



## **PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS**

### **CHAIR'S STATEMENT TO THE HOUSE OF REPRESENTATIVES**

#### **Seventh Report of 2012**

**28 November 2012**

In this seventh report of the Parliamentary Joint Committee on Human Rights for 2012 the committee has considered 17 bills introduced during the period 29 October to 1 November 2012 and 145 legislative instruments registered between 17 October and 16 November 2012.

The committee has decided that six bills do not appear to raise human rights concerns and has commented on or sought further information in relation to the remaining eleven bills. The committee has sought further information in relation to two legislative instruments and has decided to include three instruments that relate to the Stronger Futures in the Northern Territory Act 2012 in its detailed examination of that package of related legislation.

The committee has identified 37 instruments that do not appear to raise any human rights concerns but are accompanied by statements of compatibility that fall short of the committee's expectations. The committee will send advisory letters to the relevant Ministers in relation to these.

I take this opportunity to report to the House on the committee's work to date.

In my first statement on behalf of the committee in June this year, I provided an early indication of how the committee was approaching its work. I said at the time that I would make a statement to the House at the end of the year to provide greater clarity around the committee's approach and working practices.

This committee has been charged with assisting the parliament to consider human rights in a more systematic, rigorous and consistent way.

It does this by examining legislation against the seven key international human rights instruments specified in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

This is an evolutionary process for the committee, the parliament and for those who develop policy and draft legislation. We are all coming to grips with the meaning and scope of Australia's human rights obligations and how to apply these obligations in our work in a far more rigorous way that we may have done in the past.

Things have moved on since I made the first statement to the House. The committee still finds the enormity of its workload daunting. Equally daunting is the realisation that to be of real assistance to the Parliament the committee must distil human rights principles in a way that is both legally sound and easily understood by lawyers and non-lawyers alike. It is essential that we place this analysis before the Parliament in the shortest possible timeframe.

#### **THE COMMITTEE'S WORK PRACTICES**

The difference now is that the committee has established a regular scrutiny and reporting cycle. The committee meets each sitting Tuesday to consider all bills and legislative instruments that have come

before the Parliament since the committee's last meeting. The committee categorises legislation into three groups:

- legislation that does not appear to require further consideration;
- legislation that requires clarification; and
- legislation that requires detailed examination.

This is set out in the committee's report that is tabled each sitting Wednesday in both the House and the Senate.

Where the committee examines specific legislation in detail, it may hold public hearings and will publish its conclusions in a stand-alone report. The committee's examination of the Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, reflected in its Fourth Report of 2012, is an example of this.

Since June 2012, the committee has considered 87 bills and 566 legislative instruments. 57 bills and 12 instruments have drawn comment from the committee and the committee has sent advisory letters in relation to a further 183 bills and instruments.

The committee has established a practice of considering related legislation as a package where it considers that the significance and complexity of the engagement of rights warrants this.

The committee is currently examining the Stronger Futures in the Northern Territory Act 2012 and the Migration Legislation (Regional Processing and Other Measures) Act 2012 and related bills and instruments in this way. The committee aims to complete its detailed examination of the Stronger Futures legislation early in the new year. The committee will shortly convene public hearings to assist in its examination of the Migration Legislation Regional Processing package. The committee aims to complete this work early in 2013.

There are two key benefits to this approach.

Firstly, it enables the committee to assess human rights compatibility on the basis of an understanding of the complete legislative package.

Second, it enables the committee to contribute to a broader understanding of thematic human rights issues while still maintaining a practical focus.

#### THE ROLE OF LEGAL ADVICE

The committee has ensured that it has access to specialist human rights law advice. The recent appointment of Professor Andrew Byrnes as external legal adviser will bolster the expertise available to the committee through its secretariat. Professor Byrnes is a professor of international law at the University of NSW and brings with him significant human rights law experience.

The committee has a clearer understanding of how its role sits alongside the legal advice it receives and now has a degree of experience in considering questions of human rights compatibility.

There is clearly a need for the committee's deliberations to be underpinned by appropriate legal advice to assist with the accurate identification of the rights engaged by legislation and the appropriate interpretation of Australia's human rights obligations as expressed in the seven human rights covenants.

However, the question of compatibility invariably turns on the extent to which a proposed limitation on rights is justifiable: that is whether it addresses some compelling social purpose and whether the limitation is rationally connected to this objective. In other words, a limitation should be reasonable, necessary and proportionate. These are assessments that all parliamentarians are well equipped to make.

#### STATEMENTS OF COMPATIBILITY

The starting point of the committee's consideration of most bills and legislative instruments is the statement of compatibility and the committee has very clear expectations of these statements, as set out in its first Practice Note. The committee approaches its consideration of statements of compatibility in the same way that it hopes Ministers, Members and Senators approach the drafting of them.

It prefers them to read as succinct stand-alone documents capable of informing debate within the parliament. The committee looks to see if the statement of compatibility contains an assessment of the extent to which the legislation engages human rights. Where limitations on rights are proposed, the committee looks for clear and adequate justification for each limitation and the extent to which there is a rational connection between the limitation and a legitimate policy objective. The committee then considers whether and how the limitation is proportionate to that objective.

