b>	<b>37</b>
<b>Practice Notes 1 and 2 .....</b>	<b>37</b>



**Appendix 5**

**ICESCR and ICCPR rights and related articles in the other five human rights treaties..... 45**

**Appendix 6**

**Examples of key human rights considered by the Parliamentary Joint Committee on Human Rights in 2012-2013 ..... 49**



## **Foreword**

I am pleased to provide this first Annual Report of the work of the Parliamentary Joint Committee on Human Rights in the 43<sup>rd</sup> Parliament.

The establishment of the committee in the 43<sup>rd</sup> Parliament builds on an established tradition of legislative scrutiny within the Parliament and enhances the advice and analysis available to the Parliament in its consideration of legislation.

I commend the committee and its Chair, Mr Harry Jenkins MP, for fostering a collegiate and bipartisan approach to the committee's work. The committee established a robust analytical framework that enables it to focus on the assessment of legislation against Australia's human rights obligations in an objective and measured way.

From its inception, the committee has seen itself as part of a wider set of processes contributing to the development of legislation that balances policy objectives and human rights obligations. The committee's engagement with the sponsors of legislation has emphasised the importance of maintaining an effective dialogue that can contribute to an appropriate regard for human rights in the development of policy and legislation. The committee's practice of writing to Ministers to seek further information before forming a view on the human rights implications of legislation underpins this dialogue. In this way, the committee hopes to contribute to a clear understanding of how rights might be engaged in legislative measures and what safeguards might be necessary where such measures seek to limit rights.

The work of the committee in the 43<sup>rd</sup> Parliament provides a firm footing for the ongoing consideration of human rights by Parliament. I look forward to working with the committee to build on this foundation and continue this important work in the 44<sup>th</sup> Parliament.

**Senator Dean Smith**

**Chair**



## Introduction

### Role of the committee

1.1 The Parliamentary Joint Committee on Human Rights assists the Parliament in undertaking its legislative function by examining and reporting on the compatibility of bills, legislative instruments and Acts with Australia's international human rights obligations.

### Functions and powers of the committee

1.2 The committee's functions are set out in section 7 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Act).<sup>1</sup> The committee's mandate is to:

- examine bills and legislative instruments for compatibility with human rights;
- examine existing Acts for compatibility with human rights; and
- undertake inquiries on any human rights matters referred to it by the Attorney-General.

1.3 The Act attaches no priority to any of the committee's functions. However, the explanatory memorandum to the Human Rights (Parliamentary Scrutiny) Bill 2011 states that the committee's examination of bills and legislative instruments is primarily a traditional scrutiny function and will be the major activity of the committee.<sup>2</sup>

1.4 As the explanatory memorandum notes, the committee is able to inquire more thoroughly into bills and legislative instruments by calling for submissions, holding public hearings and examining witnesses when it considers this appropriate. The committee is able to determine the manner in which it performs its scrutiny function to ensure that reports on the compatibility of bills and legislative instruments with human rights are provided to Parliament in a timely manner.

1.5 The powers and proceedings of the committee are set out in the committee's resolution of appointment.<sup>3</sup>

---

1 A copy of the Act is available at:

<http://www.comlaw.gov.au/Details/C2011A00186>

2 A copy of the explanatory memorandum is available at:

<http://www.comlaw.gov.au/Details/C2010B00216/Explanatory%20Memorandum/Text>.

3 The committee's resolution of appointment is available on its website:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Human\\_Rights/Role\\_of\\_the\\_Committee](http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Role_of_the_Committee)

## **Definition of human rights**

1.6 Human rights are defined in section 3 of the Act to mean the rights and freedoms recognised or declared by seven international human rights treaties ratified by Australia. These are the:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child (CRC); and
- Convention on the Rights of Persons with Disabilities (CRPD).

## **Establishment of the committee**

1.7 The passage of the Act and the establishment of the committee in March 2012 was part of a concerted effort to enhance the understanding of, and respect for, human rights in Australia. The establishment of the committee was a key element of Australia's Human Rights Framework, which was launched by the government on 21 April 2010. The Framework and the Act clearly intended that the committee would play a key role in enhancing the understanding of, and respect for, human rights in Australia.

## **Committee membership**

1.8 The committee has ten members: five appointed by the Senate and five appointed by the House of Representatives.<sup>4</sup>

1.9 The membership of the committee as at 30 June 2013 was :

- Mr Harry Jenkins MP (Chair)
- Mr Ken Wyatt MP (Deputy Chair)
- Senator the Hon Kim Carr
- Mr Graham Perrett MP
- Senator Anne Ruston

---

4 See section 5 of the *Human Rights (Parliamentary Scrutiny) Act 2011* and resolution 1(a) of the committee's Resolution of Appointment, which provides that five of the committee's members are to be nominated by the Government, four by the Opposition and one by any minority group or independent Senator.

- Senator Dean Smith
- Senator the Hon Ursula Stephens
- Mr Dan Tehan MP
- Senator Penny Wright
- Mr Tony Zappia MP

1.10 A full list of members since the committee's establishment is provided at Appendix 1.

## The committee's mode of operation

1.11 The committee examines all bills and legislative instruments as they come before the Parliament. This includes legislative instruments that are exempt from the disallowance process prescribed by the *Legislative Instruments Act 2003* (LIA).<sup>5</sup> The committee's aim is to adopt a non-partisan and consensual approach to the consideration of whether a bill or a legislative instrument may raise any human rights concerns.

### Work practices

1.12 The committee has established a regular scrutiny and reporting cycle. The committee meets when both the House of Representatives and the Senate are sitting to consider bills and instruments that have come before the Parliament since it last reported. The committee tables a regular scrutiny report each sitting week in the House and the Senate.

1.13 The committee seeks to conclude its examination of legislation while it is still before the Parliament. In the case of bills, the committee undertakes its work around the process for the introduction into, and passage of bills through, the Parliament.

1.14 The committee endeavours to complete its consideration of legislative instruments within the disallowance timeframe. In the event that the committee's concerns cannot be resolved during this timeframe, the committee may give a notice of motion to disallow the instrument as a precautionary measure.<sup>6</sup>

### Legal advice

1.15 The committee is assisted by an external legal adviser, who is appointed by the committee with the approval of the Presiding Officers, and a secretariat, which includes two human rights lawyers. The committee's current external legal adviser is Professor Andrew Byrnes. Professor Byrnes is a professor of international law at the University of New South Wales.

### Hearings, private briefings and submissions

1.16 While the speed with which the committee must work means that its analysis of legislation is primarily done on the papers, from time to time the committee has found it beneficial to hold public hearings. The committee held three

---

5 The LIA provides that certain instruments are exempt from disallowance by providing either that a type of instrument is not a legislative instrument for the purposes of the LIA (section 7) or is otherwise not subject to disallowance (section 42).

6 On 18 June 2013 the committee took this step in relation to the Customs (Drug and Alcohol Testing) Regulation 2013. As the committee had not received a response to its concerns, notice was given in order to give the committee adequate time to consider the compatibility of the instrument, pending the Minister's response. See the committee's *Sixth Report of 2013*, pp 139 – 146; *Seventh Report of 2013*, pp 59 – 62 and *Tenth Report of 2013*, pp 45 – 47.



public hearings during the year: one as part of its examination of the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012 and two as part of its examination of the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and related legislation. In the case of the Social Security Bill, the committee's hearing provided an avenue for it to place evidence regarding the human rights issues raised by the bill on the public record, and therefore available to the Parliament, in the shortest possible timeframe.

1.17 While the committee's preference is to conduct as much of its business as possible in public, the committee has found it helpful to seek private briefings to assist it in developing its understanding of legislation and human rights principles. The committee has held five private briefings during the year and is grateful to all those who made time available to contribute to these. The committee is particularly grateful to representatives from scrutiny committees, organisations and individuals who met privately with the committee during its formative stages. The advice and good will extended to the committee by so many has greatly assisted the committee in formulating its own approach to its task.

1.18 As a general rule, the committee does not invite submissions on the legislation it considers. However, the committee welcomes correspondence and may publish correspondence where this is relevant to a particular matter under consideration. The committee draws on evidence published by other parliamentary committees where relevant to its own work.

### **Prioritising the committee's work**

1.19 The committee categorises bills and instruments into three groups according to the level of human rights scrutiny each bill or instrument would appear to require:

- legislation that does not appear to raise human rights concerns;
- legislation that potentially raises human rights concerns; and
- legislation that raises human rights concerns that the committee considers require closer examination.

#### ***Legislation that does not appear to raise human rights concerns***

1.20 This category includes legislation that the committee is satisfied does not appear to raise human rights concerns. Such legislation may well engage human rights. However, the committee has been able to satisfy itself, on the face of the legislation and the statement of compatibility, that the legislation is unlikely to give rise to human rights incompatibility.

1.21 In many cases, these bills and instruments are accompanied by a statement of compatibility and other supporting documentation that clearly sets out the objective of the legislation and provides adequate justification for any proposed limitations.

1.22 However, where the committee is satisfied that the legislation does not warrant further scrutiny, but the statement of compatibility does not adequately meet the committee's expectations, the committee will write to the sponsor in an advisory capacity.

***Legislation that potentially raises human rights concerns***

1.23 This category includes bills and instruments that the committee is unable to form a view on compatibility with human rights without further information. In such cases, the committee writes to the sponsor of the bill or instrument setting out its concerns and requesting the information it requires to complete its examination of the legislation.

1.24 Where the committee considers that such legislation may raise human rights concerns, it will set out its preliminary consideration in its report, identifying those aspects of the legislation that may give rise to human rights concerns and any additional information the committee may require, to assist the sponsor of the legislation to respond to the committee's concerns.

1.25 The committee's practice is to publish the response to such requests in a subsequent report together with its conclusions with regard to human rights compatibility. For the most part responses provide information that is able to allay the committee's concerns.<sup>7</sup> In many cases, the committee has observed that it would have been helpful if the information provided in the response had been included in the original statement of compatibility.

1.26 On occasion, the response does not fully address the committee's concerns. In this case the committee may seek further clarification from the sponsor, or may determine that it is unable to conclude that the legislation is compatible with human rights.

***Legislation that raises human rights concerns that the committee considers require closer examination – thematic inquiries***

1.27 Some legislation raises human rights concerns of such significance or complexity that the committee may decide to examine it more closely, either individually or as part of a package of legislation.

1.28 To date, the committee has applied this approach to its examination of one bill and two packages of legislation:

- Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012 [Reports 4/2012 and 5/2013];

---

7 A list of responses to committee comments which remained outstanding at 30 June 2013 is at Appendix 2. Responses received after 24 June 2013 will be considered by the committee in the 44<sup>th</sup> Parliament.

- *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and related legislation [Report 9/2013]; and
- *Stronger Futures in the Northern Territory Act 2012* and related legislation [Report 11/2013].

1.29 While the committee's examination of such legislation may extend beyond its consideration by the Parliament, the committee considers that in some cases there is significant value in exploring human rights principles and their application in an Australian context even after the legislation has been passed. The two principal benefits of this approach are that it enables the committee to:

- assess human rights compatibility on the basis of an understanding of the complete legislative package; and
- contribute to a broader understanding of thematic human rights issues while still maintaining a practical focus.

### ***Working with other parliamentary committees***

1.30 The committee recognises that the consideration of the human rights implications of legislation is not solely the responsibility of this committee. The committee appreciates that its work intersects with the work of other parliamentary committees and that it can usefully leverage off this shared responsibility.

1.31 During the review period, the committee focussed on working more effectively with other parliamentary committees, particularly where they have been charged with examining particular bills and instruments. The committee's aim is to complete its work and draw it to the attention of other committees in a timely way. Following the tabling of each of its reports, the committee writes to those committees that may have an interest in legislation considered in the report.

### ***Senate scrutiny committees***

1.32 The committee recognises the importance of working effectively alongside the Senate Scrutiny of Bills Committee and the Senate Regulations and Ordinances Committee. While each of the three legislative scrutiny committees has its own distinct focus, there is a high degree of complementarity within their work.

