Chapter 1

New and continuing matters

1.1 This chapter provides assessments of the human rights compatibility of:

- bills introduced into the Parliament between 8 and 31 May 2018 (consideration of 2 bills from this period has been deferred);[1]
- legislative instruments registered on the Federal Register of Legislation between 15 March and 23 April 2018 (consideration of 6 legislative instruments from this period has been deferred);[2] and
- bills and legislative instruments previously deferred.

Instruments not raising human rights concerns

1.2 The committee has examined the legislative instruments registered in the period identified above, as listed on the Federal Register of Legislation. Instruments raising human rights concerns are identified in this chapter.

1.3 The committee has concluded that the remaining instruments do not raise human rights concerns, either because they do not engage human rights, they contain only justifiable (or marginal) limitations on human rights or because they promote human rights and do not require additional comment.

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1 See Appendix 1 for a list of legislation in respect of which the committee has deferred its consideration. The committee generally takes an exceptions based approach to its substantive examination of legislation.

2 The committee examines legislative instruments registered in the relevant period, as listed on the Federal Register of Legislation. See, https://www.legislation.gov.au/.

Response required

1.4 The committee seeks a response or further information from the relevant minister or legislation proponent with respect to the following bills and instruments.

Defence (Inquiry) Regulations 2018 [F2018L00316]

Purpose	Prescribes matters providing for, and in relation to, inquiries concerning the Defence Force. This includes two flexible inquiry formats: Commission of Inquiry and Inquiry Officer Inquiry. These formats consolidate and replace the five forms of inquiry allowed under the previous *Defence Force (Inquiry) Regulations 1985*
Portfolio	Defence
Authorising legislation	*Defence Act 1903*
Last day to disallow	15 sitting days after tabling (tabled House of Representatives 26 March 2018; tabled Senate 21 March 2018)
Rights	Privacy; fair trial; not to incriminate oneself; presumption of innocence (see **Appendix 2**)
Status	Seeking additional information

Coercive evidence-gathering powers

1.5 Sections 30 and 32 of the regulations provide that a person who fails or refuses to attend as a witness to give evidence before a commission of inquiry (COI),[1] or fails or refuses to answer questions before a COI, commits an offence punishable by 20 penalty units.[2] Similarly, a person commits an offence punishable by 20 penalty units if a person fails to comply with a notice to produce documents or things relevant to a COI.[3] Similar offence provisions are introduced for members of the Defence Force who fail or refuse to comply with a notice to attend as a witness to

1 Commissions of Inquiry are a consolidation of the four higher-level inquiry formats under the former Defence (Inquiry) Regulations 1985 – General Courts of Inquiry, Boards of Inquiry, Combined Boards of Inquiry and Chief of the Defence Force (CDF) Commissions of Inquiry: see Explanatory Statement (ES) p.8. COIs are used for higher level matters that are particularly complex and sensitive: see ES p.1.

2 Persons can be required to attend to give evidence following a written notice from the president of the commission of inquiry, if the president reasonably believes that a person has information that is relevant to the commission's inquiry: section 19 of the regulations.

3 Pursuant to a notice issued under section 18 of the regulations.

give evidence, who fail or refuse to produce a document or thing, or who refuse to answer questions, in relation to an inquiry officer (IO) inquiry.[4]

1.6 Subsections 38(1) and 67(1) respectively provide that an individual appearing as a witness before a COI or IO is not excused from answering a question on the ground that the answer to the question might tend to incriminate the individual.[5]

1.7 However, an individual is not required to answer a question if the answer might tend to incriminate the individual in respect of an offence with which the individual has been charged, where the relevant charge has not been finally dealt with by a court or otherwise disposed of.[6] Additionally, section 124(2C) of the *Defence Act 1903* (Defence Act) provides that a statement or disclosure made by a witness in the course of giving evidence before an inquiry is not admissible in evidence against the witness other than in proceedings relating to the giving of false testimony.[7] Further, civil proceedings cannot lie against the person for loss, damage or injury of any kind suffered by another person as a result of producing a document or thing, disclosing information, or giving information or making a submission in the course of an inquiry.[8]

Compatibility of the measure with the right not to incriminate oneself

1.8 Specific guarantees of the right to fair trial in the determination of a criminal charge, guaranteed by article 14 of the International Covenant on Civil and Political Rights (ICCPR), include the right not to incriminate oneself (article 14(3)(g)). Subsections 38(1) and 67(1) of the regulations engage and limit this right by requiring that a person answer questions notwithstanding that to do so might tend to incriminate that person.

1.9 The right not to incriminate oneself may be subject to permissible limitations where the limitation pursues a legitimate objective, is rationally connected to that objective and is a proportionate means of achieving that objective.

1.10 The statement of compatibility acknowledges that the measure engages and limits the right not to incriminate oneself. It states that:

> The purpose of statutory inquiries under the Regulations is to facilitate command decision-making concerning the Defence Force. Ascertaining the

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4 Sections 53, 61 and 62 of the regulations. 'Inquiry officer' inquiries are used to inquire into more routine matters. See ES p.1.

5 It is noted that this applies to oral testimony only, and the privilege against self-incrimination applies to the provision of documents: see sections 124(2A) and (2C) of the *Defence Act 1903.* See also pp.29 of the ES.