While statements of compatibility provide a starting point for the committee's work, the committee does not accept statements at face value. The committee looks beyond the stated intention of the legislation to consider the likely effect of the legislation. The committee seeks to understand whether decisions to limit rights are evidence based. Where the committee considers that further information is required to assist its consideration of the legislation it will write to the proponent of the legislation seeking this.

For the most part, responses to the committee's requests have been timely and comprehensive. However, the committee is still awaiting some responses. Some of these date from the committee's first report in August. The committee has tabled a list of these outstanding responses in this its Seventh Report and hopes that these will soon be forthcoming. I find it disappointing that some Ministers, with the resources of a department to assist them, have not responded to the committee's requests in a more timely way. I would like to emphasise that the committee expects a response, even where the legislation has already been passed.

The fact that legislation predates 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 proponent of the legislation and invite them to provide information regarding the human rights compatibility of the legislation.

Best practice suggests that statements of compatibility should accompany all bills and instruments, whether they fall within the requirement or not.

This requirement to produce a statement of compatibility is having tangible results. It is clear that government agencies and Ministers are gradually getting better at thinking about human rights impacts as part of the legislative process.

The committee hopes that by increasing awareness of human rights impacts we will reach a point where consideration of human rights will be a natural part of all policy and legislative processes.

Ideally, the committee will be able to rely on the justification and analysis provided in the statement of compatibility without seeking further information.

However, the committee accepts that this is an evolutionary process and is committed to working with Ministers and their departments to achieve this.

#### TRAINING AND RESOURCES

I acknowledge the work undertaken by the Attorney-General's Department and the Australian Human Rights Commission in providing support and training to the public service as it comes to terms with these requirements.

When it launched Australia's Human Rights Framework, the Government made a significant commitment to developing an education and training program for the Commonwealth public sector. Since then, over 700 public service officers have received face-to-face training on what human rights are, their basis in international law, and how they can inform the work of the public service.

I recently attended a meeting of the APS Human Rights Network for the launch of an e-learning module entitled 'Human rights are in our hands' and a pocket book entitled 'Human rights at your fingertips'. The e-learning tool provides information about the international human rights system. It is a step-by-step guide to the human rights principles that should be considered in the development of policy and legislation and in the drafting of statements of compatibility. The pocket book will ensure that public sector officers have easy access to Australia's human rights obligations.

These are excellent resource materials. To complement them, the committee proposes to publish further practice notes of its own. The committee intends to review the work it has undertaken in 2012 and publish an annual report early in 2013. As well as setting out the approach the committee has taken to the consideration of specific human rights in the seven reports tabled this year, this review will form the basis for future practice notes.

#### WORKING WITH OTHER COMMITTEES

The consideration of the human rights implications of legislation is not solely the responsibility of the PJCHR. The committee appreciates that its work intersects with the work of other parliamentary committees.

In 2013 the committee will focus on working more effectively with these committees, particularly where they have been charged with examining particular bills and instruments. The committee aims to ensure that it draws the attention of these committees to its reports where they are relevant to particular inquiries.

For its part, the committee pays close attention to other committee inquiries so that it can draw on relevant evidence and findings to inform its own work.

This is important for two reasons:

- Firstly, it makes effective use of resources both within and outside the parliament.
- Secondly, determining the human rights implications of legislation is frequently complex and contentious. It makes sense to examine legislation from a variety of angles and shed as much light as possible on how legislation works and how it relates to Australia's human rights obligations in practical terms.

The committee will continue to work at establishing clear and regular communication with parliamentary committees to assist in the examination of human rights issues.

It is equally important for the committee to work effectively alongside the two Senate scrutiny committees. While each has its own specific focus in the scrutiny of legislation, the work of the Scrutiny of Bills, Regulations and Ordinances and Human Rights committees is complementary.

The three committees have established 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 a Legislative Scrutiny Unit. I hope that we can continue to build on this dialogue in 2013. To this end, the Deputy Chair and I will meet with the two Senate scrutiny committees this week.

In conclusion I would like to acknowledge the committee's debt to all those who have provided advice and sign posts throughout our journey. This includes all those who have briefed the committee and those who have written to offer their assistance or draw attention to specific issues.

I said in June that the committee was not setting out into uncharted territory. It follows a number of similar committees, including the ground breaking Joint Committee on Human Rights in the United Kingdom.

The advice and good will extended to the committee by so many has enabled it to learn from the experience of these committees and begin to formulate its own, distinctly Australian, approach to its task.

On this occasion, on behalf of the committee, I iterate the committee's gratitude to the members of the committee secretariat. Their diligence, devotion and enthusiasm for their task is greatly appreciated and admired.

Finally, I would like to thank my colleagues on the committee. Their preparedness to approach this awesome task with commitment and zeal, and as parliamentarians rather than politicians, has enabled the committee to make sure strides in this initial period and augurs well for the next phase of our journey.