

Chapter 3

Work of the committee in 2015-16

3.1 This chapter provides information about the work of the committee during 2015-16, including the major themes and scrutiny issues arising from the legislation examined by the committee.

Legislation considered

3.2 During the reporting period, which included an election period, the committee assessed a large number of bills and legislative instruments in order to determine their compatibility with Australia's international human rights obligations.

3.3 Table 3.1 shows the total number of bills, Acts and legislative instruments assessed. It also shows how many in each category were found to raise no human rights concerns. Where a bill, Act or legislative instrument raised human rights concerns, Table 3.1 shows whether the committee provided an advice-only comment to, or required a response from, the legislation proponent in relation to the human rights issues identified.

Table 3.1: Legislation considered during the reporting period

	Total considered	No human rights concerns	Advice-only comment	Response required
Bills and Acts	192	144	17	31
Legislative instruments	1948	1850	21	77

Reports tabled during the period

3.4 The committee tabled 14 scrutiny reports during the reporting period, from the *Twenty-fifth report of the 44th Parliament* to the *Thirty-eighth report of the 44th Parliament*.¹

3.5 The committee also tabled one inquiry report during the reporting period, *2016 Review of Stronger Futures measures*.²

1 The committee's reports are available on its website at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Scrutiny_reports.

Commonly engaged rights

3.6 The most commonly engaged human rights identified in legislation substantively commented on during this period were spread across both civil and political rights and economic, social and cultural rights. These were:

- right to equality and non-discrimination;³
- right to privacy;⁴
- right to an adequate standard of living;⁵
- right to social security;⁶
- right to a fair hearing;⁷
- right to freedom of movement;⁸ and
- non-refoulement obligations.⁹

3.7 During the reporting period, the above seven rights accounted for 65 per cent of rights which the committee commented on substantively within both primary and delegated legislation.¹⁰ This figure does not include rights engaged where the committee initially examined and reported on legislation as not raising

2 See Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/strongerfutures2.

3 Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR).

4 Article 17 of the ICCPR.

5 Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

6 Article 9 of the ICESCR.

7 Article 14 of the ICCPR.

8 Article 12 of the ICCPR.

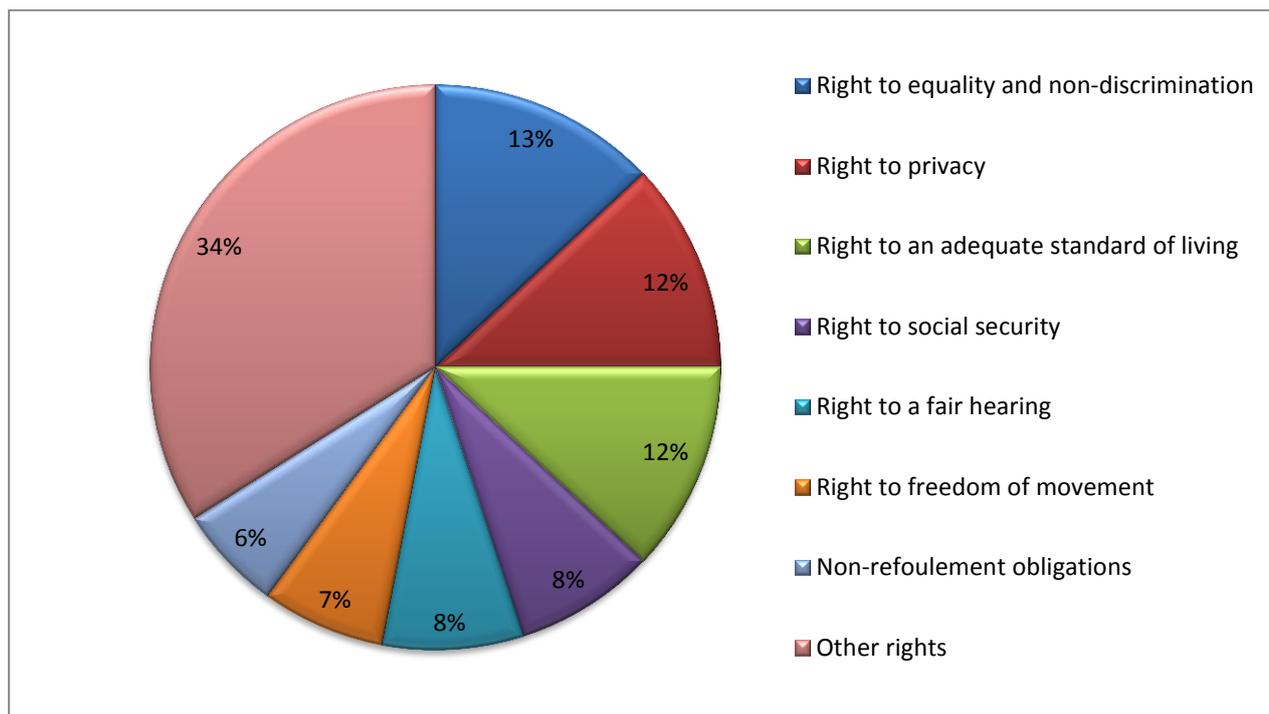
9 Article 33 of the Refugee Convention; article 3(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; articles 6(1) and 7 of the ICCPR; and Second Optional Protocol to the International Covenant on Civil and Political Rights Aiming at the Abolition of the Death Penalty.