6 Sections 38(2) and 67(2) of the regulations.

7 Section 124(2C) of the *Defence Act 1903* (Defence Act)*;* see the note to sections 38 and 67 of the regulations.

8 Sections 40 and 69 of the regulations.

> true causes of significant events involving Defence Force members is frequently more important than possible prosecution of, or civil suit against, individuals. Compelling witnesses to provide information about an event, even though it could implicate them in wrongdoing, while also protecting the information from subsequent use in criminal or civil proceedings, is an important mechanism to obtain information.[9]

1.11 Ascertaining the true causes of significant events involving Defence Force members, and facilitating command decision-making, are likely to be legitimate objectives for the purposes of international human rights law. Compelling witness to attend hearings and to provide information, irrespective of whether to do so could implicate them in wrongdoing, appears to be rationally connected to that objective.

1.12 However, questions arise as to the proportionality of the measures. The statement of compatibility states that the abrogation of the privilege against self-incrimination 'is accompanied by significant protections against the use of information obtained in subsequent criminal, disciplinary and civil tribunals'.[10] In this respect, a 'use' immunity is provided by subsection 124(2C) of the Defence Act, such that where a person has been required to give incriminating evidence, the statement or disclosure cannot be used directly against the person in any civil or criminal proceedings, or in any proceedings before a service tribunal.

1.13 However, no 'derivative use' immunity is provided either by the regulations or the Defence Act. This means that information or evidence obtained indirectly as a result of the person's incriminating evidence may be used in criminal proceedings against the person. While not specifically addressed in the statement of compatibility, the explanatory statement acknowledges that there is no 'derivative use' immunity available.[11]

1.14 However, the statement of compatibility discusses in general terms why the limitation on the privilege against self-incrimination is proportionate:

> The requirement that hearings of Commissions of Inquiry be held in private, and the prohibitions against the use and disclosure of certain information and documents that apply in both types of inquiries (including the application of the exemption under section 38 of the Freedom of Information Act 1982), constitute additional levels of protection in respect of the abrogation of the privilege against self-incrimination. For example, where an individual gives oral testimony containing incriminating

9 Statement of compatibility (SOC), p. 4.

10 SOC, p.4.

11 ES p.29, p.47.

evidence, subsequent use or publication of that testimony can be prohibited.[12]

1.15 These safeguards are important and relevant in determining the proportionality of the measure. However, it remains unclear why it would not be appropriate also to include a 'derivative use' immunity. In this respect, it is acknowledged that a 'derivative use' immunity will not be appropriate in all cases (for example, because it would undermine the purpose of the measure or be unworkable). Further, the availability or lack of availability of a 'derivative use' immunity needs to be considered in the regulatory context of the relevant measures. The extent of interference with the privilege against self-incrimination that may be permissible as a matter of international human rights law may, for example, be greater in contexts where there are difficulties regulating specific conduct, persons subject to the powers are not particularly vulnerable, or the powers are otherwise circumscribed with respect to the scope of information which may be sought. That is, there are a range of matters which influence whether the limitation is proportionate. Further information from the minister as to the rationale for not including a 'derivative use' immunity would therefore assist in determining whether the measures are the least rights restrictive way of achieving their objectives.

Committee comment

1.16 The preceding analysis indicates that the coercive evidence-gathering powers conferred by the regulation may engage and limit the right not to incriminate oneself.

1.17 The committee therefore seeks the advice of the minister as to whether the measures are a proportionate means of achieving the stated objective (including any relevant safeguards that exist in relation to ADF personnel). This includes information as to whether a 'derivative use' immunity is reasonably available as a less rights restrictive alternative to ensure information or evidence indirectly obtained from a person compelled to answer questions cannot be used in evidence against that person.

Compatibility of the measure with the right to privacy

1.18 The right to privacy includes respect for informational privacy, including the right to respect for private and confidential information, particularly the use and sharing of such information and the right to control the dissemination of information about one's private life.

1.19 By imposing a penalty for failing to appear as a witness, or failing or refusing to answer questions, in circumstances where the witness is not afforded the privilege against self-incrimination, the measure may engage and limit the right to privacy.

12 SOC, p. 5: this same point is made in the ES at pp. 29 and 47-48.

This is because a person may be required to disclose personal information in the course of any inquiry.

1.20 While the right to privacy may be subject to permissible limitations in a range of circumstances, the statement of compatibility does not acknowledge that the coercive evidence gathering powers may engage and limit the right to privacy. Assuming the purpose of limiting the right to privacy in this context is the same as that discussed above at [1.10] and [1.11], this would appear to be a legitimate objective and appears to be rationally connected to this objective. However, further information, including information as to the extent to which a person may be required to disclose personal information as part of the coercive evidence gathering process, would assist in determining the compatibility of the measures with this right. In this respect, it is noted that the use and disclosure provisions of the regulations, discussed further below, would be relevant in determining the proportionality of the limitation on the right to privacy.

Committee comment

1.21 The preceding analysis indicates the right to privacy may be engaged and limited by the coercive evidence gathering powers.

1.22 The committee seeks the advice of the minister as to whether the limitation is a proportionate limitation on the right to privacy (including the extent to which a person may be required to disclose personal information as part of the coercive evidence gathering process, and any applicable safeguards).

