

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

DEPUTY CHAIR'S TABLING STATEMENT

Thursday 17 September 2015

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Twenty-Eighth 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 7 to 10 September 2015 and legislative instruments received from 14 to 27 August 2015. The report also includes the committee's consideration of three responses to matters raised in previous reports.

The one new bill examined in this report is assessed as not raising human rights concerns and 43 instruments raise matters in relation to which the committee will seek a response from the legislation proponents. The committee is also continuing its examination of instruments made under two Acts. The committee has concluded its examination of two bills, and deferred its consideration of five bills.

One of the bills for which the committee has concluded its examination is a private senator's bill, titled the Criminal Code Amendment (Animal Protection) Bill 2015. The bill would introduce an offence provision to provide that a person recording malicious cruelty to animals commits an offence if they fail to report that event to the police. The committee considered that the bill engages and

limits the right not to incriminate oneself because providing a recording of cruelty to animals to the police may provide evidence of the individual who made the recording committing an offence, such as criminal trespass.

The privilege against self-incrimination is a core principle of both the Australian common law and international human rights law. In its analysis, the committee has drawn on *The Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers*. This guide was developed by the Attorney General's Department to assist Australian Government departments to frame criminal offences and provides detailed information on when the privilege against self-incrimination may be limited.

While the guide does not consider international law principles directly, where the guide is followed in drafting a provision that limits the privilege against self-incrimination the provision is highly likely to be a justifiable limitation on the privilege against self-incrimination under international human rights law. Accordingly, as the guide was not followed in the drafting of the bill, the committee has sought to make helpful recommendations to the legislation proponent to improve both the drafting of the offence provisions in the bill and, consequently, their compatibility with international human rights law.

The report also includes the committee's continued consideration of a number of instruments made under the *Autonomous Sanctions Act 2011* and the *Charter of the United Nations Act 1945*. The

committee, in considering 30 instruments made under these Acts, has focused its analysis on measures that freeze the assets of designated persons or prevent declared persons from travelling to, entering or remaining in Australia. These instruments expand the operation of the sanctions regime and so, to assess whether the instruments are compatible with human rights, it is necessary to assess whether certain aspects of the sanctions regime are compatible with human rights.

The committee recognises the importance of Australia acting in concert with the international community to prevent egregious human rights abuses, and agrees that laws designed to prevent such abuses pursue a legitimate objective under international human rights law. However, the committee considers that further information is required to conclude that the process of designation of persons under the sanctions regimes is proportionate to the stated objective.

While the committee is unaware whether anyone in Australia has been affected by these measures, I note that the committee's mandate is to examine Acts and legislative instruments for compatibility with human rights and whether legislation *could* be applied in a way that would limit rights. It is on this basis that the committee has applied its usual analytical framework to engage in a constructive dialogue with the minister in relation to this matter.

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-eighth Report of the 44th Parliament to the House.