

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

Tuesday 8 September 2015

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

The committee's report examines the compatibility of bills and legislative instruments with Australia's human rights obligations. This report considers bills introduced into the Parliament from 17 to 20 August 2015 and legislative instruments received from 7 to 13 August 2015. The report also includes the committee's consideration of a response to a matter raised in a previous report.

Of the 11 bills examined in this report, seven are assessed as not raising human rights concerns and four raise matters in relation to which the committee will seek a response from the legislation proponents. The committee has concluded its examination of one bill, has deferred its consideration of one bill and continues to defer a number of instruments.

This report follows the committee's usual scrutiny approach to assessing whether a bill or instrument is compatible with human rights, as set out in the seven core international human rights treaties to which Australia is a party.

Most human rights are able to be limited if there is a proper justification for doing so. The committee's analytical framework

therefore focuses primarily on identifying if a proposed measure might have the effect of limiting the enjoyment of a specific right and, second, whether any such limitation may be regarded as permissible or justified.

The vast majority of bills and instruments considered by the committee do not raise human rights concerns because they either do not engage any human rights or in fact promote rights.

Of the legislation that may or does limit human rights, the committee is often able to assess the limitation as justifiable under international human rights law. In these cases, the committee generally reports on the legislation simply by identifying it as not giving rise to human rights concerns.

The committee's approach thus focuses on those bills and instruments which raise human rights concerns and which have not been adequately addressed in the statement of compatibility.

These remarks I hope draw attention to the great importance of ensuring that statements of compatibility for bills and instruments provide considered and evidence-based assessments of how any potential limitations of human rights may be regarded as justified.

Indeed, in most cases that the committee determines it is necessary to write to a legislation proponent, it is invariably because the statement of compatibility accompanying the legislation does not provide the

committee with sufficient information for it to fully assess the human rights compatibility of the legislation.

For the benefit of those charged with the task of preparing statements of compatibility, I would emphasise the importance of clearly setting out the objective of the legislation and the manner in which human rights have been considered when framing the legislation. This is crucial when, in order to achieve a particular objective, certain rights are to be limited.

The committee expects that where rights are limited the statement of compatibility will demonstrate that the limitation is rationally connected to, which is to say will be effective to achieve, its stated objective, and explain whether the limitation is proportionate to that objective. The statement should also set out any safeguards that will be applied to ensure that any limitations on human rights are implemented in the least restrictive form.

With this context, I note that some of the statements of compatibility accompanying the bills considered in this report have fallen short of the committee's expectations. In particular, a number of these provide simple assertions with no supporting evidence. As one example, the statement of compatibility for the Social Security Legislation Amendment (Debit Card Trial) Bill 2015 provided no empirical evidence of how the proposed measures are likely to be effective in achieving their objective. This is necessary due to the fact that income management schemes, while clearly well-intended, necessarily

involve limitations on a number of human rights, such as the right to a private life and the right to equality and non-discrimination.

As in all cases, the committee will request, in a spirit of constructive dialogue, further information from the sponsor of the legislation that supports their assessment that the measures propose only justifiable limitations on human rights.

As always, I encourage my fellow members and others to examine the committee's report to better inform their understanding of the committee's deliberations.

With these comments, I commend the committee's Twenty-seventh Report of the 44th Parliament to the House.