Authorisations to use, disclose and copy information and documents

1.23 Section 25 provides that the president of the COI may direct that information collected in oral evidence or documents given during evidence may be prohibited from disclosure where the president is satisfied that it is necessary to do so in the interests of: the defence, security or international relations of the Commonwealth; fairness to a person who may be affected by the inquiry; or the effective conduct of the inquiry.[13] It is an offence for a person to disclose information where it has been prohibited by a direction of the president.[14]

1.24 However, section 26 provides that a Commonwealth employee or member of the Defence Force may use, disclose and copy information and documents contained in COI records and reports in the performance of the person's duties. Section 27 additionally provides that the minister may authorise a Commonwealth employee or a member of the Defence Force to use information and documents in COI records and reports for a specified purpose, and disclose or copy inquiry

13 Section 25 of the regulations.

14 Section 36 of the regulations.

documents, records and reports.[15] Section 28 provides that the minister may use, disclose and copy information and documents contained in COI records and reports. Each of these provisions apply despite a direction given by the president prohibiting disclosure of information under section 25.[16]

1.25 Equivalent use and disclosure provisions are provided in relation to IO inquiries,[17] however, there is no corresponding power of inquiry officers to give directions prohibiting disclosure of information.

Compatibility of the measure with the right to privacy

1.26 As set out above, the right to privacy includes the right to respect for private and confidential information, particularly the storing, use and sharing of such information; and the right to control the dissemination of information about one's private life.

1.27 Information and documents contained in COI and IO records and reports may contain personal and sensitive information. By permitting the use, disclosure and copying of information and documents contained in COI and IO records and reports, the measures engage and limit the right to privacy. The statement of compatibility does not acknowledge that the provisions authorising the use, disclosure and copying of information and documents engage the right to privacy.

1.28 The right to privacy may be subject to permissible limitations which are provided by law and are not arbitrary. In order for limitations not to be arbitrary, they must pursue a legitimate objective, be rationally connected and proportionate to achieving that objective.

1.29 In particular, regarding the proportionality of the measure, there are concerns in relation to the breadth of the use and disclosure provisions, and whether they are sufficiently circumscribed. For each of the provisions, it is unclear what the extent of disclosure is. For example, providing certain conditions are met, the regulations would appear to extend to permitting public disclosure. Similarly, in relation to sections 26, 27, 58 and 59 of the regulations, the authorisation to disclose information in the course of their duties extends to an 'employee of the Commonwealth' or a 'member of the Defence Force'. This may capture a broad number of people at varying levels of rank within the public service and Defence Force. In relation to sections 27 and 59 of the regulations, it is not clear whether

15 Persons who are permitted to disclose information or documents pursuant to sections 26 and 27 will not commit an offence: see section 37(2) and (3) of the regulations.

16 Section 26(2), section 27(3) and section 28 of the regulations.

17 Sections 58 (use, disclosure and copying of certain information and documents as an employee of the Commonwealth or member of the Defence Force), 59 (minister may authorise use, disclosure and copying of certain information) and 60 (minister may use, disclose and copy certain information and documents) of the regulations.

there are any limitations to the types of 'specified purposes' for which the minister may authorise use and disclosure of information. In relation to section 28 and 60, there does not appear to be any limit on the extent to which the minister may use, disclose or copy information and documents contained in COI records and reports. Further information from the minister as to these matters would assist in determining the compatibility of these measures with the right to privacy.

1.30 In relation to section 26 of the regulations, it is noted that the explanatory statement explains that use, disclosure and copying occur 'in the performance of the person's duties', which provides a significant safeguard against improper use, disclosure and copying of information contained in COI records and COI reports. It also states that if persons were to disclose a COI record or COI report outside of their duties, that person may be subject to internal administrative or disciplinary action, and the conduct may also constitute an offence under section 37, as well as an unauthorised disclosure for the purposes of the *Privacy Act 1988* and section 70 of the *Crimes Act 1914*. In addition, unauthorised public disclosure of a COI record or COI report may result in internal administrative or disciplinary action.[18] The explanatory statement further states that the Chief of Defence Force Directive 08/2014 further enhances the safeguards in relation to sections 26 and 58, as it restricts the types of disclosures that validly fall within the scope of a person's official duties. It would be of assistance if a copy of this directive could be provided in order to assess the human rights compatibility of the measures.

1.31 More generally, the information provided in the explanatory statement is not sufficient as it does not provide an assessment of whether the limitation on the right to privacy is permissible. As set out in the committee's *Guidance Note 1*, the committee's expectation is that statements of compatibility read as stand-alone documents, as the committee relies on the statement as the primary document that sets out the legislation proponent's analysis of the compatibility of the bill with Australia's international human rights obligations.

Committee comment

1.32 The preceding analysis raises questions as to whether the use and disclosure provisions in the regulations are compatible with the right to privacy. The statement of compatibility does not contain an assessment of whether the measures are compatible with this right.

1.33 The committee therefore seeks the advice of the minister as to:

- **whether the measures pursue a legitimate objective for the purposes of international human rights law;**
- **whether the measures are rationally connected to (that is, effective to achieve) that objective;**

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18 ES, p.21.