1.33 Soon after the establishment of the committee, the Chair and Deputy Chair met with both Senate scrutiny committees and the three committees agreed to establish a practice of writing to each other to draw attention to comments on particular bills and instruments. On an informal level the three secretariats work closely together within the Senate Legislative Scrutiny Unit.

### ***Other parliamentary committees***

1.34 The committee routinely monitors the work of other parliamentary committees. Where possible, the committee endeavours to expedite its own consideration of bills and instruments where this may assist the work of other committees. For example, the committee brought forward its consideration of the

Australian Sports Anti-Doping Authority Amendment Bill 2013 to ensure that the Senate Rural and Regional Affairs and Transport Legislation Committee, to which the bill had been referred for inquiry and report, would have the benefit of the committee's comments early in its own consideration of the bill.<sup>8</sup> Similarly, the committee resolved to release its comments on the media reform package of bills ahead of the formal tabling of its *Fourth Report of 2013*, to assist the work of the Senate Environment and Communications Legislation Committee and the House of Representatives Infrastructure and Communications Committee. The committee also noted that its report may be of relevance to the Joint Select Committee on Broadcasting Legislation.<sup>9</sup>

1.35 At the same time, the committee closely monitors the work of other committees so that it can draw on this in its own work. For example, in considering the Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012 the committee noted that the bill was being considered by the Senate Education, Employment and Workplace Relations Legislation Committee and decided to defer finalising its views on the bill to take account of that committee's report.<sup>10</sup>

1.36 In the case of each of its thematic inquiries, the committee has found the work of other committees valuable in gaining an understanding of the policy and regulatory context of the legislation.

1.37 In February 2013, the committee resolved to make a submission to the Senate Legal and Constitutional Affairs Legislation Committee's inquiry into the exposure draft of the Human Rights and Anti-Discrimination Bill 2012.<sup>11</sup> The committee recognised that, while it would have an opportunity to comment on the bill when it was formally introduced into Parliament, it was appropriate and timely for it to make some comments on human rights concerns while amendments to the exposure draft of the bill were under consideration. The committee considers that this may be an approach the committee could consider adopting with regard to future parliamentary inquiries into exposure draft legislation.

---

8 See the committee's *Second Report of 2013*.

9 See executive summary to the committee's *Fourth Report of 2013*, p x.

10 See the committee's *Second Report of 2012*, p 11; *Seventh Report of 2012*, p 41 and *Sixth Report of 2013*, p 212.

11 The submission is available on the committee's website and on the Senate Legal and Constitutional Affairs Committee's website (submission number 595) at: [http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed%20inquiries/2010-13/antidiscrimination2012/submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed%20inquiries/2010-13/antidiscrimination2012/submissions)

---

## **Committee publications and resources**

### ***Reports***

1.38 The committee has tabled 18 legislative scrutiny reports during the period to 30 June 2013. All of these reports have been consensus reports.

1.39 The committee's reports are available on the committee's website.

### ***Tabling statements and speeches***

1.40 It has been the Chair's practice to deliver a tabling statement at the tabling of each report. These statements provide a summary of the legislation considered in the report and highlight key issues identified. The Chair's statements are available on the committee's website.

1.41 The Chair and members of the committee have had the opportunity to speak to a variety of audiences at seminars and conferences over the year. The committee has found this a valuable means of raising awareness about the work of the committee and instructive for the variety of feedback and perspectives gathered on each occasion. A list of all conferences and seminars is provided at Appendix 3. All speeches are available on the committee's website.

### ***Practice notes***

1.42 The Chair's first statement to the House in June 2012 noted the very comprehensive and useful human rights source material prepared by the Attorney-General's Department and available on the Department's website. The Chair indicated it was the committee's intention to provide guidance material of its own to complement this material. To date the committee has published two practice notes (at Appendix 4):

- Practice Note 1 – Committee's approach to human rights scrutiny and expectations for statements of compatibility; and
- Practice Note 2 (interim) – Civil Penalties

1.43 The committee intends to publish further practice notes in the future.

### **Impact of committee's work**

1.44 The committee considers that its work to date has contributed to the elevation of the consideration of human rights within the Parliament and in the development of policy and legislation.

1.45 Through its regular scrutiny reports and tabling statements, and its cooperation with other parliamentary committees, the committee is helping to ensure that human rights issues are considered in a systematic and consistent way in the consideration of legislation by the Parliament. For example, the committee's

work has been referenced in debates on bills and in parliamentary reports of inquiries on specific bills and instruments.<sup>12</sup>

1.46 There are positive signs that the committee's work is being taken into account in the development and refinement of legislation. Departments and agencies are increasingly aware of the committee's expectations regarding the content of statements of compatibility. More significantly, a number of Ministers have undertaken to review procedures and make amendments to legislation in response to the committee's comments.<sup>13</sup>

1.47 More broadly, the committee notes that public comments by a range of non-government organisations (NGOs) and stakeholders indicate that the committee's work is contributing to debate on human rights issues.

---

12 See for example the Senate Rural and Regional Affairs and Transport Legislation Committee's report of its inquiry into the Australian Sports Anti-Doping Authority Amendment Bill 2013 available online at:

[http://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Rural\\_and\\_Regional\\_Affairs\\_and\\_Transport/Completed%20inquiries/2012-13/sportsantidoping/index](http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Rural_and_Regional_Affairs_and_Transport/Completed%20inquiries/2012-13/sportsantidoping/index)

13 See for example responses received on the following bills in the committee's *Tenth Report of 2013*: Public Interest Disclosure Bill 2013, pp 159-162; Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013, pp 101-107; Australian Public Service Commissioner's Directions 2013, pp 183-184; Fee Rules 2013, pp 198-199; and the Prime Minister's response in relation to the Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2013, p 151.

---

## Analysis and interpretation of human rights

1.48 The committee recognises that the nature and scope of the rights and freedoms expressed in the seven human rights treaties requires some interpretation on the committee's part. The committee considers that, where relevant and appropriate, the views of human rights treaty bodies and international and comparative human rights jurisprudence can provide useful sources. Importantly, the committee considers that its interpretation of these rights and freedoms must have relevance within an Australian context.

### **The committee's analytical framework**

1.49 In undertaking its consideration of bills and instruments the committee has been mindful of the importance of establishing a robust analytical framework. The committee devoted some time at the beginning of its work to consider how it would approach its examination of legislation and the use it would make of key sources on the application of the specific human rights and principles engaged by bills and instruments.

### ***Applying the definition of human rights in the Act***

1.50 The committee's analysis of legislation begins with the two main human rights treaties: the International Covenant on Civil and Political Rights (ICCPR) and International Covenant on Economic, Social and Cultural Rights (ICESCR). These covenants cover all the key civil and political and economic, social and cultural rights. For the most part, the five other treaties expand or flesh out these rights in a more detailed way.<sup>14</sup> This approach is consistent with the approach the Attorney-General's Department has adopted in providing support to executive departments and agencies.

1.51 Approaching its work in this way, the committee has come to recognise that, while on the face of it, the definition of human rights in the Act appears to set a much greater scrutiny task for this committee than other similar committees in Australia and overseas, in reality the key difference is that this committee's mandate expressly extends to economic, social and cultural rights.

### ***Assessing compatibility with human rights***

1.52 Consistent with approaches adopted by human rights committees in other jurisdictions, the committee assesses legislation for its potential to be incompatible with human rights, rather than seeking to determine whether particular legislative provisions could be interpreted as compatible with human rights. Having identified that the legislation engages human rights, the committee's starting point is to consider whether the legislation could be applied in ways which would breach human rights (including whether human rights could be breached as a result of the

---

14 This approach is summarised in the table at Appendix 5.

exercise of a legislative discretion) and not whether a consistent meaning may be found through the application of statutory interpretation principles. The latter is a task more appropriately left for the courts in the context of enforcing rights.

1.53 Where a provision appears to limit rights, the committee considers three key questions:

1. whether the limitation is aimed at achieving a legitimate objective;
2. whether there is a rational connection between the limitation and that objective; and
3. whether the limitation is proportionate to that objective.

1.54 The committee considers that this approach has provided it with a workable and credible strategy for scrutinising compatibility across the seven human rights treaties, something that the committee considered challenging when it was first established.

### ***The role of case law***

1.55 The committee considers international and comparative case law in its analysis of human rights principles, where appropriate. The committee does not generally include extensive references to this material in its reports, preferring instead to base its comments on the legal principles derived from human rights jurisprudence.

### **Statements of compatibility**

1.56 Since 4 January 2012, the Act has required that each new bill and disallowable legislative instrument be accompanied by a statement of compatibility.<sup>15</sup> As well as being an obvious starting point for the Parliament's consideration of human rights in the legislative process, the committee considers that statements of compatibility have the potential to significantly increase transparency and accountability in the development of policy and legislation.

1.57 While statements of compatibility provide an important starting point for the committee's work, the committee does not accept statements at face value. It endeavours to look beyond the stated intention of the legislation to consider its likely practical effect and whether decisions to limit rights are evidence based. Where further information is required to determine this, the committee will write to the sponsor of the legislation seeking further information to assist its consideration of the legislation.

### ***The committee's expectations***

1.58 From the outset the committee has adopted what it hopes is a constructive approach to statements of compatibility and has set out the following expectations:

---

15 See Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.



- 
- statements should read as succinct self-contained documents capable of informing debate within the Parliament;
  - they should contain an assessment of the extent to which the legislation engages human rights;
  - where limitations on rights are proposed, the committee expects the statement to set out clear and adequate justification for each limitation and demonstrate that there is a rational and proportionate connection between the limitation and a legitimate policy objective.<sup>16</sup>

1.59 The committee considers that the preparation of a statement of compatibility should be the culmination of a process that commences early in the development of policy. Statements of compatibility should reflect the assessment of human rights that took place during the development of the policy and the drafting of the legislation. They should not be drafted after the fact and retrofitted to the legislation.

1.60 Best practice suggests that statements of compatibility should accompany all bills and instruments, whether they fall within the requirement in the Act or not. The fact that draft legislation predated the requirement for a statement of compatibility, or is exempt from that requirement, does not prevent the committee from considering its human rights compatibility. In such circumstances the committee will write to the sponsor of the legislation and invite them to provide information regarding the human rights compatibility of the legislation.

1.61 The committee also considers that it will generally be good practice to provide a compatibility statement for government amendments to bills, or to update the original statement, where practicable, and particularly where the amendments could give rise to human rights concerns.

### ***Quality of statements of compatibility***

1.62 The requirement to produce a statement of compatibility is having tangible results and the quality of statements of compatibility has improved over the reporting period. The committee notes that some statements of compatibility explicitly refer to the committee's previous comments on similar human rights issues and others appear to be expressed in a manner that is mindful of the committee's expectations.<sup>17</sup>

1.63 In tabling its *Seventh Report of 2013*, the Chair noted that the overall quality of statements of compatibility for legislative instruments had improved significantly. In its *Eighth Report of 2013*, the committee highlighted some good examples of

---

16 See the committee's *Practice Note 1*.

17 See for example the Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Bill 2012 considered in the committee's *First Report of 2013*, pp 48-56.

statements of compatibility that set out the justification for certain limitations on rights clearly and concisely. For example, the committee noted that the statement provided with the Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013 was exemplary. While the committee raised some questions in relation to certain aspects of the bill, for the most part any limitations to be imposed by the bill were adequately explained in the statement of compatibility.<sup>18</sup>

---

18 Executive Summary to *Eighth Report of 2013* p x, see also the references to the Charities Bill 2013 and Migration Amendment (Offshore Resources Activity) Bill 2013.