10 In the previous reporting period of 2014-15, the seven most commonly engaged rights accounted for 58 per cent of rights engaged within both primary and delegated legislation.

human rights concerns (this may be because the bill or instrument does not engage or promotes human rights, and/or permissibly limits human rights).¹¹

3.8 Figure 3.1 shows the breakdown of human rights engaged by the legislation examined and substantively commented on by the committee in the reporting period. These statistics show similar trends to the previous reporting period with a balance between civil and political rights and economic social and cultural rights engaged.

Figure 3.1: Human rights engaged by legislation in 2015-16



Major themes

3.9 Three significant policy areas that attracted comment from the committee in the reporting period related to counter-terrorism and national security legislation, legislation made under the *Autonomous Sanctions Act 2011* and the *Charter of the United Nations Act 1945*, and migration legislation.

11 The committee examines all bills and instruments that come before the parliament for compatibility with human rights. However, it focuses its substantive analysis or comments in reports on measures that raise human rights concerns in such legislation. As such, the rights that are identified as engaged in the above statistics relate to legislation raising human rights concerns. During the 2015-2016 period, bills not raising human rights concerns were listed in the committee's reports. For legislative instruments not raising human rights concerns, a cross reference was made in the committee's reports to the list contained in the *Journals of the Senate*. Legislative instruments raising human rights concerns were identified on an exceptions basis in the committee's reports.

Counter-terrorism and national security legislation

3.10 The committee examined a number of bills seeking to implement the government's national security and counter-terrorism policies, including:

- the Australian Citizenship Amendment (Allegiance to Australia) Bill 2015;
- the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014;
- the Counter-Terrorism Legislation Amendment Bill (No. 1) 2015; and
- the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014.¹²

3.11 Challenges encountered by the committee in undertaking its human rights assessment of significant changes to national security laws continued to include the expedited passage of measures through the Parliament and measures which sought to expand on existing elements of the national security regime that had not previously been subject to a foundational human rights assessment by the committee (because they pre-dated the establishment of the committee).

3.12 The national security and counter-terrorism bills collectively engaged and limited a significant number of human rights, including the right to privacy; the right to freedom of movement; the right to freedom of opinion and expression; the right to equality and non-discrimination; the right to security of the person and the right to be free from arbitrary detention; the prohibition on torture and cruel, inhuman and degrading treatment or punishment; the obligation to consider the best interests of the child; the right to a fair trial and fair hearing; the right to an effective remedy; the right to work; the right to social security; and the right to an adequate standard of living.

3.13 Legislative responses to issues of national security are generally likely to engage a range of human rights. In its *Thirty-second report of the 44th Parliament* the committee reiterated its previous comments that, in this regard, international human rights law allows for the balancing of human rights considerations with responses to national security concerns, providing that any limitations on Australia's

12 See Parliamentary Joint Committee on Human Rights, *Thirty-sixth report of the 44th Parliament* (16 March 2016), Australian Citizenship Amendment (Allegiance to Australia) Bill 2015, 27, and Counter-Terrorism Legislation Amendment Bill (No. 1) 2015, 85; *Thirtieth report of the 44th Parliament* (10 November 2015), Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, 82; *Thirtieth report of the 44th Parliament* (10 November 2015), Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014, 133. The committee also relevantly examined the National Security Legislation Amendment Bill (No. 1) 2014, its consideration of which fell within the 2014-2015 reporting period, see: *Sixteenth Report of the 44th Parliament* (25 November 2014).

human rights obligations are reasonable, necessary and proportionate to the achievement of a legitimate objective.¹³