- **whether the measures are proportionate to achieve the stated objective, having regard to the matters addressed in [1.29] to [1.31] above; and**
- **whether a copy of Chief of Defence Force Directive 08/2014 as it relates to the use and disclosure provisions could be provided to the committee.**

Reversal of the evidential burden of proof

1.34 The regulations create a number of offences in relation to the use and disclosure of information in relation to a COI. A number of these offences provide exceptions (offence-specific defences) in certain circumstances. For each of these defences, the defendant bears an evidential burden.[19] Similar offence-specific defences for which the defendant bears the evidential burden apply in the context of the offence provisions in relation to an IO Inquiry.[20]

Compatibility of the measure with the right to the presumption of innocence

1.35 Article 14(2) of the ICCPR protects the right to be presumed innocent until proven guilty according to law. Generally, consistency with the presumption of innocence requires the prosecution to prove each element of a criminal offence beyond reasonable doubt. Provisions that reverse the burden of proof and require a defendant to raise evidence to disprove one or more elements of an offence engage and limit this right

1.36 Reverse burden offences will not necessarily be inconsistent with the presumption of innocence provided that they are within reasonable limits, taking into account the importance of the objective being sought, and maintain the defendant's right to a defence. In other words, such provisions must pursue a legitimate objective, be rationally connected to that objective and be a proportionate means of achieving that objective.

1.37 The statement of compatibility does not identify that the reverse burden offences in the regulations engage and limit the presumption of innocence. Further, while information is provided in the explanatory statement as to the rationale for reversing the evidential burden of proof,[21] this information does not provide an assessment of whether the limitation on the right to the presumption of innocence is permissible.

Committee comment

1.38 The committee draws the attention of the minister to the committee's *Guidance Note 2* which sets out the key human rights compatibility issues in relation to reverse burden offences.

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19 Sections 29(2), 30(2), 32(3), 36(2) and (3) and 37(2) and (3) of the regulations.

20 Sections 61(2) and (4), 62(2) and 66(2) and (4) of the regulations.

21 See, for example, ES p.23,25,43 and 46.

1.39 The committee requests the advice of the minister as to:

- **whether the reverse burden offences are aimed at achieving a legitimate objective for the purposes of international human rights law;**
- **how the reverse burden offences are effective to achieve (that is, rationally connected to) that objective; and**
- **whether reverse burden offences are reasonable and proportionate to achieve that objective.**

Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018 [F2018L00262]

Purpose	Repeals the Temporary Work (Skilled)(Subclass 457) visa and introduces new Temporary Skill Shortage (Subclass 482) visa; implements complementary measures for the Employer Nomination Scheme (Subclass 186) visa and the Regional Sponsored Migration Scheme (Subclass 187) visa
Portfolio	Home Affairs
Authorising legislation	*Migration Act 1958*
Last day to disallow	15 sitting days after tabling (tabled Senate 19 March 2018) Notice of motion to disallow must be given by 26 June 2018[1]
Rights	Freedom of association (see **Appendix 2**)
Status	Seeking additional information

Criteria for nomination – associated persons

1.40 Section 2.72 of the regulations sets out the criteria which apply to persons sponsoring or nominating a proposed occupation for persons holding or applying for a Subclass 482 (Temporary Skills Shortage) Visa (TSS visa).[2] Section 2.72(4) requires that, to approve a nomination, the minister must be satisfied that either:

> (a) there is no adverse information known to Immigration about the person or a person associated with the person; or
>
> (b) it is reasonable to disregard any adverse information known to Immigration about the person or a person associated with the person.

1 In the event of any change to the Senate's sitting days, the last day for the notice would change accordingly.

2 Section 2.72 also applies to holders of the Subclass 457 (Temporary Work (Skilled) Visa) visa. That visa is repealed by the regulation, however, the reference is included in section 2.72 because, although the visa has been repealed, holders of 457 visas will require a new nomination if they change employer: Explanatory statement to the Migration Legislation Amendment (Temporary Skill Shortage Visa and Complementary Reforms) Regulations 2018 (regulations), p.28.

1.41 It is also one of the criteria for obtaining a TSS visa that there is no adverse information known to Immigration about the person who nominated the nominated occupation[3] or a person associated with that person.[4]

1.42 Section 5.19(4) of the regulations introduces the same requirement for persons nominating skilled workers under the Subclass 186 and Subclass 187 visas.[5]

1.43 'Adverse information' is defined in section 1.13A of the regulations to mean information that the person:

(a) has contravened a law of the Commonwealth, a State or a Territory; or

(b) is under investigation, subject to disciplinary action or subject to legal proceedings in relation to a contravention of such a law; or

(c) has been the subject of administrative action (including being issued with a warning) for a possible contravention of such a law by a Department or regulatory authority that administers or enforces the law; or

(d) has become insolvent (within the meaning of section 95A of the Corporations Act 2001); or

(e) has given, or caused to be given, to the Minister, an officer, the Tribunal or an assessing authority a bogus document, or information that is false or misleading in a material particular.

1.44 Section 1.13B provides that persons are 'associated with' each other if:

(a) they:

(i) are or were spouses or de facto partners; or

(ii) are or were members of the same immediate, blended or extended family; or

(iii) have or had a family-like relationship; or

(iv) belong or belonged to the same social group, unincorporated association or other body of persons; or

(v) have or had common friends or acquaintances; or

(b) one is or was a consultant, adviser, partner, representative on retainer, officer, employer, employee or member of:

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3 'Nominated occupation' refers to the proposed occupation of the applicant for the visa: see clause 482.111 in Schedule 2 of the regulations.

4 See clause 482.216, clause 482.316 of Schedule 2 of the regulations.

5 These visas allow employers to nominate skilled workers for permanent residence to fill genuine vacancies in their business. Subclass 186 visa is available nationally, while the Subclass 187 visa is for skilled workers who want to work in regional Australia: see Statement of Compatibility (SOC) to the regulations, p. 8.