## Work of the committee in 2012-13

1.64 During the period from 18 June 2012 until 30 June 2013 the committee considered 289 bills (and Acts) and 1,924 legislative instruments. The committee considered that 152 bills (and Acts) and 1,839 instruments did not raise human rights concerns. Of these, the committee wrote to the sponsors of 12 bills and 464 instruments in an advisory capacity. The committee identified 137 bills (and Acts) and 85 legislative instruments for which further information was required to assist the committee with its assessment of human rights compatibility.

### Commonly engaged rights

1.65 The human rights issues identified in legislation during this period were spread across both civil and political rights and economic, social and cultural rights. The rights that arose most regularly included:

- right to privacy;<sup>19</sup>
- fair trial rights;<sup>20</sup>
- right to social security;<sup>21</sup>
- right to work and rights in work;<sup>22</sup>
- right to freedom of expression;<sup>23</sup>
- right to health;<sup>24</sup> and
- right to non-discrimination.<sup>25</sup>

1.66 The following sections consider the legislative and policy context in which each of these rights are commonly engaged and the types of concerns that the committee identified in the reporting period. Relevant examples are provided in each case, however, the examples provided are not exhaustive. Further examples of key human rights considered by the committee are at Appendix 6.

## Right to privacy

### *Relevant to:*

- Monitoring, investigation and information-sharing powers.<sup>26</sup>

---

19 Article 17 of the ICCPR.

20 Article 14 of the ICCPR.

21 Article 9 of the ICESCR.

22 Articles 6 and 7 of the ICESCR.

23 Article 19 of the ICCPR.

24 Article 12 of the ICESCR.

25 Articles 2 and 26 of the ICCPR, article 2 of the ICESCR.

- Information disclosure schemes (including to third parties, e.g. contractors).<sup>27</sup>
- Entry, search and seizure powers.<sup>28</sup>
- Forfeiture and recovery orders.<sup>29</sup>
- Access to private information through online databases.<sup>30</sup>
- Publication of personal information.<sup>31</sup>
- Providing for compulsory physical intervention on a person (for instance blood tests, collecting fingerprints, DNA samples or biometric information).<sup>32</sup>
- Interferences with personal autonomy and decision-making.<sup>33</sup>
- Interception of communications.<sup>34</sup>

**Type of concerns:**

- Insufficient justification for why powers that interfere with privacy are reasonable, necessary and proportionate to achieving a legitimate policy objective.<sup>35</sup>

- 
- 26 International Tax Agreements Amendment Bill 2012, *First Report of 2013*, pp 36-38.
- 27 National Disability Insurance Scheme Bill 2012, *First Report of 2013*, pp 39-47; see also Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Bill 2012, *First Report of 2013*, pp 48-56 and Parliamentary Service Amendment (Parliamentary Budget Officer) Bill 2013, *Fourth Report of 2013*, pp 51-52.
- 28 Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012, *First Report of 2013*, pp 4-11, *Third Report of 2013*, pp 97-109 and *Eighth Report of 2013*, pp 23-40.
- 29 Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Bill 2012, *Sixth Report of 2012*, pp 3-11; *Seventh Report of 2012*, p 45 and *First Report of 2013*, pp 126-131.
- 30 Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012, *Seventh Report of 2012*, pp 30-32 and *Third Report of 2013*, pp 177-179.
- 31 Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No. 2) Bill 2013, *Sixth Report of 2013*, pp 120-123 and Australian Public Service Commissioner's Directions 2013, *Sixth Report of 2013*, pp 133-134.
- 32 Customs (Drug and Alcohol Testing) Regulation 2013, *Sixth Report of 2013*, pp 139-146, *Seventh Report of 2013*, pp 59-66 and *Tenth Report of 2013*, pp 45-51.
- 33 Social Security Legislation Amendment (Public Housing Tenants' Support) Bill 2013, *Eighth Report of 2013*, pp 12-15 and Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013, *Sixth Report of 2013*, pp 135-137 and *Tenth Report of 2013*, pp 13-19.
- 34 Telecommunications (Interception and Access) Amendment Regulation 2013 (No. 1), *Sixth Report of 2013*, pp 172-173 and *Tenth Report of 2013*, p 179, 210-213.

- 
- Inadequate explanation of safeguards in place to protect privacy.<sup>36</sup>
  - Failure to explain limitations on the rights of persons to personal autonomy and the freedom to organise their private and family lives, in particular by making their own decisions about the way in which they use their social security payments.<sup>37</sup>
  - Focusing on information privacy aspects of measures at the expense of addressing the rights to bodily integrity.<sup>38</sup>
  - Assertions, without explanation, that the provisions are consistent with the *Privacy Act 1988* and which do not sufficiently demonstrate that the measures are fully consistent with the right to privacy.<sup>39</sup>
  - Inadequate explanation as to why it is considered that the standard of ‘reasonably necessary’ is an appropriate threshold for triggering the privacy intrusion. Article 17 of the ICCPR requires interferences with the right to privacy to be ‘necessary’ for a legitimate objective. The standard of ‘reasonably necessary’ appears to be lower than the standard of ‘necessary’ and may not fully reflect the requirement in Article 17.<sup>40</sup>

---

35 Australian Jobs Bill 2013, *Seventh Report of 2013*, pp 1-5.

36 Corporations and Financial Sector Legislation Amendment Bill 2013, *Sixth Report of 2013*, pp 9-13.

37 *Stronger Futures in the Northern Territory Act 2012* and related legislation, *Eleventh Report of 2013*.

38 Law Enforcement Integrity Legislation Amendment Bill 2012, *Fifth Report of 2012*, pp 12-21, *Sixth Report of 2012*, p 41, *Seventh Report of 2012*, p. 44 and *First Report of 2013*, pp 138-139. See also related secondary legislation: Customs (Drug and Alcohol Testing) Regulation 2013, *Sixth Report of 2013*, pp 139-146, *Seventh Report of 2013*, pp 59-66, *Tenth Report of 2013*, pp 45-51.

39 Student Identifiers Bill 2013, *Sixth Report of 2013*, pp 65-70.

40 Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012, *First Report of 2013*, pp 4-11, *Third Report of 2013*, pp 97-109 and *Eighth Report of 2013*, pp 23-40.

## Right to a fair trial and fair hearing

### Right to a fair hearing

#### **Relevant to:**

- Provisions which affect the disclosure of evidence to the defendant, including secrecy provisions.<sup>41</sup>
- Provisions which affect the rights of defendants to examine witnesses against them.<sup>42</sup>
- Provisions that limit access to courts or tribunals.<sup>43</sup>
- Provisions that limit access to legal aid or otherwise limit the right to legal representation.<sup>44</sup>

#### **Type of concerns:**

- Inadequate justification as to why less restrictive approaches were not adopted when excluding the jurisdiction of Australian courts in relation to the bringing of certain claims.<sup>45</sup>
- Inadequate explanation as to the need for, and proportionality of, removing merits review in particular circumstances.<sup>46</sup>
- Introduction of powers to make certain orders without first giving the affected person a right of representation; and providing for limited rights of review.<sup>47</sup>

---

41 Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012, *Sixth Report of 2012*, pp 19-21.

42 Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013, *Eighth Report of 2013*, pp 4-6.

43 International Organisations (Privileges and Immunities) Amendment Bill 2013, *Fourth Report of 2013*, pp 42-47.

44 Native Title (Assistance from Attorney-General) Guideline 2012, *Third Report of 2013*, p 90 and Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2013, *First Report of 2013*, pp 27-33 and *Sixth Report of 2013*, pp 189-195.

45 Protection of Cultural Objects on Loan Bill 2012, *First Report of 2013*, pp 62-66, *Third Report of 2013*, pp 159-164 and *Tenth Report of 2013*, pp 94-95.

46 Therapeutic Goods Amendment (2013 Measures No. 1) Bill 2013, *Sixth Report of 2013*, pp 86-89.

47 Court Security Bill 2013, *Sixth Report of 2013*, pp 14-21 and *Tenth Report of 2013*, pp 36-44.

---

## Presumption of innocence

### **Relevant to:**

- Offence provisions which reverse the burden of proof where the defendant carries either an evidential or legal burden of proof with respect to the existence (or non-existence) of some fact.<sup>48</sup>
- No-fault offences, such as strict and absolute liability offences, which allow for the imposition of criminal liability without the need to prove fault.<sup>49</sup>

### **Type of concerns:**

- Insufficient justification for why offences that interfere with the presumption of innocence are reasonable, necessary and proportionate to achieving a legitimate objective.<sup>50</sup>
- Inadequate explanation of provisions that place a legal burden on a defendant as to why an evidential burden would not be a less restrictive alternative to achieve the provision's purpose.<sup>51</sup>

## Right not to incriminate oneself

### **Relevant to:**

- Provisions which require a person to answer questions or provide information that may tend to incriminate the person.<sup>52</sup>

### **Type of concerns:**

- Abrogation of the privilege of self-incrimination which are not accompanied by adequate safeguards such as use and/or derivative use immunity.<sup>53</sup>

---

48 Australian Charities and Not-for-profits Commission Bill 2012, *Second Report of 2012*, pp 3-7 and Tax Laws Amendment (Special conditions for Not-for-profit Concessions) Bill 2012, *Second Report of 2012* pp 14-18.

49 Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Bill 2013, *Sixth Report of 2013*, pp 25-35.

50 Competition and Consumer Amendment (Australian Food Labelling) Bill 2012, *Fifth Report of 2012*, pp 7-9.

51 Australia Council (Consequential and Transitional Provisions) Bill 2013, *Sixth Report of 2013*, pp 3-5.

52 Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012, *First Report of 2013*, pp 4-11, *Third Report of 2013*, pp 97-109 and *Eighth Report of 2013*, pp 23-40.

## Prohibition against double jeopardy

### Relevant to:

- Provisions that allow for assistance to be given to investigate, prosecute and punish a person for an offence where the person has already been punished, acquitted or pardoned.<sup>54</sup>
- Provisions that allow a person subject to a civil penalty to later be subject to a criminal offence, where the civil penalty can properly be characterised as 'criminal'.<sup>55</sup>

### Type of concerns:

- Failure to explain whether civil penalty regimes that permit criminal proceedings to be brought against a person for substantially the same conduct are compatible with the prohibition against double jeopardy.<sup>56</sup>

## Prohibition against retrospective punishment

### Relevant to:

- Introduction of criminal offences that are brought into force before the date of the enabling legislation.
- Provisions that make changes to penalty regimes that apply retrospectively (where the penalties may be characterised, under human rights law, as 'criminal' in nature).<sup>57</sup>

---

53 Small Business Commissioner Bill 2013, *Third Report of 2013*, pp 49-51 and *Sixth Report of 2013*, pp 305-307.

54 Mutual Assistance in Criminal Matters (Cybercrime) Regulation 2013, *Sixth Report of 2013*, pp 167-173 and *Tenth Report of 2013*, pp 56-75.

55 Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012, *First Report of 2013*, pp 4-11, *Third Report of 2013*, pp 97-109 and *Eighth Report of 2013*, pp 23-40; Australian Sports Anti-Doping Authority Amendment Bill 2013, *Second Report of 2013*, pp 3-4, *Third Report of 2013*, pp 113-119, and *Eighth Report of 2013*, pp 41-49; Biosecurity Bill 2012, *First Report of 2013*, pp 25-26, and *Eighth Report of 2013*, pp 50-56; and Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures) Bill 2012, *First Report of 2013*, pp 51-56, *Third Report of 2013*, pp 153-158, and *Eighth Report of 2013*, pp 57-67.

56 See examples provided in footnote 52 above.

57 Parliamentary Service Amendment Bill 2012, *First Report of 2013*, pp 57-61, *Sixth Report of 2013*, pp 294-304, *Tenth Report of 2013*, pp 89-93.