3.14 The committee continued to note that providing necessary powers to security and law enforcement authorities to detect and prevent acts of terrorism constitutes a legitimate objective for human rights purposes. Much of the committee's analysis in relation to the bills was targeted at ensuring that those powers were not broader than necessary and were subject to appropriate safeguards. That is, whether limitations on human rights were proportionate. However, the majority of the statements of compatibility for the bills fell short of the committee's expectations, with a number of limitations not being adequately justified for the purposes of international human rights law. The committee accordingly sought further information in relation to each of the bills to fully assess their compatibility with human rights.¹⁴

3.15 The bills introduced, extended or amended a broad number of measures relating to national security and counter-terrorism. These included the extension and amendment of the control orders and preventative detention regimes; expansion of search and seizure powers and delayed notification warrants; providing for automatic loss of citizenship; increases to a number of criminal penalties and introduction of new offences (including the declared area offence); the cancellation of passports; and the cancellation of welfare payments for persons whose passports have been cancelled.

3.16 Overall, the timeliness of ministers in responding to committee concerns in this area continued to include significant delays, and some responses took a number of months to be received by the committee. At the end of June 2016, for example, the committee was still awaiting a further response in relation to the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, which had been requested by 27 November 2015.¹⁵ This served to limit the impact of the committee's final assessment of the legislation. If legislation proponents do not respond before the legislation is finally passed by both Houses, these responses are unable to inform the deliberations of members of Parliament or the debates of the Parliament more broadly.

13 See Parliamentary Joint Committee on Human Rights, *Thirty-second report of the 44th Parliament* (1 December 2015), Counter-Terrorism Legislation Amendment Bill (No. 1) 2015, 3.

14 See, in particular, Parliamentary Joint Committee on Human Rights, *Thirty-second report of the 44th Parliament* (1 December 2015), Counter-Terrorism Legislation Amendment Bill (No. 1) 2015, 6.

15 See Parliamentary Joint Committee on Human Rights, *Thirtieth report of the 44th Parliament* (10 November 2015). The committee had previously requested further information from the Attorney-General in its *Nineteenth Report of the 44th Parliament* (tabled on 3 March 2015). This response had been requested by 27 March 2015 and was not received until 17 September 2015.

Autonomous sanctions regimes

3.17 In previous reporting periods the committee had considered numerous instruments made under the *Autonomous Sanctions Act 2011* and the *Charter of the United Nations Act 1945*, and sought further information from the Minister for Foreign Affairs as to the compatibility of the instruments with multiple human rights.¹⁶ These instruments expanded or applied the operation of the sanctions regimes by designating, listing or declaring that a person or entity is subject to the sanctions regime, or by amending the regime itself. Designating, declaring or listing a person or entity has the effect that the assets of the designated person or entity are frozen and a person may be prevented from travelling to, entering or remaining in Australia. Additionally, sanctions can restrict or prevent the supply, sale or transfer or procurement of goods or services.

3.18 The broad effects of the sanctions regimes as implemented in both primary and delegated legislation therefore engage and limit multiple human rights. These include the right to privacy; right to a fair hearing; right to protection of the family; right to equality and non-discrimination; right to an adequate standard of living; right to freedom of movement; and the prohibition against non-refoulement.

3.19 In light of these broad effects the committee also considered that it is necessary to assess whether the sanctions regimes as a whole are compatible with human rights, before it is able to assess the compatibility of individual instruments. In the 2013-14 reporting period, the committee wrote to the then new Minister for Foreign Affairs to draw her attention to the committee's consideration of these matters and to reiterate its earlier request for a review in relation to the sanctions regimes.¹⁷ Pending the minister's response, over this reporting period the committee deferred its consideration of numerous instruments relating to the sanctions regimes.¹⁸

3.20 The minister's response to the committee noted that she saw no need for the Department of Foreign Affairs to review¹⁹ the operation of the regimes.¹⁹ The

16 See Parliamentary Joint Committee on Human Rights, *Sixth Report of 2013* (15 May 2013); *Seventh Report of 2013* (5 June 2013) and *Tenth Report of 2013* (26 June 2013) and *Annual Report 2013-14* (3 May 2016).

17 See Parliamentary Joint Committee on Human Rights, *First Report of the 44th Parliament* (10 December 2013) 165-167.

18 These included Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Iran) Amendment List 2016 (No. 1) [F2016L00047] (deferred in the committee's *Thirty-fourth report of the 44th Parliament*) and Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Iran) Amendment List 2016 (No. 2) [F2016L00117] (deferred in the committee's *Thirty-sixth report of the 44th Parliament*).