(i) the other; or

(ii) any corporation or other body in which the other is or was involved (including as an officer, employee or member); or

(c) a third person is or was a consultant, adviser, partner, representative on retainer, officer, employer, employee or member of both of them; or

(d) they are or were related bodies corporate (within the meaning of the Corporations Act 2001); or

(e) one is or was able to exercise influence or control over the other; or

(f) a third person is or was able to exercise influence or control over both of them.

Compatibility of the measure with the right to freedom of association

1.45 The right to freedom of association protects the right of all persons to group together voluntarily for a common goal and to form and join an association.[6] This right supports many other rights, such as freedom of expression, religion, assembly and political rights. Without freedom of association, the effectiveness and value of these rights would be significantly diminished.

1.46 Introducing a requirement that the minister may refuse nomination where there is adverse information about a person associated with the person nominating engages and limits the right to freedom of association, as it has the potential for the measure to restrict a person's ability to freely associate. The statement of compatibility does not acknowledge that the right to freedom of association is engaged by the measure.

1.47 Limitations on the right to freedom of association are only permissible where they are 'prescribed by law' and 'necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others'.[7] This requires an assessment of whether the measure pursues one of these legitimate objectives, is rationally connected to that objective and is a proportionate means of achieving the objective.

1.48 No information is provided in the statement of compatibility as to the objective of the measure. However, the explanatory statement provides the following information as to why it is necessary to have a broad definition of 'associated with' in the regulations:

> The definition has been drafted in terms which encompass the wide range of associations among family, friends and associates which can be used to

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6 Article 22 of the International Covenant on Civil and Political Rights

7 Article 22(2).

> continue unacceptable or unlawful business practices via different corporate entities.
>
> The breadth of these provisions is necessary to maintain the integrity of Australia's sponsored worker programs. There are two safeguards against inappropriate reliance on the provisions. The Minister always has a discretion to disregard adverse information and associations if it is reasonable to do so. That discretion would be exercised to disregard information which did not have serious bearing on the suitability of the business to sponsor overseas workers. Further, if the decision relates to a business operating in Australia, all relevant decisions – refusal to approve a person as a sponsor, refusal to approve a nomination, and refusal to grant a visa to the nominated employee – are subject to independent merits review by the Administrative Appeals Tribunal. The Government considers that these provisions strike an appropriate balance between the need to uphold the integrity of the sponsored worker program and the need to ensure consistent and fair decision making.[8]

1.49 A measure is likely to be rationally connected if it can be shown that the measure is likely to be effective in achieving that objective. In this case, it is unclear whether merely being associated with a person who may have engaged in a range of specified conduct ('adverse information') has specific relevance to a person's suitability as a sponsor or nominator. In addition, it is noted that the definition of 'associated with' is very broad, extending to persons who 'belong or belonged to the same social group, unincorporated association or other body of persons'. Taking into account the potential breadth of its application, there are concerns that the definition of 'associated with' may not be sufficiently circumscribed such that the measure may not be a proportionate way to achieve that objective. In this respect, it is noted that there is ministerial discretion to disregard any adverse information about the person or a person associated with the person.[9] It is unclear that the ministerial discretion to disregard the adverse information of the associated person, in and of itself, offers sufficient protection such that the measure may be regarded as proportionate to its objective.

Committee comment

1.50 The preceding analysis indicates that the measure engages the right to freedom of association.

1.51 The committee seeks the advice of the minister as to the compatibility of the measure with this right, including:

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8 Explanatory statement, pp.19-20.

9 See section 2.72(4) and 5.19(4) of the regulation.

- **whether there is reasoning or evidence that establishes that the stated objective addresses a pressing or substantial concern or whether the proposed changes are otherwise aimed at achieving a legitimate objective;**
- **whether the measure is rationally connected (that is, effective to achieve) that objective; and**
- **whether the measure is a proportionate means of achieving its objective (including whether the definition of 'associated with' is sufficiently circumscribed).**

National Redress Scheme for Institutional Child Sexual Abuse Bill 2018

National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018

Purpose	Seeks to establish a national redress scheme for survivors of institutional child sexual abuse
Portfolio	Social Services
Introduced	House of Representatives, 10 May 2018
Rights	Equality and non-discrimination, privacy, effective remedy, fair hearing (see **Appendix 2**)
Status	Seeking additional information

Background

1.52 The committee has previously considered the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (the 2017 Bill) and the Commonwealth Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2017 (the 2017 Consequential Amendments Bill) in its *Report 13 of 2017* and *Report 2 of 2018.*[1] Those bills sought to establish a Commonwealth redress scheme for survivors of institutional child sexual abuse absent a referral power from a state to establish a national redress scheme.

1.53 Following referral of powers by states,[2] the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 (the 2018 Bill) and the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018 (the 2018 Consequential Amendments Bill) seek to establish a national redress scheme (the scheme) for survivors of institutional child sexual abuse.

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1 See, Parliamentary Joint Committee on Human Rights, *Report 13 of 2017* (5 December 2017) pp. 2-16; Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) pp. 73-96.

2 The statement of compatibility refers to the assistance of New South Wales, Victoria and the Australian Capital Territory: see Statement of Compatibility (SOC) p. 113. See the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (NSW) which passed both houses in New South Wales on 16 May 2018, and the National Redress Scheme for Institutional Child Sexual Abuse (Commonwealth Powers) Bill 2018 (Victoria) passed both houses in Victoria on 7 June 2018.