**Type of concerns:**

- Failure to explain whether amendments to penalty regimes expose a person to liability for a penalty for conduct that took place before the legislation was enacted.<sup>58</sup>

**Civil penalty provisions**

- The committee has considered a number of bills containing civil penalty provisions and has sought clarification as to whether these provisions and the procedures for their enforcement are consistent with guarantees relating to criminal proceedings contained in articles 14 and 15 of the ICCPR.<sup>59</sup>
- As civil penalty provisions raise complex human rights issues and the implications for existing practice are potentially significant, the committee has provided its initial views on these matters in the form of an interim practice note. The practice note is intended to provide guidance to those involved in policy development, drafting and human rights scrutiny of these types of provisions.<sup>60</sup> It draws attention to the principal criteria employed in assessing whether a civil penalty provision is 'criminal': (a) the classification of the penalty under domestic law; (b) the nature of the penalty provision; and (c) the severity of the penalty.

**Right to non-discrimination****Relevant to:**

- Provisions which draw distinctions between people or groups, either directly or indirectly, on prohibited grounds of discrimination.<sup>61</sup>
- Provisions which introduce or extend exemptions from prohibited grounds.<sup>62</sup>

---

58 Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Shifting) Bill 2013, *Third Report of 2013*, pp 57-60.

59 See *Eighth Report of 2013*, pp 21-67.

60 See Practice Note 2 (interim) – civil penalties at Appendix 6.

61 Tax Laws Amendment (Clean Building Managed Investment Trust) Bill 2012, *Sixth Report of 2012*, p 32. See also DisabilityCare Australia Fund Bill 2013, *Seventh Report of 2013*, pp 8-16 and National Disability Insurance Scheme Legislation Amendment Bill 2013, *Seventh Report of 2013*, pp 17-20.

**Type of concerns:**

- Inadequate justification for the differential treatment.<sup>63</sup>
- Assertions that measures are 'special measures'.<sup>64</sup>

## **Freedom of expression**

**Relevant to:**

- Regulation of the media.<sup>65</sup>
- Provisions which restrict access to information, including freedom of information.<sup>66</sup>

**Type of concerns:**

- Inadequate justification for limitations on the ability of persons to broadcast or publish material and the right of persons to receive such information.<sup>67</sup>
- Insufficient detail of standards to be applied in regulating the media.<sup>68</sup>
- Inadequate reasons as to why limitations on freedom of expression may be necessary and whether other less restrictive options were considered.<sup>69</sup>

---

62 Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013, *Sixth Report of 2013*, pp 58-64.

63 Tax and Superannuation Laws Amendment (2013 Measures No.2) Bill 2013, *Sixth Report of 2013*, pp 71-81; and *Tenth Report of 2013*, pp 108-113.

64 *Stronger Futures in the Northern Territory Act 2012* and related legislation, *Eleventh Report of 2013*, pp 21-31.

65 See media reform package, *Fourth Report of 2013*, pp 1-26.

66 Parliamentary Service Amendment (Freedom of Information) Bill 2013, *Eighth Report of 2013*, pp 9-11.

67 Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013, *Fourth Report of 2013*, pp 1-7.

68 Broadcasting Legislation Amendment (News Media Diversity) Bill 2013, *Fourth Report of 2013*, pp 8-14.

69 News Media (Self-Regulation) Bill 2013, *Fourth Report of 2013*, pp 15-23.

## Right to social security

### Relevant to:

- Provisions that enable the recovery of social security benefits.<sup>70</sup>
- Provisions that revise the methodology for payment of social security benefits that might lead to a reduction in payment.<sup>71</sup>
- Provisions which remove existing entitlements.<sup>72</sup>

### Type of concerns:

- Inadequate explanation of the potential impact of changes to social security measures.<sup>73</sup>
- Inadequate justification for reductions in social security or superannuation benefits.<sup>74</sup>
- Retrogressive measures.<sup>75</sup>
- Exclusion of right of review.<sup>76</sup>

## Right to work and rights in work

### Relevant to:

- Provisions which change superannuation entitlements or the tax treatment of superannuation savings.<sup>77</sup>

---

70 Financial Framework Legislation Amendment Bill (No.2) 2013, *Fourth Report of 2013*, pp 36-38.

71 Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013, *Sixth Report of 2013*, pp 90-94.

72 Health Insurance (Dental Services) Amendment Determination 2012 (No. 1), *Seventh Report of 2012*, pp 51-55 and *Third Report of 2013*, pp 133-137.

73 Family Assistance and Other Legislation Amendment Bill 2013, *Third Report of 2013*, pp 18-20 and *Sixth Report of 2013*, pp 218-220.

74 Superannuation Laws Amendment (MySuper Capital Gains Tax Relief and Other Measures) Bill 2013, *Eighth Report of 2013*, p 16. See also Health Insurance (Dental Services) Amendment Determination 2012 (No. 1), *Seventh Report of 2012*, pp 51-55 and *Third Report of 2013*, pp 133-137.

75 Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, *Fourth Report of 2012* (Interim Report) and *Fifth Report of 2013* (Final Report).

76 Financial Framework Legislation Amendment Bill (No.2) 2013, *Fourth Report of 2013*, pp 36-38.

- Safe and healthy working conditions.<sup>78</sup>
- Provisions with the potential to generate or limit employment.<sup>79</sup>
- Provisions that reduce the applicable time limits for lodging claims relating to unfair dismissal and adverse employment action.<sup>80</sup>

**Type of concerns:**

- Inadequate justification for substantial increases in fees for trade certificates.<sup>81</sup>
- Provisions that may lead to job losses in certain regions.<sup>82</sup>
- Lack of clarity regarding criteria for determining that the access of certain persons to secure work areas (of airports and seaports) should be suspended.<sup>83</sup>
- Lack of adequate procedural safeguards and the availability of review.<sup>84</sup>
- Expansive powers to exempt persons in particular occupations from workplace health and safety laws.<sup>85</sup>

---

77 Tax and Superannuation Laws Amendment (Increased Concessional Contributions Cap and Other Measures) Bill 2013, *Seventh Report of 2013*, pp 39-42.

78 Asbestos Safety and Eradication Agency Bill 2013, *Sixth Report of 2013*, pp 1-2 and *Work Health and Safety Act 2011* (Application to Defence activities and Defence members) Declaration 2012, *Fourth Report of 2013*, pp 74-75.

79 Australian Jobs Bill 2013, *Seventh Report of 2013* pp 1-5 and Customs Amendment (Prohibition of Certain Coal Exports) Bill 2013, *Sixth Report of 2013*, pp 22-24.

80 Fair Work Amendment Bill 2012, *Seventh Report of 2012*, pp 16-19.

81 Tradepersons' Rights (Cost Recovery) Amendment Regulation 2013 (No. 1) *Seventh Report of 2013*, pp 54-55.

82 Customs Amendment (Prohibition of Certain Coal Exports) Bill 2013, *Sixth Report of 2013*, pp 22-24.

83 Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Bill 2013, *Sixth Report of 2013*, pp 25-35.

84 Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Bill 2013, *Sixth Report of 2013*, pp 25-35.

85 Foreign Affairs Portfolio Miscellaneous Measures Bill 2013, *Fourth Report of 2013*, pp 39-41.

## Right to health

### Relevant to:

- Measures that relate to the national healthcare system,<sup>86</sup> including Medicare<sup>87</sup> and other medical benefits payments.<sup>88</sup>
- Provisions that may impact on access to private health insurance.<sup>89</sup>
- Public health measures.<sup>90</sup>
- Treatment of asylum seekers, including detention conditions.<sup>91</sup>
- Environmental protection measures.<sup>92</sup>

### Type of concerns:

- Inadequate justification for limitations.<sup>93</sup>
- Retrogressive measures.<sup>94</sup>

---

86 National Health Reform Amendment (Definitions) Bill 2013, *Seventh Report of 2013*, p 33.

87 Tax Laws Amendment (Medicare Levy) Bill 2013, *Seventh Report 2013*, p 45.

88 Tax and Superannuation Laws Amendment (2013 Measures No.2) Bill 2013, *Sixth Report of 2013*, pp 71-81.

89 Private Health Insurance Legislation Amendment (Base Premium) Bill 2013, *Seventh Report of 2013*, pp 34-35.

90 Biosecurity Bill 2012, *First Report of 2013*, pp 16-26; Asbestos Safety and Eradication Agency Bill 2013, *Sixth Report of 2013*, p 2.

91 *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and related legislation, *Ninth Report of 2013*.

92 Environment Protection and Biodiversity Conservation Amendment Bill 2013, *Fourth Report of 2013*, pp 32-35.

93 Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013, *Sixth Report of 2013*, pp 36-39, and *Tenth Report of 2013*, pp 76-81; *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and related legislation, *Ninth Report of 2013*.

94 Health Insurance (Dental Services) Amendment Determination 2012 (No. 1), *Seventh Report of 2012*, pp 51-55, and *Third Report of 2013*, pp 133-134.

## Other human rights scrutiny issues

1.67 During the reporting period, the committee identified a number of issues that pose particular challenges for the committee, as well as for ministers and departments. These include the extent to which principal Acts should be included in the analysis of the human rights implications of bills and legislative instruments and the consideration of human rights in the development of legislation that is the product of complex whole of government processes or intergovernmental agreement.

### Scrutiny of principal Acts

1.68 Throughout the year, the committee noted a tendency for sponsors of legislation to suggest that, where an amending bill incorporates by reference the provisions of an existing Act, such amendments do not raise any human rights concerns by virtue of this reference to existing legislation.<sup>95</sup>

1.69 In its *Third Report of 2013*, the committee set out its expectation that, to the extent that the parent Act is relevant to the operation of the amending provision, the statement of compatibility should include an analysis of the human rights implications and compatibility of the provisions of the existing or parent Act, as they are applied or extended by the amendment.

1.70 This approach is consistent with the committee's functions under the Act in two respects. First, the operation of amendments have to be analysed in terms of their legal effect and practical impact, which can only be done by reviewing their operation in the statutory framework of which they form part. Second, such a review contributes to the committee's performance of its mandate 'to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue'.

### Human rights scrutiny of national cooperative schemes of legislation

1.71 In its consideration of the Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2013. The committee set out its concerns regarding areas of activity regulated under national schemes of legislation resulting from intergovernmental agreements. While the minor amendments proposed by this bill did not give rise to any human rights concerns, the committee noted its concern that the parent Act, the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012*, may give rise to human rights concerns.

1.72 The committee observed that an increasing number of areas of activity are regulated under national schemes resulting from intergovernmental agreements, and the committee noted that the legislative form of such schemes varies. In some

---

95 Customs Amendment (Anti-Dumping Commission) Bill 2012, *Third Report of 2013*, pp 8-11; Water Efficiency Labelling Standards (Registration Fees) Bill 2013, *Fourth Report of 2013*, p 67.

---

cases the legislation of one jurisdiction is adopted by the legislatures of other jurisdictions; in others, each jurisdiction commits itself to enacting a uniform law in terms agreed at the intergovernmental level. Sometimes these arrangements involve the agreement of the parties that changes to the template law will be automatically adopted in the various jurisdictions.

1.73 The committee notes that these types of arrangements give rise to legislative scrutiny concerns, as there may be no formal agreement or procedure in place to ensure that cooperative national schemes and implementing legislation are scrutinised for human rights compatibility during their development and before they are finalised at an intergovernmental level. Following the conclusion of an intergovernmental agreement, there may be only a limited opportunity for legislative scrutiny at a time when such consideration may influence the final content of the legislation.

1.74 As with any legislation, the committee considers that the issue of compatibility with human rights should be an integral part of the development of any national scheme.

1.75 In response to the committee's views, the former Prime Minister, Ms Julia Gillard, advised that the First Parliamentary Counsel will seek the views of the states and territories on amending the Protocol on Drafting National Uniform Legislation to refer to the Commonwealth's requirements for assessing human rights compatibility.<sup>96</sup>

### **Human rights scrutiny of appropriation bills**

1.76 In its *Third Report of 2013* the committee set out its initial views on the human rights implications of appropriation bills. The committee noted that it does not anticipate it will generally be necessary for it to make substantive comments on such bills. Nonetheless, the committee's expectation is that the incorporation of human rights considerations in the underlying budgetary processes would, where appropriate, provide the most practical approach to ensuring that human rights are taken into account in the development of policy and legislation.