19 See Parliamentary Joint Committee on Human Rights, *Twenty-eighth Report of the 44th Parliament* (17 September 2015) 15.

committee therefore sought the Minister's specific advice in relation to a series of questions relating to the proportionality of the regimes and availability of safeguards to protect human rights.²⁰ The committee received a response to its request for further information on 21 March 2016 which was also the date that the 44th parliament was prorogued. Accordingly, the minister's response was reported on following the commencement of the 45th Parliament.²¹

Migration legislation

3.21 The committee continued to receive a number of bills and legislative instruments relating to migration, asylum seekers and refugees in the reporting period. The committee commented on a number of these bills and legislative instruments, including legislation implementing changes to the complementary protection framework; the protection visa application process; and visa cancellation powers.²²

3.22 Human rights engaged by this legislation included obligations of non-refoulement; the rights of the child; the right to protection of the family; the right to equality and non-discrimination; the right to a fair hearing; the right to privacy; the right to health; the right to security of the person and the right to be free from arbitrary detention; the prohibition on torture, cruel, inhuman and degrading treatment or punishment; the right to freedom of movement; the right to life; the right to humane treatment in detention; the right to an effective remedy; the right to an adequate standard of living; and the right to equality before the law.

20 Parliamentary Joint Committee on Human Rights, *Twenty-eighth Report of the 44th Parliament* (17 September 2015) 15 and *Thirty-third Report of the 44th Parliament* (2 February 2016) 38.

21 See, Parliamentary Joint Committee on Human Rights, *Report 9 of 2017* (22 November 2016) 41.

22 See Parliamentary Joint Committee on Human Rights, *Twenty-fifth report of the 44th Parliament* (11 August 2015) to *Thirty-eighth report of the 44th Parliament* (3 May 2016) Migration Amendment (Regional Processing Arrangements) Bill 2015; Migration Amendment (Strengthening Biometrics Integrity) Bill 2015; Migration Legislation Amendment (2014 Measures No. 2) Regulation 2014 [F2014L01461]; Migration Amendment (Complementary Protection and Other Measures) Bill 2015; Migration and Maritime Powers Amendment Bill (No. 1) 2015; Migration Amendment (Conversion of Protection Visa Applications) Regulation 2015 [F2015L01461]; Migration Regulations 1994 - Specification of Required Medical Assessment - IMMI 15/119 [F2015L01747]; Migration Amendment (Charging for a Migration Outcome and Other Measures) Regulation 2015 [F2015L01961]; Migration Legislation Amendment (2015 Measures No. 4) Regulation 2015 [F2015L01962]; Migration Amendment (Resolving the Asylum Legacy Caseload) Regulation 2015 [F2015L00551]; Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014; Migration Amendment (Character and General Visa Cancellation) Bill 2014; Migration Amendment (2014 Measures No. 2) Regulation 2014 [F2014L01696].

Non-refoulement

3.23 Many of the committee's assessments of legislation in this policy area were focused on non-refoulement obligations, which are absolute and therefore may not be subject to any limitation.

3.24 Non-refoulement obligations require that Australia must not return any person to a country where there is a real risk that they would face persecution, torture or other serious forms of harm, such as the death penalty; arbitrary deprivation of life; and cruel, inhuman or degrading treatment or punishment.

3.25 In its consideration of measures that engaged Australia's non-refoulement obligations, such as changes to the complementary protection framework with regard to considering the reasonableness of internal relocation, and extending statutory bars on protection visa claims or visa cancellation powers, the committee reiterated its previous statements that where a measure limits a human right, discretionary or administrative safeguards alone are likely to be insufficient for the purpose of a permissible limitation under international human rights law.²³ This is because administrative and discretionary safeguards are less stringent than the protection of statutory processes, and are insufficient in and of themselves to satisfy the standards of 'independent, effective and impartial' review of non-refoulement decisions required to comply with Australia's non-refoulement obligations under the ICCPR and the CAT.²⁴ The committee also noted that review mechanisms are important in guarding against the irreversible harm which may be caused by breaches of Australia's non-refoulement obligations.

Continuing and mandatory immigration detention

3.26 Certain measures considered by the committee over the reporting period engaged and limited the right to liberty and the prohibition against arbitrary detention by providing for continuing and mandatory immigration detention of certain individuals. These included amendments made by the Migration and Maritime Powers Amendment Bill (No. 1) 2015 to extend the statutory bar on

23 See Parliamentary Joint Committee on Human Rights, *Thirty-fourth Report of the 44th Parliament* (23 February 2016) Migration Amendment (Complementary Protection and Other Measures) Bill 2015, 66; and Migration and Maritime Powers Amendment Bill (No. 1) 2015, 29.