Previous analysis of the proposed Commonwealth Redress Scheme

1.54 In *Report 2 of 2018,* the committee noted that the minister had foreshadowed the introduction of the 2018 Bill, and that the minister had also indicated that a number of the human rights issues raised by the committee in relation to the Commonwealth Bill would be considered when developing the 2018 Bill.[3]

1.55 The statement of compatibility to the 2018 Bill extensively draws upon and refers to the committee's previous analysis of the 2017 Bill where relevant, which was useful to the committee in undertaking its analysis.

1.56 A number of aspects of the 2017 Bill are replicated in the 2018 Bill. Where there is overlap and no substantive change to the provision, the committee's previous human rights analysis of the measures in the 2017 Bill applies equally to the 2018 Bill. In particular:

- *Eligibility to receive redress under the scheme for non-citizens and non-permanent residents*: The human rights analysis of the 2017 Bill noted that the restriction on non-citizens' and non-permanent residents' eligibility for redress engaged and limited the right to equality and non-discrimination on the basis of nationality or national origin.[4] Following correspondence from the minister, the committee concluded that while the measure pursues a legitimate objective, there were concerns that the breadth of the restriction on the eligibility of all non-citizens and non-permanent residents may not be proportionate.[5] However, the committee further stated that setting out further classes of persons who may be eligible in the proposed redress scheme rules, including those who would otherwise be excluded due to not being citizens or permanent residents, may be capable of addressing these concerns.[6] This same eligibility criterion is also present in the 2018 Bill.[7]
- *Power to determine entitlement, eligibility and ineligibility by rules:* The previous human rights analysis stated that the proposed power in the 2017 Bill to prescribe eligibility and ineligibility by way of rules (the proposed redress scheme rules) raised concerns as to compatibility with the right to an

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3 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) pp. 73, 79, 83, 93.

4 See Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) p. 74.

5 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) p. 78.

6 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) p. 78.

7 See proposed section 13(1)(e) of the 2018 Bill; see statement of compatibility (SOC) pp. 117-118.

effective remedy.[8] This was because, in the absence of sufficient safeguards, the broad scope of the power to determine eligibility or ineligibility could be exercised in such a way as to be incompatible with this right.[9] The committee noted, however, that the proposed discretion of the scheme operator to determine eligibility of survivors if they are otherwise ineligible may be capable of addressing some of these concerns.[10] The power to determine eligibility and ineligibility by way of rules is also present in the 2018 Bill, as well as a broad power to determine entitlement to redress by way of rules.[11] To that extent the concerns expressed in the previous human rights analysis apply equally here.[12] However, there are also additional issues relating to entitlement, eligibility and ineligibility under the scheme that are discussed in further detail below.

- *Power to determine by rules whether an institution is responsible for abuse:* The 2017 Bill contained a provision that allowed for rules to be made prescribing circumstances in which a participating institution is not responsible for sexual or non-sexual abuse.[13] The committee noted the broad scope of this power may give rise to human rights concerns in relation to its operation. This was because its scope was such that it could be used in ways that may risk being incompatible with the right to an effective remedy.[14] The 2018 Bill also includes a provision that allows for rules to be made to prescribe whether an institution is responsible, primarily responsible or equally responsible for abuse.[15] The concern as to the potential operation of this rule-making power in a manner incompatible with the right to an effective remedy also applies to the 2018 Bill. As with the 2017 Bill, if the bill is passed, the committee will consider the human rights implications of any redress scheme rules once they are received.
- *Bar on future civil liability of participating institutions and associates:* The 2017 Bill provided that where an eligible person receives an offer of redress and chooses to accept the offer, the person releases and forever discharges

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8 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) pp. 79-83.

9 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) p. 80.

10 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) p. 83.

11 Proposed section 12(3) and (4) of the 2018 Bill.

12 See proposed section 13(2) and (3) of the 2018 Bill.

13 See proposed section 21(7) of the Commonwealth Bill.

14 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) pp. 83-85.

15 Proposed section 15(4(f),(5) and (6) of the 2018 Bill.

all institutions participating in the scheme from civil liability for abuse, and the eligible person cannot bring or continue any claim against those institutions in relation to that abuse.[16] The committee considered that this bar on future civil liability of participating institutions may engage and limit the right to an effective remedy.[17] However, the committee noted that the proposed rules governing the provision of legal services under the redress scheme may operate as a sufficient safeguard so as to support the human rights compatibility of the measure.[18] The 2018 Bill also requires survivors who accept redress to forever release from civil liability all institutions providing them with redress, and additionally extends this release to 'officials of those responsible institutions and associates (other than an official who is an abuser of the person)'.[19] The 2018 Bill also provides further detail as to the effect of accepting the release on civil liability.[20] The concern as to compatibility of the bar on future civil liability with the right to an effective remedy also applies to the 2018 Bill. The committee will consider the compatibility of the proposed rules governing the provision of legal services, and whether they offer adequate safeguards, when they are received.[21]

- *Absence of external merits review and removal of judicial review:* The 2017 Bill provided for a system of internal review of determinations made under the scheme.[22] The 2017 Consequential Amendments Bill also exempted decisions made under the scheme from judicial review under the

16 Proposed sections 39 and 40 of the Commonwealth Bill.

17 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) pp. 85-88.

18 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) p. 88.