1.77 In its consideration of appropriation bills in its *Seventh Report of 2013*, the committee noted the difficulties of providing comprehensive statements of compatibility for appropriation bills. The committee recognised that the detail relating to specific government expenditure is primarily contained in the relevant portfolio budget statements instead of the bill itself.

---

96 See the former Prime Minister's response in relation to the Marine Safety (Domestic Commercial Vessel) National Law Amendment Bill 2013, *Tenth Report of 2013*, p 151.





## **Appendix 1**

### **Committee membership 2012-2013**

#### ***Committee membership as at 30 June 2013***

Mr Harry Jenkins MP (Chair) *(from 14 March 2012)*

Mr Ken Wyatt MP (Deputy Chair) *(from 14 March 2012)*

Senator the Hon Kim Carr *(from 14 May 2013)*

Mr Graham Perrett MP *(from 6 February 2013)*

Senator Anne Ruston *(from 29 October 2012)*

Senator Dean Smith *(from 20 August 2012)*

Senator the Hon Ursula Stephens *(from 13 March 2012)*

Mr Dan Tehan MP *(from 14 March 2012)*

Senator Penny Wright *(from 22 March 2012)*

Mr Tony Zappia MP *(from 13 February 2013)*

#### ***Previous committee members***

Mr Kelvin Thomson MP *(from 14 March 2012 – 6 February 2013)*

Ms Melissa Parke MP *(from 14 March 2012 – 13 February 2013)*

Senator the Hon Matthew Thistlethwaite *(from 13 March 2012 – 14 May 2013)*

Senator Sean Edwards *(from 16 March 2012 – 20 August 2012)*

Senator Gary Humphries *(from 16 March 2012 – 29 October 2012)*



## Appendix 2

### Outstanding correspondence

As at 30 June 2013, the following responses to committee comments remained outstanding. Responses which were received after 24 June 2013 will be considered in the 44<sup>th</sup> Parliament.

<b>Bill name</b>	<b>Report Number</b>
Protecting Local Jobs (Regulating Enterprise Migration Agreements) Bill 2012	1/2012
Renewable Energy (Electricity) Amendment (Excessive Noise from Wind Farms) Bill 2012)	1/2012
Competition and Consumer Amendment (Australian Food Labelling) Bill 2012	5/2012
Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 [No. 2]	5/2012
Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012	5/2012
Superannuation Legislation Amendment (Further MySuper and Transparency Measures) Bill 2012	5/2012
Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012	6/2012
Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012	6/2012
Superannuation Legislation Amendment (Reducing Illegal Early Release and Other Measures) Bill 2012	1/2013
Superannuation Legislation Amendment (Service Providers and Other Governance Measures) Bill 2012	1/2013
Therapeutic Goods Amendment (Pharmaceutical Transparency) Bill 2013	3/2013
Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Sharing) Bill 2013	3/2013
Tax and Superannuation Laws Amendment (2013 Measures No. 1) Bill 2013	3/2013
Criminal Code Amendment (Misrepresentation of Age to a Minor) Bill 2013	3/2013

Social Security and Other Legislation Amendment (Caring for Single Parents) Bill 2013	4/2013
Financial Framework Legislation Amendment Bill (No. 2) 2013	4/2013
Asbestos Safety and Eradication Agency Bill 2013	6/2013
Australia Council (Consequential and Transitional Provisions) Bill 2013	6/2013
Customs Amendment (Prohibition of Certain Coal Exports) Bill 2013	6/2013
Tax Laws Amendment (Disclosure of MRRT Information) Bill 2013	6/2013
Small Business Commissioner Bill 2013	6/2013
Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2013	7/2013
Parliamentary Service Amendment (Freedom of Information) Bill 2013	8/2013
<b>Instrument Name</b>	<b>Report Number</b>
Superannuation Industry (Supervision) Amendment Regulation 2012 (No. 2) [F2012L01654]	2/2012
Tradespersons' Rights (Cost Recovery) Amendment Regulation 2013 (No. 1) [F2013L00704]	7/2013
Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013 (No. 2) [F2013L00857]	10/2013
Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Syria) Amendment List 2013 [F2013L00884]	10/2013
Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Zimbabwe) Amendment List 2013 [F2013L00477]	10/2013
Therapeutic Goods Order No. 88 - Standards for donor selection, testing, and minimising infectious disease transmission via therapeutic goods that are human blood and blood components, human tissues and human cellular therapy products [F2013L00854]	10/2013
Marine Order 4 (Transitional modifications) 2013 [F2013L00871]	10/2013

Migration Regulations 1994 - Revocation under paragraph 5.36(1A)(a)-Instrument of Revocation-May 2013 and related instrument [F2013L00888]	10/2013
Migration Amendment (Permanent Protection Visas) Regulation 2013 [F2013L00890]	10/2013
Charter of the United Nations Legislation Amendment Regulation 2013 (No. 1) [F2013L00791]	10/2013
Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2013 (No. 1) [F2013L00789]	10/2013
Charter of the United Nations (Sanctions – the Taliban) Regulation 2013 [F2013L00787]	10/2013

The committee expects to receive responses in the 44<sup>th</sup> Parliament to its examination of the following legislation:

<b>Legislation</b>	<b>Report Number</b>
<i>Social Security Legislation Amendment (Fair Incentives to Work) Act 2012</i>	4/2012 and 5/2013
<i>Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012</i> and related legislation	9/2013
<i>Stronger Futures in the Northern Territory Act 2012</i> and related legislation	11/2013



## Appendix 3

### Conferences and seminars

Members of the committee participated in the following conferences and seminars in 2012-2013. Copies of the speeches are available on the committee's website.

1. *Recent Developments in Constitutional Law: Centre for Comparative Constitutional Studies Conference*, 21 July 2012 - Mr Harry Jenkins MP
2. *2012 Australian Government and Non-Government Organisations Forum on Human Rights*, Parliament House, 14 August 2012 - Mr Harry Jenkins MP
3. *Human rights at your fingertips, online and in practice*, 29 October 2012 - Mr Harry Jenkins MP
4. *Human Rights Compatibility: Parliamentary Scrutiny and Human Rights in Australia*, NSW Bar Association Human Rights Committee Professional Development Seminar, 28 February 2013 - Mr Harry Jenkins MP
5. *Commonwealth Regional Seminar on Universal Periodic Review*, 9-10 April 2013 – Senator the Honourable Ursula Stephens
6. *Human Rights at Work*, University of Melbourne, 29 April 2013 – Senator the Honourable Ursula Stephens
7. *2013 Australian Government and Non-Government Organisations Forum on Human Rights*, Old Parliament House, 19 June 2013 – Senator the Honourable Ursula Stephens





## **Appendix 4**

---

### **Practice Notes 1 and 2**



# PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

## Practice Note 1

### Introduction

---

This practice note:

- (i) sets out the underlying principles that the committee applies to the task of scrutinising bills and legislative instruments for human rights compatibility in accordance with the *Human Rights (Parliamentary Scrutiny) Act 2011*; and
- (ii) gives guidance on the committee's expectations with regard to information that should be provided in statements of compatibility.

### The committee's approach to human rights scrutiny

---

- The committee views its human rights scrutiny tasks as primarily preventive in nature and directed at minimising risks of new legislation giving rise to breaches of human rights in practice. The committee also considers it has an educative role, which includes raising awareness of legislation that promotes human rights.
- Consistent with the approaches adopted by other human rights committees in other jurisdictions, the committee will test legislation for its potential to be incompatible with human rights, rather than considering whether particular legislative provisions could be open to a human rights compatible interpretation. In other words, the starting point for the committee is whether the legislation could be applied in ways which would breach human rights and not whether

a consistent meaning may be found through the application of statutory interpretation principles.

- The committee considers that the inclusion of adequate human rights safeguards in the legislation will often be essential to the development of human rights compatible legislation and practice. The inclusion of safeguards is to ensure a proper guarantee of human rights in practice. The committee observes that human rights case-law has also established that the existence of adequate safeguards will often go directly to the issue of whether the legislation in question is compatible. Safeguards are therefore neither ancillary to compatibility and nor are they merely 'best practice' add-ons.
- The committee considers that, where relevant and appropriate, the views of human rights treaty bodies and international and comparative human rights jurisprudence can be useful sources for understanding the nature and scope of the human rights defined in the *Human Rights (Parliamentary Scrutiny) Act 2011*.
- The committee notes that previously settled drafting conventions and guides are not determinative of human rights compatibility and may now need to be re-assessed for the purposes of developing human rights compatible legislation and practice.

### The committee's expectations for statements of compatibility

---

- The committee views statements of compatibility as essential to the consideration

of human rights in the legislative process. It is also the starting point of the committee's consideration of a bill or legislative instrument.

- The committee expects statements to read as stand-alone documents. The committee relies on the statement to provide sufficient information about the purpose and effect of the proposed legislation, the operation of its individual provisions and how these may impact on human rights. While there is no prescribed form for statements under the *Human Rights (Parliamentary Scrutiny) Act 2011*, the committee has found the templates<sup>1</sup> provided by the Attorney-General's Department to be useful models to follow.
- The committee expects statements to contain an assessment of whether the proposed legislation is compatible with human rights. The committee expects statements to set out the necessary information in a way that allows it to undertake its scrutiny tasks efficiently. Without this information, it is often difficult to identify provisions which

may raise human rights concerns in the time available.

- In line with the steps set out in the assessment tool flowchart<sup>2</sup> (and related guidance) developed by the Attorney-General's Department, the committee would prefer for statements to provide information that addresses the following three criteria where a bill or legislative instrument limits human rights:
  1. whether and how the limitation is aimed at achieving a legitimate objective;
  2. whether and how there is a rational connection between the limitation and the objective; and
  3. whether and how the limitation is proportionate to that objective.
- If no rights are engaged, the committee expects that reasons should be given, where possible, to support that conclusion. This is particularly important where such a conclusion may not be self-evident from the description of the objective provided in the statement of compatibility.

September 2012

<sup>1</sup> <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSector/Pages/Statementofcompatibilitytemplates.aspx>

<sup>2</sup> <http://www.ag.gov.au/RightsAndProtections/HumanRights/PublicSector/Documents/Flowchart.pdf>

*For further information please contact:*

**Parliamentary Joint Committee  
on Human Rights**

Tel. (02) 6277 3823 • Fax. (02) 6277 5767

Email: [human.rights@aph.gov.au](mailto:human.rights@aph.gov.au)

PO Box 6100, Parliament House  
CANBERRA ACT 2600

# PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

## PRACTICE NOTE 2 (INTERIM)

### CIVIL PENALTIES

#### Introduction

1.1 This interim practice note:

- sets out the human rights compatibility issues to which the committee considers the use of civil penalty provisions gives rise; and
- provides guidance on the committee's expectations regarding the type of information that should be provided in statements of compatibility.

1.2 The committee acknowledges that civil penalty provisions raise complex human rights issues and that the implications for existing practice are potentially significant. The committee has therefore decided to provide its initial views on these matters in the form of an interim practice note and looks forward to working constructively with Ministers and departments to further refine its guidance on these issues.

#### Civil penalty provisions

1.3 The committee notes that many bills and existing statutes contain civil penalty provisions. These are generally prohibitions on particular forms of conduct that give rise to liability for a 'civil penalty' enforceable by a court.<sup>1</sup> These penalties are pecuniary, and do not include the possibility of imprisonment. They are stated to be 'civil' in nature and do not constitute criminal offences under Australian law. Therefore, applications for a civil penalty order are dealt with in accordance with the rules and procedures that apply in relation to civil matters.

1.4 These provisions often form part of a regulatory regime which provides for a graduated series of sanctions, including infringement notices, injunctions, enforceable

undertakings, civil penalties and criminal offences. The committee appreciates that these schemes are intended to provide regulators with the flexibility to use sanctions that are appropriate to and likely to be most effective in the circumstances of individual cases.