24 For further detail relating to the requirements for the effective discharge of Australia's non-refoulement obligations see Parliamentary Joint Committee on Human Rights, *Second Report of the 44th Parliament* (2 February 2015), pp 49-51 and *Fourth Report of the 44th Parliament* (18 March 2014) pp 59-62 (both relating to the Migration Amendment (Regaining Control Over Australia's Protection Obligations) Bill 2013).

protection visa claims in the event of an unsuccessful removal from Australia and the expansion of visa cancellation powers.²⁵

3.27 The right to liberty applies to all forms of deprivations of liberty, including immigration detention. The committee noted that Australia's obligations with respect to the right to liberty require that any detention must not only be lawful, it must also be reasonable, necessary and proportionate in all the circumstances. Detention that may initially be necessary and reasonable may become arbitrary over time if the circumstances no longer require the detention. In this respect, regular review must be available to scrutinise whether the continued detention is lawful and non-arbitrary.

3.28 With respect to the above measures, in order to address the human rights compatibility issues raised, the committee recommended that the *Migration Act 1958* be amended to:

- provide an individual assessment of the necessity of detention in each individual case;
- provide each individual subject to immigration detention a statutory right of review of the necessity of that detention; and
- in the case of individuals detained for a lengthy period of time, provide a periodic statutory right of review of the necessity of continued detention.

Children

3.29 During the reporting period the committee considered numerous migration measures affecting the rights of children, including measures which limited the obligation to consider the best interests of the child and the rights of children to be heard in judicial and administrative proceedings.²⁶

3.30 Examples of these measures included: the removal of restrictions on the collection of personal identifiers from minors; registration of children adopted from countries that are not party to the Hague Convention as Australian citizens; bars on

25 See Parliamentary Joint Committee on Human Rights, *Thirty-fourth Report of the 44th Parliament* (23 February 2016) 29. See also Parliamentary Joint Committee on Human Rights, *Thirty-sixth Report of the 44th Parliament* (16 March 2016) Migration Amendment (2014 Measures No. 2) Regulation 2014 [F2014L01696], 218; and Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014, 149.

26 See Parliamentary Joint Committee on Human Rights, *Twenty-fifth report of the 44th Parliament* (11 August 2015) to *Thirty-sixth report of the 44th Parliament* (16 March 2016) Migration Amendment (Regional Processing Arrangements) Bill 2015; Migration Amendment (Strengthening Biometrics Integrity) Bill 2015; Migration Legislation Amendment (2014 Measures No. 2) Regulation 2014 [F2014L01461]; Migration and Maritime Powers Amendment Bill (No. 1) 2015; Migration Amendment (Conversion of Protection Visa Applications) Regulation 2015 [F2015L01461] and Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014.

further protection visa applications; and the conversion of applications for permanent protection visas to applications for temporary protection visas.

3.31 Noting that, under the Convention on the Rights of the Child (CRC) nation state parties are required to ensure that, in all actions concerning children, the best interests of the child is a primary consideration,²⁷ the committee sought information from the minister as to whether the measures were proportionate to their stated objectives, including whether there were sufficient safeguards in place to ensure that the best interests of the child would be taken into account by decision makers implementing the measures.

Scrutiny issues

3.32 During the reporting period, a number of issues posed particular challenges for the committee as well as for legislation proponents and departments in the context of the scrutiny process. These included the timeliness of legislation proponents in responding to the committee's requests for further information; re-introduced measures and statements of compatibility; and appropriations bills and federal financial relations determinations.

Timeliness

3.33 The committee seeks to conclude its assessment of bills while they are still before the Parliament, and its assessment of legislative instruments within the timeframe for disallowance (usually 15 sitting days). In both cases, the committee's approach seeks to ensure that reports on the human rights compatibility of legislation are available to inform parliamentary deliberations.

3.34 Accordingly, the responsiveness of legislation proponents to the committee's requests for information regarding human rights concerns is critical to the effectiveness of the scrutiny process. While the committee stipulates a deadline by which it expects a response be provided, there is no legal or procedural requirement to ensure that a legislation proponent provides the response within this time period. There is also no procedural requirement for the committee to have finally reported on a particular bill prior to its passage by the Parliament, even where this is due to the failure of a minister to respond to the committee's requests for information.