19 Proposed section 42(2)(c) of the 2018 Bill; see also sections 39, 42 and 43 of the 2018 Bill; see also SOC pp.122-123. The SOC explains (at p.123) the rationale for expanding the release to 'associates' as follows: ' organisations comprising multiple institutions are likely to opt-in to the Scheme as one, forming a ‘participating group’ (institutions are then known as ‘associates’ of one another). In order to form a participating group, institutions must be sufficiently connected and appoint a representative for the group. That representative will then be jointly and severally liable with each associate for funding contributions. Attaching the release to all associates of responsible participating institution(s) for sexual abuse and related non-sexual abuse within the scope of the Scheme is therefore reflective of their joint financial liability, and is a necessary component of ensuring that institutions will opt-in to the Scheme together, therefore ensuring maximum coverage for survivors'.

20 Proposed section 43 of the 2018 Bill.

21 The committee also notes that it is preferable for details of proposed rules to be available for consideration in conjunction with the related bill prior to its passage. See also Committee Comment at [1.59] below.

22 Proposed Part 4-3 of the Commonwealth Bill.

Administrative Decisions (Judicial Review) Act 1977 (ADJR Act).[23] The committee considered that these measures raised concerns as to compatibility of the review scheme with the right to a fair hearing.[24] However, having regard to the information provided by the minister and the particular context in which the review scheme operated, the committee considered that the internal review mechanism may be capable of ensuring that survivors have adequate opportunities to have their rights and obligations determined in a manner compatible with the right to a fair hearing. The committee recommended that the operation of the internal review mechanism be monitored to ensure that survivors have sufficient opportunities to have their rights and obligations determined by an independent and impartial tribunal.[25] The 2018 Bill also establishes an internal review mechanism,[26] and the 2018 Consequential Amendments Bill excludes the scheme from judicial review under the ADJR Act.[27] Therefore, the conclusions relating to the right to a fair hearing in the 2017 Bill apply equally to the 2018 Bill. In relation to review of the internal review mechanism, it is noted that the statement of compatibility to the 2018 Bill further advises that:

> The Government intends to monitor the Scheme's internal review mechanism, including through broader reviews of the Scheme's implementation. General information relevant to internal review may also be detailed in the Scheme's annual report to the Minister (for presentation to the Parliament) and also has the capacity to be scrutinised through the Scheme's governance arrangements.[28]

1.57 The matters discussed in the remainder of this human rights analysis relate to matters in the 2018 Bill and National Redress Consequential Amendments Bill that raise additional or new issues to the 2017 Bill that require further advice from the minister.

Committee Comment

1.58 The committee notes that the analysis in the statement of compatibility to the National Redress Scheme for Institutional Child Sexual Abuse Bill 2018 and the

23 Schedule 3 of the Commonwealth Consequential Amendments Bill.

24 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) pp. 93-96.

25 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) p. 96.

26 Part 4-1 of the 2018 Bill.

27 Schedule 3 to the National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018.

28 SOC, p. 127.

National Redress Scheme for Institutional Child Sexual Abuse (Consequential Amendments) Bill 2018 draw extensively upon the committee's human rights analysis of the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 (Commonwealth Bill). The committee welcomes this approach and thanks the minister for preparing the statement of compatibility in this manner.

1.59 The committee requests the minister provide the committee with a copy of the proposed redress scheme rules. Alternatively, the committee requests a detailed overview of the proposed rules, having regard to the matters discussed above.

1.60 The committee refers to and reiterates its previous consideration of the Commonwealth Redress Scheme for Institutional Child Sexual Abuse Bill 2017 in its *Report 13 of 2017* and *Report 2 of 2018* as outlined at paragraph [1.56] of the preceding analysis, and draws the human rights implications of those measures as they apply to the 2018 Bill to the attention of the Parliament.

Information sharing provisions

Disclosure power of the scheme operator

1.61 The 2017 Bill set out the circumstances in which the scheme operator may disclose protected information in the public interest.[29] Following the further information provided by the minister, the committee noted that the power to make public interest disclosures under the 2017 Bill would only be used where it is necessary to prevent, or lessen, a threat to life, health or welfare, for the purpose of briefing the minister or if the information is necessary to assist a court, coronial inquiry, Royal Commission, or similar, for specific purposes such as assistance in relation to a reported missing person or a homeless person. The committee considered that disclosure in such circumstances may be sufficiently circumscribed such that the measure would be a proportionate limitation on the right to privacy. The committee recommended that the operator's disclosure power be monitored by government to ensure that any limitation on the right to privacy be no more extensive than what is strictly necessary.[30]

1.62 The committee also noted that the minister had indicated he would consider including a positive requirement that the scheme operator must have regard to the impact the disclosure may have on a person to whom the information relates in any future legislation developed to reflect a national redress scheme, and would also

29 See proposed section 77 of the Commonwealth Bill.

30 See Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) p. 93.

consider including a positive requirement for rules to regulate the operator's disclosure power.[31]

1.63 The 2018 Bill also provides that the National Redress Scheme Operator (operator)[32] may disclose protected information[33] in the public interest if certain circumstances are satisfied.[34] As with the 2017 Bill, this measure engages and limits the right to privacy.[35] The provision in the 2018 Bill is substantively identical to the provision in the 2017 Bill, and to that extent the committee's comments on the 2017 Bill apply equally.

1.64 However, it is noted that the statement of compatibility provides the following information:

> The Committee also noted that the (former) Minister has indicated he will consider including a positive requirement that the Operator must have regard to the impact the disclosure may have on a person to whom the information relates in any future legislation developed for a National Redress Scheme. This has now been reflected in the Bill.[36]

1.65 However, there is no requirement in section 95 of the 2018 Bill (which relates to public interest disclosure) that requires the operator to have regard to the impact the disclosure may have on a person to whom the information relates. It is noted that this safeguard is instead included for other disclosure powers of the scheme operator and in respect of disclosure by persons engaged by participating

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31 Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) pp. 92-93.