#### Human rights implications

1.5 Civil penalty provisions may engage the criminal process rights under articles 14 and 15 of the International Covenant on Civil and Political Rights (ICCPR).<sup>2</sup> These articles set out specific guarantees that apply to proceedings involving the determination of 'criminal charges' and to persons who have been convicted of a 'criminal offence', and provide protection against the imposition of retrospective criminal liability.<sup>3</sup>

1.6 The term 'criminal' has an 'autonomous' meaning in human rights law. In other words, a penalty or other sanction may be 'criminal' for the purposes of the ICCPR even if it is considered to be 'civil' under Australian domestic law. Accordingly, when a provision imposes a civil penalty, an assessment is required of whether it amounts to a 'criminal' penalty for the purposes of the ICCPR.<sup>4</sup>

#### The definition of 'criminal' in human rights law

1.7 There are three criteria for assessing whether a penalty is 'criminal' for the purposes of human rights law:

- a) *The classification of the penalty in domestic law*: If a penalty is labelled as 'criminal' in domestic law, this classification is considered

determinative for the purposes of human rights law, irrespective of its nature or severity. However, if a penalty is classified as ‘non-criminal’ in domestic law, this is never determinative and requires its nature and severity to be also assessed.

- b) *The nature of the penalty*: A criminal penalty is deterrent or punitive in nature. Non-criminal sanctions are generally aimed at objectives that are protective, preventive, compensatory, reparatory, disciplinary or regulatory in nature.
- c) *The severity of the penalty*: The severity of the penalty involves looking at the maximum penalty provided for by the relevant legislation. The actual penalty imposed may also be relevant but does not detract from the importance of what was initially at stake. Deprivation of liberty is a typical criminal penalty; however, fines and pecuniary penalties may also be deemed ‘criminal’ if they involve sufficiently significant amounts but the decisive element is likely to be their purpose, ie, criterion (b), rather than the amount per se.

1.8 Where a penalty is designated as ‘civil’ under domestic law, it may nonetheless be classified as ‘criminal’ under human rights law if either the nature of the penalty or the severity of the penalty is such as to make it criminal. In cases where neither the nature of the civil penalty nor its severity are separately such as to make the penalty ‘criminal’, their cumulative effect may be sufficient to allow classification of the penalty as ‘criminal’.

### When is a civil penalty provision ‘criminal’?

1.9 Many civil penalty provisions have common features. However, as each provision or set of provisions is embedded in a different

statutory scheme, an individual assessment of each provision in its own legislative context is necessary.

1.10 In light of the criteria described in paragraph 1.9 above, the committee will have regard to the following matters when assessing whether a particular civil penalty provision is ‘criminal’ for the purposes of human rights law.

#### a) *Classification of the penalty under domestic law*

1.11 As noted in paragraph 1.9(a) above, the classification of a civil penalty as ‘civil’ under Australian domestic law will be of minimal importance in deciding whether it is criminal for the purposes of human rights law. Accordingly, the committee will in general place little weight on the fact that a penalty is described as civil, is made explicitly subject to the rules of evidence and procedure applicable to civil matters, and has none of the consequences such as conviction that are associated with conviction for a criminal offence under Australian law.

#### b) *The nature of the penalty*

1.12 The committee considers that a civil penalty provision is more likely to be considered ‘criminal’ in nature if it contains the following features:

- the penalty is punitive or deterrent in nature, irrespective of its severity;
- the proceedings are instituted by a public authority with statutory powers of enforcement;<sup>5</sup>
- a finding of culpability precedes the imposition of a penalty; and
- the penalty applies to the public in general instead of being directed at regulating members of a specific group (the latter being more likely to be viewed as ‘disciplinary’ rather than as ‘criminal’).

### c) *The severity of the penalty*

1.13 In assessing whether a pecuniary penalty is sufficiently severe to amount to a ‘criminal’ penalty, the committee will have regard to:

- the amount of the pecuniary penalty that may be imposed under the relevant legislation;
- the nature of the industry or sector being regulated and relative size of the pecuniary penalties and the fines that may be imposed;
- whether the maximum amount of the pecuniary penalty that may be imposed under the civil penalty provision is higher than the penalty that may be imposed for a corresponding criminal offence; and
- whether the pecuniary penalty imposed by the civil penalty provision carries a sanction of imprisonment for non-payment.

### **The consequences of a conclusion that a civil penalty is ‘criminal’**

1.14 If a civil penalty is assessed to be ‘criminal’ for the purposes of human rights law, this does not mean that it must be turned into a criminal offence in domestic law. Human rights law does not stand in the way of decriminalization. Instead, it simply means that the civil penalty provision in question must be shown to be consistent with the criminal process guarantees set out in article 14 and article 15 of the ICCPR.

1.15 If a civil penalty is characterised as not being ‘criminal’, the criminal process guarantees in articles 14 and 15 will not apply. However, such provisions must still comply with the right to a fair hearing before a competent, independent and impartial tribunal contained in article 14(1) of the ICCPR.

### **The committee’s expectations for statements of compatibility**

1.16 As set out in its *Practice Note 1*, the committee views sufficiently detailed

statements of compatibility as essential for the effective consideration of the human rights compatibility of bills and legislative instruments. The committee expects statements for proposed legislation which includes civil penalty provisions, or which draws on existing legislative civil penalty regimes, to address the issues set out in this interim practice note.

1.17 In particular, the statement of compatibility should:

- explain whether the civil penalty provisions should be considered to be ‘criminal’ for the purposes of human rights law, taking into account the criteria set out above; and
- if so, explain whether the provisions are consistent with the criminal process rights in article 14 and article 15 of the ICCPR, including providing justifications for any limitations of these rights.<sup>6</sup>

1.18 The key criminal process rights that have arisen in the committee’s scrutiny of civil penalty provisions are set out briefly below. The committee, however, notes that the other criminal process guarantees in articles 14 and 15 may also be relevant to civil penalties that are viewed as ‘criminal’ and should be addressed in the statement of compatibility where appropriate.

#### *Right to be presumed innocent*

1.19 Article 14(2) of the ICCPR provides that a person is entitled to be presumed innocent until proved guilty according to law. This requires that the case against the person be demonstrated on the criminal standard of proof, that is, it must be proven beyond reasonable doubt. The standard of proof applicable in civil penalty proceedings is the civil standard of proof, requiring proof on the balance of probabilities. **In cases where a civil penalty is considered ‘criminal’, the statement of compatibility should explain how the application of the civil standard of proof for such proceedings is compatible with article 14(2) of the ICCPR.**

## *Right not to incriminate oneself*

1.20 Article 14(3)(g) of the ICCPR provides that a person has the right ‘not to be compelled to testify against himself or to confess guilt’ in criminal proceedings. **Civil penalty provisions that are considered ‘criminal’ and which compel a person to provide incriminating information that may be used against them in the civil penalty proceedings should be appropriately justified in the statement of compatibility.<sup>7</sup> If use and/or derivative use immunities are not made available, the statement of compatibility should explain why they have not been included.**

## *Right not to be tried or punished twice for the same offence*

1.21 Article 14(7) of the ICCPR provides that no one is to be liable to be tried or punished again for an offence of which she or he has already been finally convicted or acquitted. **If a civil penalty provision is considered to be ‘criminal’ and the related legislative scheme permits criminal proceedings to be brought against the person for substantially the same conduct, the statement of compatibility should explain how this is consistent with article 14(7) of the ICCPR.**

- 1 This approach is reflected in the Regulatory Powers (Standard Provisions) Bill 2012, which is intended to provide a standard set of regulatory powers which may be drawn on by other statutes.
- 2 The text of these articles is reproduced at the end of this interim practice note. See also UN Human Rights Committee, General Comment No 32 (2007) on article 14 of the ICCPR.
- 3 Article 14(1) of the ICCPR also guarantees the right to a fair hearing in civil proceedings.
- 4 This practice note is focused on civil penalty provisions that impose a pecuniary penalty only. But the question of whether a sanction or penalty amounts to a ‘criminal’ penalty is a more general one and other ‘civil’ sanctions imposed under legislation may raise this issue as well.
- 5 In most, if not all, cases, proceedings in relation to the civil penalty provisions under discussion will be brought by public authorities.
- 6 That is, any limitations of rights must be for a legitimate objective and be reasonable, necessary and proportionate to that objective – for further information see *Practice Note 1*.
- 7 The committee notes that a separate question also arises as to whether testimony obtained under compulsion that has already been used in civil penalty proceedings (whether or not considered ‘criminal’) is consistent with right not to incriminate oneself in article 14(3)(g) of the ICCPR if it is used in subsequent criminal proceedings.

*For further information please contact:*

**Parliamentary Joint Committee  
on Human Rights**

Tel. (02) 6277 3823 • Fax. (02) 6277 5767

Email: [human.rights@aph.gov.au](mailto:human.rights@aph.gov.au)

PO Box 6100, Parliament House  
CANBERRA ACT 2600

## Articles 14 and 15 of the International Covenant on Civil and Political Rights

### 1. Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may

be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal



case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

- a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
- b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
- c) To be tried without undue delay;
- d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
- e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
- g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

### *Article 15*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.



## Appendix 5

### ICESCR and ICCPR rights and related articles in the other five human rights treaties

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	CRPD
Right to self determination	Art 1	Art 1					
Equal rights of men and women	Art 3	Art 3		All			
Right to work	Art 6		Art 5(e)(i)	Art 11 Art 14(2)(e)			Art 27(1)
Right to just and favourable conditions of work	Art 7		Art 5(e)(i)	Art 11			Art 27(1)
Right to form trade unions (including rights at work)	Art 8	Art 22	Art 5(e)(ii)				Art 27(1)(c)
Right to social security	Art 9		Art 5(e)(iv)	Art 11(1)(e) Art 14(2)(c)		Art 26	Art 28
Right to maternity leave	Art 10			Art 11(2)			
Right to adequate standard of living, including food, water and housing	Art 11		Art 5(e)(iii)	Art 14(2)(h)		Art 24(2)(c) Art 27	Art 28
Right to health	Art 12		Art 5(e)(iv)	Art 12, 14(2)(b), 16(1)(e)		Art 24 Art 25	Art 23(1)(c) Art 25
Right to education	Art 13 Art 14		Art 5(e)(v)	Art 10 Art 14(2)(d)		Art 28 Art 29	Art 24 Art 26
Right to enjoy and benefit from culture	Art 15	Art 27	Art 5(e)(vi)	Art 13(c)		Art 30 Art 31	Art 30
Rights of persons with disability	Art 2	Art 2 Art 26			Art 2 Art 16	Art 23	All

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	CRDP
Right to life		Art 6				Art 6	Art 10
Prohibition on torture, cruel inhuman or degrading treatment or punishment		Art 7			All	Art 37 Art 39	Art 15
Right to freedom from slavery and forced labour		Art 8					Art 27(2)
Right to security of the person and freedom from arbitrary detention		Art 9	Art 5(b)			Art 37	Art 14
Right to humane treatment in detention		Art 10				Art 37	Art 14
Prohibition on imprisonment for inability to fulfil a contract		Art 11					
Right to freedom of movement		Art 12	Art 5(d)(i) & (ii)	Art 15(4)		Art 10	Art 18
Expulsion of aliens		Art 13					
Fair trial and fair hearing rights (including presumption of innocence) and minimum guarantees in criminal proceedings		Art 14	Art 5(a)			Art 40	Art 13
Prohibition on retrospective criminal laws		Art 15				Art 40(2)(a)	
Right to recognition as person before the law		Art 16		Art 15			
Right to privacy and reputation		Art 17				Art 16	Art 22
Right to freedom of thought, conscience and religion or belief		Art 18	Art 5(d)(vii)			Art 14	

