

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

TUESDAY 10 DECEMBER 2013

It gives me great pleasure to table this First Report of the Parliamentary Joint Committee on Human Rights in the 44th Parliament on Human Rights Day. In doing so, I would like to take a moment to remind the Senate of the important role that this committee plays in supporting the Parliament's legislative process.

The committee examines and reports to the Parliament on the compatibility of bills and legislative instruments with Australia's human rights obligations under the seven international human rights treaties ratified by Australia. The committee also has the ability to examine current Acts and to conduct broader inquiries into human rights matters referred to it by the Attorney-General.

The committee's work is focused on prevention and education with regard to human rights compatibility. The committee does not usually seek to make definitive statements regarding the compatibility of legislation with human rights. Instead, the committee seeks to determine the risk of the legislation being applied in ways that would breach human rights and suggests avenues and safeguards for addressing areas of concern.

The committee commences its work by reviewing the statement of compatibility that is required for all bills and most legislative instruments that come before the Parliament. While the committee

does not accept statements of compatibility at face value and is able to consider the human rights compatibility of legislation in the absence of such statements, it appreciates that statements of compatibility often provide valuable information that cannot be gained from the legislation itself or from the explanatory memorandum or explanatory statement that accompanies it.

Since its establishment, the committee has sought to influence the general quality of statements of compatibility and has set out its expectations for statements of compatibility in its Practice Note No. 1.

The committee considers that a good statement of compatibility will set out the objective of the legislation and the manner in which human rights have been considered in framing the legislation to achieve this objective. This is particularly important when, in order to achieve a particular objective, certain rights are to be limited.

Where a provision in a bill or instrument appears to limit rights, the committee considers three key questions:

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

The committee expects that these questions will be addressed in the statement of compatibility.

The committee also expects that the statement will set out the safeguards that will be applied to ensure that any limitations are implemented in the least restrictive form.

Where further information is required to determine these questions, the committee writes to the sponsor of the legislation seeking clarification and publishes its concerns in its report to the Parliament. The committee publishes responses received together with the committee's comments on them.

The committee seeks to conclude its work while the legislation under consideration is still before the Parliament to enable Senators, Members and other parliamentary committees to draw on the committee's work in their own contributions to the passage of legislation.

The committee's First Report of the 44th Parliament sets out the committee's consideration of 45 bills introduced into the Parliament from 12 November to 5 December 2013, 1 017 legislative instruments received between 8 June and 22 November 2013 and ten responses to comments made by the predecessor to this committee in reports tabled in the 43rd Parliament.

The committee considers that the majority of the bills and instruments it has considered do not give rise to human rights concerns. Some of these bills and instruments do not engage human rights, some engage and promote rights and some engage and limit rights, but are

accompanied by statements of compatibility that set out an adequate justification for each limitation.

The committee has identified 18 instruments that do not appear to raise any human rights concerns but are accompanied by statements of compatibility that do not fully meet the committee's expectations. The committee has written to the relevant Ministers in a purely advisory capacity providing guidance on the preparation of statements of compatibility.

The committee has identified 22 bills, 20 legislative instruments and six responses for which it will seek further information before forming a view on compatibility with human rights.

The committee has deferred its consideration of three bills to allow it to examine the issues more closely and to take account of submissions made to Senate committees to which the bills have been referred. The committee has deferred its consideration of six instruments to allow time for consideration of recommendations for review of certain legislative schemes made by the committee in the 43rd Parliament.

As I turn to the committee's Annual Report of 2012-13, I would like to take this opportunity to acknowledge the work of the predecessor to this committee in the 43rd Parliament and its Chair, Mr Harry Jenkins MP, the former Member for Scullin. This report captures the formative stages of the committee as it determined the scope of its role and how to approach it.

The key achievements of the committee in the 43rd Parliament under Mr Jenkins' leadership were the measured and collegiate way in which it approached its work, resulting in 18 consensus reports, and the development of the robust analytical framework I outlined earlier. This framework has enabled the committee to focus on the assessment of human rights compatibility across a wide range of legislation of varying complexity, engaging a diverse range of human rights, in an objective and consistent way.

As a result, the committee has begun to contribute to the source materials available to assist those engaged in the development of policy and legislation to consider human rights at each stage of this process. This first Annual Report identifies the human rights that arose most regularly in the committee's work during the review period, the legislative and policy context in which each of these rights arose and the types of concerns that the committee identified. The report provides concrete examples to illustrate each type of concern identified and as a result, should be of practical assistance in the consideration of human rights during the course of developing future legislation.

The work of the committee in the 43rd 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 44th Parliament.

I commend the reports to the Senate.