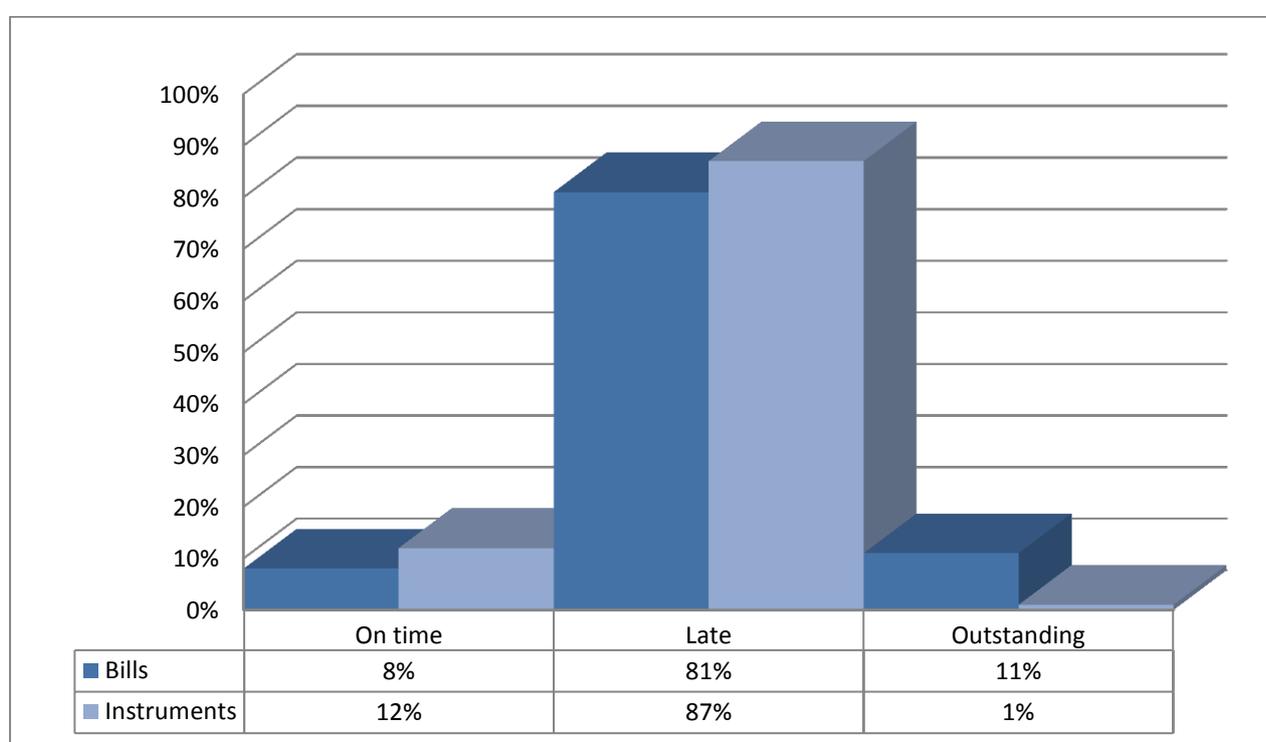
3.35 Timeliness continued to be a significant issue during the reporting period, with responses from legislation proponents often not being received until well after the committee's deadline and, on occasion, not until after the bill had passed (even when passage of the bill was not expedited) or the timeframe for disallowance had expired.

27 Article 3(1).

3.36 Responses were requested in relation to 26 bills in the reporting period.²⁸ Only two of these (8%) were provided to the committee by the requested date. Responses in relation to 21 bills (81%) were provided to the committee after the requested date. The remaining three bills (11%) still had responses outstanding at 9 May 2016 (see figure 3.2).

3.37 Responses were requested in relation to 68 legislative instruments in the reporting period.²⁹ Only 8 of these (12%) were provided to the committee by the requested date. Responses in relation to 59 legislative instruments (87%) were provided to the committee after the requested date. The remaining one legislative instrument (1%) still had a response outstanding at 9 May 2016 (see figure 3.2).

Figure 3.2: Percentage of responses received by due date



28 A response was also requested in relation to five Acts considered as part of the committee's inquiry report, *2016 Review of Stronger Futures measures* (16 March 2016). A government response to this inquiry report has not yet been received.

29 A response was also requested in relation to nine legislative instruments considered as part of the committee's inquiry report, *2016 Review of Stronger Futures measures* (16 March 2016). A government response to this inquiry report has not yet been received.