	ICESCR	ICCPR	ICERD	CEDAW	CAT	CRC	CRDP
Right to freedom of opinion and expression		Art 19	Art 5(d)(viii)			Art 12 Art 13	Art 21
Prohibition on advocacy of national, racial or religious hatred		Art 20	Art 4				
Right to freedom of assembly		Art 21	Art 5(d)(ix)			Art 15	
Right to freedom of association	Art 8(10(a))	Art 22	Art 5(d)(ix)			Art 15	
Right to respect for the family	Art 10(1)	Art 23 Art 17		Art 16		Art 5 Art 16	Art 23
Rights of children		Art 24(1) Art 14(4)		Art 16(2)		All	Art 7
Right to a name and acquire a nationality		Art 24	Art 5(d)(iii)	Art 9		Art 7 Art 8	Art 18
Right to take part in public affairs and elections		Art 25	Art 5(c)	Art 7 Art 8			Art 29
Right of equality and non-discrimination	Art 2(2)	Art 26 Art 2(1)	All	All		Art 2	All

ICESCR – International Covenant on Economic, Social and Cultural Rights

ICCPR – International Covenant on Civil and Political Rights

ICERD – International Convention on Elimination of All Forms of Racial Discrimination

CEDAW - Convention on Elimination of All Forms of Discrimination Against Women

CAT – Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment

CRC – Convention on the Rights of the Child

CRPD – Convention on the Rights of Person with Disabilities



## Appendix 6

### Examples of key human rights considered by the Parliamentary Joint Committee on Human Rights 2012-2013

#### Right to self-determination, article 1 ICESCR and ICCPR

Aboriginal and Torres Strait Islander Peoples Recognition Bill 2012	1/2013; 3/2013
Australian Capital Territory (Self-Government) Amendment Bill 2013	3/2013
Native Title Amendment Bill 2012	6/2013; 10/2013
Stronger Futures in the Northern Territory Act 2012 and related legislation	11/2013

#### Right to work, article 6 ICESCR and right to just and favourable conditions of work, article 7 ICESCR

Australian Education Bill 2012	1/2013; 3/2013
Customs Amendment (Anti-Dumping Commission) Bill 2013	3/2013; 6/2013
Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Bill 2013	6/2013; 10/2013
Fair Work Amendment Bill 2012	7/2012
Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012	2/2012; 7/2012; 6/2013
Law Enforcement Integrity Legislation Amendment Bill 2012	5/2012; 7/2012; 1/2013
Tradespersons' Rights (Cost Recovery) Amendment Regulation 2013 (No.1)	7/2013
Work Health and Safety Act 2011 (application to Defence activities and Defence members) Declaration 2012	4/2013; 10/2013

#### Right to form trade unions, article 8 ICESCR

Fair Work Amendment (Transfer of Business) Bill 2012	6/2012
Fair Work (Registered Organisations) Amendment (Towards Transparency) Bill 2013	1/2013; 3/2013

#### Right to social security, article 9 ICESCR

Health Insurance Amendment (Extended Medicare Safety Net) Bill 2012	1/2012
Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012	4/2012; 5/2013
Health Insurance (Dental Services) Amendment Determination 2012 (No. 1)	7/2012; 3/2013
Social Security and Other Legislation Amendment (Income Support Bonus) Bill 2012	1/2013; 3/2013; 10/2013
Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013; Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013 [No.2]	3/2013; 6/2013; 7/2013
Social Security Legislation Amendment (Caring for People on Newstart) Bill 2013	3/2013

Family Assistance and Other Legislation Amendment Bill 2013	3/2013; 6/2013
Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013	6/2013; 10/2013
Social Security Legislation Amendment (Disaster Recovery Allowance) Bill 2013	6/2013
Veterans' Affairs Legislation Amendment (Military Compensation Review and Other Measures) Bill 2013	6/2013; 10/2013
Social Security Legislation Amendment (Public Housing Tenant's Support) Bill 2013	8/2013
Stronger Futures in the Northern Territory Act 2012 and related legislation	11/2013

#### **Right to maternity leave, article 10 ICESCR**

Fair Work Amendment Bill 2013	6/2013
-------------------------------	--------

#### **Right to an adequate standard of living, including food, water and housing, article 11 ICESCR**

Social Security Legislation Amendment (Fair Incentives to Work) Act 2012	4/2012; 5/2013
Social Security and Other Legislation Amendment (Income Support Bonus) Bill 2012	1/2013; 3/2013; 10/2013
Water Amendment (Save the Murray-Darling Basin) Bill 2012	1/2013
Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013 [No.2]	3/2013; 7/2013
Customs Amendment (Prohibition of Certain Coal Exports) Bill 2013	6/2013
Tax and Superannuation Laws Amendment (2013 Measures No. 2) Bill 2012	6/2013; 10/2013
Competition and Consumer Amendment (Australian Country of Origin Food Labelling) Bill 2013	7/2013
Homelessness Bill 2013	8/2013
Stronger Futures in the Northern Territory Act 2012 and related legislation	11/2013

#### **Right to health, article 12 ICESCR**

Health Insurance Amendment (Extended Medicare Safety Net) Bill 2012	1/2012
Migration Amendment (Health Care for Asylum Seekers) Bill 2012	3/2012
Health Insurance (Dental Services) Amendment Determination 2012 (No. 1)	7/2012; 3/2013
Biosecurity Bill 2012	1/2013; 6/2013; 8/2013
Private Health Insurance Legislation Amendment (Base Premium) Bill 2013	7/2013
Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013; Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013 [No.2]	3/2013; 6/2013; 7/2013
Asbestos Safety and Eradication Agency Bill 2013	6/2013
Health Insurance Amendment (Medicare Funding for Certain Types of Abortion) Bill 2013	6/2013; 10/2013
Private Health Insurance Amendment (Lifetime Health Cover Loading and Other Measures) Bill 2012	1/2013



Migration Legislation Amendment (Regional Processing and Other Measures Act 2012 and related legislation	9/2013
Stronger Futures in the Northern Territory Act 2012	11/2013

#### **Right to education, articles 13 & 14 ICESCR**

Higher Education Support Amendment (Further Streamlining and Other Measures) Bill 2013	3/2013; 6/2013
Student Assistance (Education Institutions and Courses) Amendment Determination 2012 (No. 1)	3/2013; 6/2013
Student Identifiers Bill 2013	6/2013

#### **Right to enjoy and benefit from culture, article 15 ICESCR**

Broadcasting Services Amendment (Material of Local Significance) Bill 2013	4/2013
Native Title Amendment Bill 2012	6/2013; 10/2013

#### **Rights of people with disabilities, Convention on the Rights of Persons with Disabilities**

National Disability Insurance Scheme Bill 2012	1/2013; 6/2013
--	----------------

#### **Right to life, article 6 ICCPR**

Customs Act 1901 - CEO Directions No.1 of 2012	3/2012; 1/2013
Mutual Assistance in Criminal Matters (Cybercrime) Regulation 2013	6/2013; 10/2013
Extradition (Convention for Suppression of Acts of Nuclear Terrorism) Regulation 2012; Extradition (Cybercrime) Regulation 2013; Extradition (Piracy against Ships in Asia) Regulation 2013	1/2013; 3/2013; 6/2010; 10/2013

#### **Prohibition on torture, cruel, inhuman or degrading treatment or punishment, article 7 ICCPR and Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012; Extradition (Cybercrime) Regulation 2013; Extradition (Piracy against Ships in Asia) Regulation 2013	1/2013; 3/2013; 6/2013; 10/2013
Mutual Assistance in Criminal Matters (Cybercrime) Regulation 2013	6/2013; 10/2013
Migration Legislation Amendment (Regional Processing and Other Measures Act 2012 and related legislation	9/2013

#### **Right to security of the person and freedom from arbitrary detention, article 9 ICCPR**

Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012	6/2012
Royal Commissions Amendment Bill 2013	3/2013

Migration Legislation Amendment (Regional Processing and Other Measures Act 2012 and related legislation	9/2013
Biosecurity Bill 2012	1/2013; 6/2013; 8/2013
Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012;	1/2013; 3/2013; 6/2013
Royal Commissions Amendment Bill 2013	3/2013; 7/2013
Corporations and Financial Sector Legislation Amendment Bill 2013	6/2013; 10/2013
Court Security Bill 2013; Court Security (Consequential Amendments) Bill 2013	6/2013
Extradition (Convention for Suppression of Acts of Nuclear Terrorism) Regulation 2012; Extradition (Cybercrime) Regulation 2013; Extradition (Piracy against Ships in Asia) Regulation 2013	1/2013; 3/2013; 6/2010; 10/2013

#### **Right to humane treatment in detention, article 10 ICCPR**

Migration Legislation Amendment (Regional Processing and Other Measures Act 2012 and related legislation	9/2013
--	--------

#### **Right to freedom of movement, article 12 ICCPR**

Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation	9/2013
Biosecurity Bill 2012	1/2013; 6/2013; 8/2013
Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013; Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013 [No.2]	3/2013;6/2013; 7/2013
Court Security Bill 2013; Court Security (Consequential Amendments) Bill 2013	6/2013
Australian Citizenship Amendment (Special Residence Requirements) Bill 2013	8/2013
Migration Amendment (Permanent Protection Visas) Regulation 2013	10/2013
Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Zimbabwe) Amendment List 2013 (No.2) and Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Syria) Amendment List 2013	6/2013; 10/2013

#### **Expulsion of aliens, article 13 ICCPR**

Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012	6/2012
Migration Amendment (Unauthorised Maritime Arrivals and Other Measures) Bill 2012	7/2012; 9/2013

**Fair trial and fair hearing rights, article 14 ICCPR**

Clean Energy package of 7 bills	5/2012; 6/2012
Law Enforcement Integrity Legislation Amendment Bill 2012	5/2012; 7/2012; 1/2013
Migration and Security Legislation Amendment (Review of Security Assessments) Bill 2012	6/2012
Fair Work Amendment Bill 2012	7/2012
Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012; Extradition Cybercrime) Regulation 2013; Extradition (Piracy against Ships in Asia) Regulation 2013	1/2013; 3/2013; 6/2013; 10/2013
Parliamentary Service Amendment Bill 2012	1/2013; 6/2013; 10/2013
Protection of Cultural Objects on Loan Bill 2012	1/2013; 3/2013; 10/2013
Royal Commissions Amendment Bill 2013	3/2013; 7/2013
Broadcasting Legislation Amendment (News Media Diversity) Bill 2013	4/2013;
International Organisations (Privileges and Immunities) Amendment Bill 2013	4/2013; 6/2013
Court Security Bill 2013; Court Security (Consequential Amendments) Bill 2013	6/2013; 10/2013
Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Bill 2013	6/2013; 10/2013
Military Justice (Interim Measures) Amendment Bill 2013	6/2013; 10/2013
Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures No.2) Bill 2013	6/2013
Therapeutic Goods Amendment (2013 Measures No.1) Bill 2013	6/2013; 10/2013
Migration Legislation Amendment Regulation 2012 (No.1)	6/2013; 10/2013
National Gambling Reform Bill 2012	7/2012; 3/2013
Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012	1/2013; 3/2013; 8/2013
Biosecurity Bill 2012	1/2013; 6/2013; 8/2013
Superannuation Legislation Amendment (Reducing Illegal Early Release and Other Measures) Bill 2012	1/2013
Australian Sports Anti-Doping Authority Amendment Bill 2013	2/2013; 3/2013; 8/2013
Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012	1/2013; 3/2013; 8/2013
Offshore Petroleum and Greenhouse Gas Storage Amendment (Compliance Measures ) Bill 2013	1/2013; 3/2013; 8/2013
Australian Sports Anti-Doping Authority Amendment Bill 2013	2/2013; 3/2013; 8/2013
Mutual Assistance in Criminal Matters (Cybercrime) Regulation 2013	6/2013; 10/2013

