

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

Wednesday 18 March 2015

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Twentieth Report of the 44th Parliament.

This report provides the committee's view on the compatibility with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011* of bills introduced during the period 23 February to 5 March 2015, and legislative instruments received during the period 13 and 26 February 2015. The report also includes consideration of legislation previously deferred by the committee, as well as responses to issues raised by the committee in previous reports.

Of the 19 bills considered in this report, 13 are assessed as not raising human rights concerns and six raise matters requiring further correspondence with ministers. The committee has deferred its consideration of the remaining bills. There are no instruments listed in this report as raising any human rights concerns.

This report includes the committee's consideration of the Attorney-General's response to the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. The committee's initial analysis of the bill acknowledged the fundamental and legitimate interest of government in ensuring there are adequate tools for law enforcement agencies to ensure public safety and the ability

for victims of crime to have recourse to justice. Having accepted the important and legitimate objective of the bill, the committee raised a number of issues going to the proportionality of the scheme in support of that legitimate objective. The Attorney-General response provided further information in response to the committee's initial scrutiny analysis. Some committee members considered the Attorney-General's advice addressed many of their concerns, while some other members remained concerned about the proportionality of the scheme as proposed. The difference of views within the committee reflects the inherent difficulty of assessing proportionality. Nevertheless, the report provides a useful assessment for members of the bill's compatibility with Australia's international human rights obligations.

This report also includes the committee's scrutiny of the Migration Amendment (Maintaining the Good Order of Immigration Detention Facilities) Bill 2015. This bill raises a number of questions about whether the powers in the bill, as currently drafted, are appropriately circumscribed. Reference is made in the statement of compatibility to a number of safeguards around the use of force which are to be included in policies and contracts with immigration detention service providers, but which are not included on the face of the legislation. The committee intends to write to the Minister for Immigration to ask him to provide further information as to whether the bill, as currently drafted, is compatible with a number of human rights, to help inform the committee's examination of the bill for compatibility with human rights.

I also wish to make some brief remarks about the Defence Trade Controls Amendment Bill 2015 which includes a number of statutory exceptions to offences which reverse the evidential burden of proof. In doing so, it limits the presumption of innocence which usually requires the prosecution to prove each element of a criminal offence beyond reasonable doubt. Of course, reverse burden offences will not necessarily be inconsistent with the presumption of innocence provided they are within reasonable limits and are necessary. While the committee accepts that the offences in this bill seek to achieve a legitimate objective, it is concerned that it may not be reasonable to impose an evidential burden on the defendant in relation to all of the matters set out in the proposed defences. In particular, the bill would require the defendant to raise proof that a country is one that is specified in a legislative instrument or that a country is a participant in certain groups, such as being a partner in the Missile Technology Control Regime. This does not appear to be, in the committee's view, a reasonable reversal of the burden of proof, as such matters would seem to be more properly within the knowledge of the prosecution. The committee intends to write to the Minister for Defence to bring to his attention the committee's human rights concerns with this aspect of the bill so as to help inform the committee's examination of the bill.

In conclusion, the report outlines the committee's examination of the compatibility of these bills with our human rights obligations, and I encourage my fellow Members and others to examine the committee's report to better inform their consideration of proposed legislation.

With these comments I commend the committee's Twentieth Report of the 44th Parliament to the House.