Previously introduced measures

3.38 During the reporting period numerous bills reintroduced measures which had previously been examined and commented on by the committee.³⁰ In many of these instances, the statements of compatibility were very similar, and often identical, to that which had been provided in the first instance. During the previous reporting period, in its *Ninth Report of the 44th Parliament*, the committee noted its expectation that, where concerns have been raised in relation to a measure, any subsequent re-introduction of the measure will be accompanied by a statement of compatibility addressing the committee's previously identified concerns.³¹

3.39 The committee continued to draw its expectations to the attention of ministers throughout the reporting period, particularly where the information previously provided to the committee had enabled it to conclude its consideration of the relevant measure.³² The committee also noted that where a statement of compatibility in relation to a previously introduced measure does not identify the measure as engaging and/or limiting rights previously identified by the committee, despite the minister's previous dialogue with the committee on these measures, the scrutiny dialogue between the committee and proponents of legislation is less effective.³³

30 See Parliamentary Joint Committee on Human Rights, *Twenty-fifth report of the 44th Parliament* (11 August 2015) to *Thirty-eighth report of the 44th Parliament* (3 May 2016) Fairer Paid Parental Leave Bill 2015; Migration Amendment (Regional Processing Arrangements) Bill 2015; Social Services Legislation Amendment (Youth Employment and Other Measures) Bill 2015; Social Services Legislation Amendment (Youth Employment) Bill 2015; Crimes Legislation Amendment (Harming Australians) Bill 2015; Social Services Legislation Amendment (Family Payments Structural Reform and Participation Measures) Bill 2015; Omnibus Repeal Day (Spring 2015) Bill 2015; and Counter-Terrorism Legislation Amendment Bill (No. 1) 2015.

31 Parliamentary Joint Committee on Human Rights, *Ninth Report of the 44th Parliament* (15 July 2014), Fair Work (Registered Organisations) Amendment Bill 2014, 22.

32 See, for example, Parliamentary Joint Committee on Human Rights, *Twenty-fifth report of the 44th Parliament* (11 August 2015) Fairer Paid Parental Leave Bill 2015, 55; and *Twenty-eighth report of the 44th Parliament* (17 September 2015) Social Services Legislation Amendment (Youth Employment) Bill 2015, 36-37.

33 Parliamentary Joint Committee on Human Rights, *Twenty-eighth report of the 44th Parliament* (17 September 2015) Social Services Legislation Amendment (Youth Employment) Bill 2015, 36-37.

Appropriations bills and federal financial relations determinations

3.40 In previous reporting periods the committee set out its initial views on the human rights implications of appropriation bills.³⁴ The committee previously explained that compliance with Australia's obligations to progressively realise economic, social and cultural rights using the maximum of resources available is reliant on government allocation of budget expenditure. Further, specific appropriations may involve reductions in expenditure which amount to retrogressive measures or limitations on economic, social and cultural rights which need to be justified for the purposes of international human rights law. The appropriation of funds thus facilitates the taking of actions which both effect the progressive realisation of, and the failure to fulfil, Australia's obligations under the treaties listed in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

3.41 In this early analysis the committee recommended that human rights impact assessments be expressly incorporated in portfolio budget statements to ensure that human rights are properly reflected in the budgetary process. The Minister for Finance set out in dialogue with the committee that he considered requiring human rights impact statements to be included in portfolio budget statements to be 'neither practicable nor appropriate'.³⁵ In later analysis, where the committee reiterated this recommendation and the Minister for Finance in response again considered that changes to existing processes were not required, the committee concluded its analysis for future re-examination.³⁶

3.42 In its *Twenty-eighth report of the 44th Parliament* the committee examined a number of Federal Financial Relations Determinations which specify the amounts to be paid to the states and territories to support a number of outcomes and projects or rewards for nationally significant reforms.³⁷ In its assessment of these determinations the committee referred to its previous analysis of appropriations bills and set out again how proposed government expenditure to give effect to particular policies may engage and limit and/or promote a range of human rights.

3.43 In dialogue with the committee in relation to these determinations, the Treasurer provided additional information which allowed the committee to conclude

34 See Parliamentary Joint Committee on Human Rights, *Third report of 2013* (13 March 2013); *Seventh report of 2013* (5 June 2013) xi; *Third report of the 44th Parliament* (4 March 2014); *Eighth report of the 44th Parliament* (24 June 2014) 32; *Twentieth report of the 44th Parliament* (18 March 2015) 5-9; and *Twenty-third report of the 44th Parliament* (18 June 2015) 13-17.