**Fair trial, presumption of innocence, article 14(2) ICCPR**

Australian Charities and Not-for-profits Commission Bill 2012	2/2012; 6/2012
Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Bill 2012	2/2012; 6/2012
Competition and Consumer Amendment (Australian Food Labelling) Bill 2012; Competition and Consumer Amendment (Australian Food Labelling) Bill 2012 [No.2]	5/2012;
Environment Protection and Biodiversity Conservation Amendment (Declared Fishing Activities) Bill 2012	3/2012; 1/2013
Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Bill 2012	6/2012; 7/2012; 1/2013
National Gambling Reform Bill 2012	7/2012; 3/2013
Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012	1/2013; 3/2013; 8/2013
Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012	1/2013; 3/2013; 6/2013
National Disability Insurance Scheme Bill 2012	1/2013; 6/2013
Corporations Amendment (Simple Corporate Bonds and Other Measures) Bill 2013	6/2013; 10/2013
Court Security Bill 2013; Court Security (Consequential Amendments) Bill 2013	6/2013; 10/2013
Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Bill 2012	6/2012; 7/2012; 1/2013
Extradition (Convention for the Suppression of Acts of Nuclear Terrorism) Regulation 2012; Extradition (Cybercrime) Regulation 2013; Extradition (Piracy against Ships in Asia) Regulation 2013	6/2013; 10/2013
Therapeutic Goods Amendment (2013 Measures No.1) Bill 2013	6/2013
Australian Jobs Bill 2013	7/2013; 10/2013

**Fair trial, right to examine witnesses, article 14(3)(e)**

Crimes Legislation Amendment (Law Enforcement Integrity, Vulnerable Witness Protection and Other Measures) Bill 2013	8/2013; 10/2013
--	-----------------

**Fair trial, self-incrimination, article 14(3)(g)**

Corporations Legislation Amendment (Derivative Transactions) Bill 2012	3/2012; 5/2012
Law Enforcement Integrity Legislation Amendment Bill 2012	5/2012; 7/2012; 1/2013
Migration Amendment (Reform of Employer Sanctions) Bill	5/2012; 6/2012
National Gambling Reform Bill 2012	7/2012
Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012	1/2013; 3/2013
Biosecurity Bill 2012	1/2013; 6/2013; 8/2013
Parliamentary Service Amendment Bill 2012	1/2013; 6/2013; 10/2013

Australian Sports Anti-Doping Authority Amendment Bill 2013	2/2013; 3/2013; 8/2013
Small Business Commissioner Bill 2013	3/2013; 6/2013
Public Interest Media Advocate Bill 2013	4/2013
Customs (Drug and Alcohol Testing) Regulation 2013	6/2013; 7/2013; 10/2013
Australian Jobs Bill 2013	7/2013; 10/2013

#### **Prohibition on retrospective criminal laws, article 15 ICCPR**

Crimes Legislation Amendment (Organised Crime and Other Measures) Bill 2012	1/2013; 3/2013; 6/2013
Parliamentary Service Amendment Bill 2012	1/2013; 6/2013; 10/2013
Tax Laws Amendment (Countering Tax Avoidance and Multinational Profit Sharing) Bill 2013	3/2013

#### **Right to privacy and reputation, article 17 ICCPR**

Higher Education Support Amendment (Maximum Payment Amounts and Other Measures) Bill 2012	3/2012
Higher Education Support Amendment (Streamlining and Other Measures) Bill 2012	5/2012; 7/2012
Law Enforcement Integrity Legislation Amendment Bill 2012	5/2012; 7/2012; 1/2013
Superannuation Laws Amendment (Capital Gains Tax Relief and Other Efficiency Measures) Bill 2012; Superannuation Auditor Registration Imposition Bill 2012	5/2012
Crimes Legislation Amendment (Serious Drugs, Identity Crime and Other Measures) Bill 2012	6/2012; 7/2012; 1/2013
Fair Entitlements Guarantee Bill 2012	6/2012; 7/2012
Regulatory Powers (Standard Provisions) Bill 2012	6/2012; 10/2013
National Gambling Reform Bill 2012	7/2012; 3/2013
Public Interest Disclosure (Whistleblower Protection) Bill 2012	7/2012
Treasury Legislation Amendment (Unclaimed Money and Other Measures) Bill 2012	7/2012; 3/2013
Anti-Money Laundering Amendment (Gaming Machine Venues) Bill 2012	7/2012
Agricultural and Veterinary Chemicals Legislation Amendment Bill 2012	1/2013
Australian Sports Anti-Doping Authority Amendment Regulation 2012 (No.1)	1/2013; 3/2013
Biosecurity Bill 2012	1/2013; 6/2013; 8/2013
Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012	1/2013;
International Tax Agreements Amendment Bill 2012	1/2013; 6/2013
Maritime Transport and Offshore Facilities Security Amendment Regulation 2012 (No.3)	1/2013; 6/2013; 10/2013
Migration Amendment Regulation 2012 (No.8)	1/2013

National Disability Insurance Scheme Bill 2012	1/2013; 6/2013
Environment Protection and Biodiversity Conservation Amendment Bill 2013	4/2013; 10/2013
Australian Charities and Not-for-profits Commission Amendment Regulation 2013(No.1)	6/2013; 10/2013
Australian Public Service Commissioner's Directions 2013	6/2013; 10/2013
Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Zimbabwe) Amendment List 2013	6/2013; 10/2013
Corporations and Financial Sector Legislation Amendment Bill 2013	6/2013; 10/2013
Customs and AusCheck Legislation Amendment (Organised Crime and Other Measures) Bill 2013	6/2013; 10/2013
Customs (Drug and Alcohol Testing) Regulation 2013	6/2013; 7/2013; 10/2013
Defence (Personnel) Amendment Regulation 2013 (No.1)	6/2013; 10/2013
Mutual Assistance in Criminal Matters (Cybercrime) Regulation 2013	6/2013;10/2013
Student Identifiers Bill 2013	6/2013
Tax Laws Amendment (Disclosure of MRRT Information) Bill 2013	6/2013
Australian Jobs Bill 2013	7/2013; 10/2013
Charter of the United Nations Legislation Amendment Regulation 2013 (No. 1); Charter of the United Nations (UN Sanction Enforcement Law) Amendment Declaration 2013 (No. 1); Charter of the United Nations (Sanctions - the Taliban) Regulation 2013	7/2013
Intellectual Property Laws Amendment Bill 2013	8/2013; 10/2013
Social Security Legislation Amendment (Public Housing Tenant's Support) Bill 2013	8/2013
Privacy Amendment (Privacy Alerts) Bill 2013	8/2013
Migration Amendment (Permanent Protection Visas) Regulation 2013	10/2013
Therapeutic goods Order No. 88 - Standards for donor selection, testing, and minimising infectious disease transmission via therapeutic goods that are human blood and blood components, human tissues and human cellular therapy products	10/2013
Stronger Futures in the Northern Territory Act 2012 and related legislation	11/2013

#### **Right to freedom of thought, conscience and religion or belief, article 18 ICCPR**

Marriage Amendment (Celebrant Administration and Fees) Bill 2013 and Marriage (Celebrant Registration Charge) Bill 2013	6/2013
---	--------

#### **Right to freedom of opinion and expression, article 19 ICCPR**

Freedom of Information Amendment (Parliamentary Budget Office) Bill 2012	6/2012
Public Interest Disclosure (Whistleblower Protection) Bill 2012	7/2012
Broadcasting Legislation Amendment (Digital Dividend) Bill 2013	3/2013; 6/2013
Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013	4/2013; 6/2013

Broadcasting Legislation Amendment (News Media Diversity) Bill 2013	4/2013;
Broadcasting Services Amendment (Advertising for Sports Betting) Bill 2013 [No. 2]	4/2013; 7/2013
News Media (Self-regulation) Bill 2013 and News Media (Self-regulation) Consequential Amendments) Bill 2013	4/2013
Public Interest Disclosure Bill 2013	6/2013; 10/2013
Parliamentary Service Amendment (Freedom of Information) Bill 2013	8/2013

#### **Right to freedom of association, article 22 ICCPR**

Fair Work Amendment (Transfer of Business) Bill 2012	6/2012
Australian Sports Anti-Doping Authority Amendment Bill 2013	2/2013; 3/2013; 8/2013
News Media (Self-regulation) Bill 2013 and News Media (Self-regulation) (Consequential Amendments) Bill 2013	4/2013
Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013	6/2013

#### **Right to respect for the family, article 17 and 23 ICCPR**

Australian Sports Anti-Doping Authority Amendment Bill 2013	2/2013; 3/2013; 8/2013
Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Zimbabwe) Amendment List 2013	6/2013; 10/2013
Migration Legislation Amendment (Regional Processing and Other Measures Act 2012 and related legislation	9/2013
Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Zimbabwe) Amendment List 2013 (No.2) and Autonomous Sanctions (Designated Persons and Entities and Declared Persons - Syria) Amendment List 2013	10/2013
Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013; Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013 [No.2]	3/2013; 6/2013; 7/2013
Marriage Act Amendment (Recognition of Foreign Marriage for Same-Sex Couples) Bill 2013	7/2013
Migration Legislation Amendment (Regional Processing and Other Measures Act 2012 and related legislation	9/2013

#### **Rights of children, Convention on the Rights of the Child**

Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013	3/2013, 7/2013
Australian Citizenship Amendment (Special Residence Requirements) Bill 2013	8/2013
Migration Legislation Amendment (Regional Processing and Other Measures Act 2012 and related legislation	9/2013

**Right to take part in public affairs and elections, article 25 ICCPR**

Electoral and Referendum Amendment (Improving Electoral Administration) Bill 2012	1/2013
Restoring Territory Rights (Voluntary Euthanasia Legislation) Bill 2012	1/2013
Citizen Initiated Referendum Bill 2013	4/2013
Referendum (Machinery Provisions) Amendment Bill 2013	6/2013

**Equality and non-discrimination, article 26 ICCPR, article 2(1) ICCPR, article 2(2) ICESCR, ICERD**

Tax Laws Amendment (2012 Measures No. 4) Bill 2012	1/2012; 3/2013
Aviation Legislation Amendment (Liability and Insurance) Bill 2012	2/2012
Fair Work Amendment (Small Business-Penalty Rates Exemption) Bill 2012	2/2012; 7/2012; 6/2013
Dental Benefits Amendment Bill 2012	3/2012; 6/2012
Social Security Legislation Amendment (Fair Incentives to Work) Act 2012	4/2012; 5/2013
Tax Laws Amendment (2012 Measures No.5) Bill 2012	5/2012; 3/2013
Fair Entitlements Guarantee Bill 2012	6/2012; 7/2012
Tax Laws Amendment (2012 Measures No. 6) Bill 2012	1/2013
Higher Education Support Amendment (Asian Century) Bill 2013	3/2013; 6/2013
Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013	3/2013; 6/2013
Migration Amendment (Reinstatement of Temporary Protection Visas) Bill 2013 [No.2]	3/2013; 7/2013
Broadcasting Legislation Amendment (Convergence Review and Other Measures) Bill 2013	4/2013; 6/2013
Aged Care (Living Longer Living Better) Bill 2013	4/2013; 10/2013
Aboriginal Land Rights and Other Legislation Bill 2013	6/2013
Australia Council Bill 2013	6/2013
Marriage Amendment (Celebrant Administration and Fees) Bill 2013 and Marriage (Celebrant Registration Charge) Bill 2013	6/2013
Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Bill 2013	6/2013; 10/2013
Social Security Legislation Amendment (Disaster Recovery Allowance) Bill 2013	6/2013
Medicare Levy Amendment (DisabilityCare Australia) Bill 2013 and related bills	7/2013
National Disability Insurance Scheme Legislation Amendment Bill 2013	7/2013
Social Security Legislation Amendment (Public Housing Tenant's Support) Bill 2013	8/2013
Migration Legislation Amendment (Regional Processing and Other Measures Act 2012 and related legislation	9/2013
Migration Amendment (Permanent Protection Visas) Regulation 2013	10/2013
Tax Laws Amendment (2012 Measures No. 6) Bill 2012	1/2013
Stronger Futures in the Northern Territory Act 2012 and related legislation	11/2013