35 Parliamentary Joint Committee on Human Rights, *Eighth Report of the 44th Parliament* (24 June 2014) 32.

36 Parliamentary Joint Committee on Human Rights, *Twenty-third report of the 44th Parliament* (18 June 2015) 13-17.

37 Parliamentary Joint Committee on Human Rights, *Twenty-eighth report of the 44th Parliament* (17 September 2015) 10-14.

that the determinations would not constitute a retrogressive measure for the purposes of international human rights law and were therefore compatible with Australia's international human rights obligations.³⁸ While the nature of federal financial relations determinations may allow for a more straightforward assessment of the interaction of such legislation with human rights than it may for appropriations bills, the willingness of legislation proponents to engage with the committee and its mandate can result in effective outcomes and the committee will continue to engage with the Minister for Finance in its consideration of appropriations bills in the future.

Statements of compatibility

3.44 During the reporting period, many statements of compatibility provided sufficient assessments of limitations on human rights, which enabled the committee to conclude its scrutiny of specific legislation without having to request further information from the legislation proponent.

3.45 For example, in his tabling statement in the House of Representatives on 23 February 2016, the committee's then Chair Mr Philip Ruddock MP drew members' attention to a legislative instrument made by the Minister for Employment, Senator Cash, titled Social Security (parenting payment participation requirements – classes of persons) Specification 2016 (No. 1). The instrument limited certain parenting payments to particular classes of persons, with the objective of encouraging them to progress towards and achieve beneficial education and employment outcomes. The statement of compatibility for the instrument identified the limits this placed on the right to social security and other rights, and provided an informative and evidence-based analysis that clearly addressed each element of the committee's analytical framework. The Chair noted that a statement of this quality allowed the committee to accept the conclusion that the instrument was compatible with human rights without the need to write to the minister seeking further information.

3.46 However, there remained considerable room for improvement in terms of the quality of statements of compatibility in general. In his tabling statement on 8 September 2015, the committee's Chair emphasised the 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 are justified. In this respect, the Chair noted that the statements of compatibility for some of the bills considered, for example, in the committee's *Twenty-Seventh Report of the 44th Parliament* fell short of the committee's expectations. For example, the Chair noted the statement of compatibility for the Social Security Legislation Amendment (Debit Card Trial) Bill 2015, which provided no empirical evidence of how the proposed measures were likely to be effective in achieving their objective.

38 Parliamentary Joint Committee on Human Rights, *Thirty-fourth report of the 44th Parliament* (23 February 2016) 115-119.

The provision of this information was necessary because income management schemes, while having a legitimate objective for the purpose of international human rights law, 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. The committee's mandate therefore requires analysis of evidence indicating whether the limitations will be effective to achieve, and proportionate to, the stated objective.

Additional work of the committee

Stronger Futures inquiry

3.47 The committee determined in July 2014 to undertake a 12-month review of its previous inquiry, which examined the *Stronger Futures in the Northern Territory Act 2012* and related legislation, in order to consider the latest evidence and test the continuing necessity for the Stronger Futures measures. This inquiry process was conducted during the reporting period.

3.48 The committee wrote to a number of individuals and organisations inviting submissions to the inquiry by 10 October 2014. Further details regarding the inquiry and its background were also made available on the committee's website. Twenty-three submissions were subsequently accepted, published, and considered in conjunction with the final report.

3.49 The committee also corresponded with the Minister for Indigenous Affairs a number of times throughout the inquiry process, and requested specific information to allow it to further analyse the ongoing compatibility of the measures.³⁹

3.50 In its inquiry report the committee examined a number of matters, including some not dealt with in its previous consideration of the measures, such as customary law in bail and sentencing decisions, food security, and land reform measures. The majority of the recommendations, however, related to the measures to address alcohol abuse, the income management scheme, and the School Enrolment and Attendance through Welfare Reform Measure.

3.51 The committee tabled its final inquiry report on 16 March 2016.⁴⁰ This final report contained seven recommendations aimed at improving the human rights compatibility of the legislation.⁴¹ The committee is yet to receive a formal government response to this report.

39 The minister's responses to the committee are contained at appendix 3 of the final inquiry report. See Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) Appendix 3.

40 See Parliamentary Joint Committee on Human Rights, *2016 Review of Stronger Futures measures* (16 March 2016) at: http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/Committee_Inquiries/strongerfutures2/Final_report.

41 The legislation considered in the final inquiry report includes five Acts and nine legislative instruments, and is listed at Appendix 1 of that report.

Mr Ian Goodenough MP

Chair