32 National Redress Scheme Operator is defined in section 6 to mean the person who is the Secretary of the Department in the person's capacity as operator of the scheme. 'Department' is not defined in the bill and pursuant to section 19A of the *Acts Interpretation Act 1901* means the Department that is administered by the Minister or Ministers administering that provision in relation to the relevant matter, and that deals with that matter.

33 'Protected Information' is defined in section 92(2) of the 2018 Bill as '(a) information about a person or an institution that: (i) was provided to, or obtained by, an officer of the scheme for the purposes of the scheme; and (ii) is or was held in the records of the Department or the Human Services Department; or (b) information to the effect that there is no information about a person or an institution held in the records of a Department referred to in subparagraph (a)(ii)'.

34 Proposed section 95 of the 2018 Bill.

35 For the relevant principles relating to the right to privacy, see Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) p. 89.

36 SOC, p. 125.

institutions in the 2018 Bill.[37] Therefore, further information is required in order to clarify the statement in the statement of compatibility.

Disclosure by employees and officials of government institutions

1.66 Proposed section 97 provides an additional authorisation for employees or officers of government institutions to whom protected information is disclosed to obtain, record, disclose or use the information for certain permitted purposes including the enforcement of criminal law; the safety or wellbeing of children; investigatory, disciplinary or employment processes related to the safety or wellbeing of children; or for a purpose prescribed by the rules. As this provision involves the disclosure of protected information (including personal information), this provision also engages and limits the right to privacy.

1.67 Limitations on the right to privacy are permissible where the measure pursues a legitimate objective, and is rationally connected and proportionate to that objective. The statement of compatibility does not address this specific new provision and its compatibility with the right to privacy. It is noted that, like the scheme operator's public interest disclosure power, this provision does not require the employee or officer of the institution to consider the impact the disclosure may have on the person. This raises concerns as to whether, with respect to the proportionality of the measure, the measure is the least rights restrictive approach.

1.68 It is also noted that the provision allows for rules to introduce new purposes for which employees or officers of government institutions may disclose information. This also raises concerns as to proportionality. This is because international human rights law jurisprudence states that laws conferring discretion or rule-making powers on the executive must indicate with sufficient clarity the scope of any such power or discretion conferred on competent authorities and the manner of its exercise.[38] Without sufficient safeguards, broad powers may be exercised in such a way as to be incompatible with human rights. Further information from the minister would therefore assist in determining whether this additional disclosure power is a proportionate limitation on the right to privacy.

Committee comment

1.69 The committee seeks clarification from the minister, having regard to the statement on page 125 of the statement of compatibility, as to whether the public interest disclosure power in section 95 of the 2018 Bill could be amended so as to

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37 See proposed section 96(3) of the 2018 bill (operator disclosing for law enforcement or child safety or wellbeing), and proposed section 98(3) (person engaged by participating institution disclosing etc. for a specified purpose).

38 See the discussion of the human rights implications of expressing legal discretion of the executive in overly broad terms in *Hasan and Chaush v Bulgaria* ECHR 30985/96 (26 October 2000) [84].

include a positive requirement that the scheme operator must have regard to the impact the disclosure may have on a person to whom the information relates.

1.70 In relation to the additional disclosure authorisations for employees or officers of government institutions in section 97, the committee seeks the advice of the minister as to the compatibility of this provision with the right to privacy, in particular:

- **whether the measure pursues a legitimate objective;**
- **whether the measure is rationally connected to that objective;**
- **whether the measure is proportionate to the legitimate objective (including whether the provision is the least rights restrictive approach, and clarification as to the scope of the power to declare new permitted purposes by the rules); and**
- **whether section 97 could be amended to include a positive requirement that the operator must have regard to the impact the disclosure may have on a person to whom the information relates.**

Entitlement to receive redress under the national redress scheme: special rules for persons with serious criminal convictions

1.71 Proposed section 63 of the 2018 Bill introduces a special assessment procedure for persons with 'serious criminal convictions', which applies where the person is sentenced to imprisonment for 5 years or longer for an offence against a law of the Commonwealth, a State, a Territory or a foreign country.[39] Proposed section 63(2) provides that a person is not entitled to redress under the scheme unless there is a determination by the scheme operator that the person is not prevented from being entitled to redress. Proposed section 63(5) provides:

> (5) The Operator may determine that the person is not prevented from being entitled to redress under the scheme if the Operator is satisfied that providing redress to the person under the scheme would not:
>
> (a) bring the scheme into disrepute; or
>
> (b) adversely affect public confidence in, or support for, the scheme.

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39 The minister foreshadowed in his response to the Commonwealth Bill that the 2018 Bill would limit the eligibility of persons with certain criminal convictions to obtain redress: see Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) 80-83. The committee noted that there are human rights concerns in relation to the proposed exclusion of persons with certain criminal convictions from being eligible for the scheme: page 83.

1.72 As soon as practicable after becoming aware of the person's sentence, the scheme operator is required to consider whether to make a determination and give a written notice to the relevant 'specified advisor'[40] from the Commonwealth or participating State or Territory, requesting that the specified advisor provide advice about whether a determination should be made and setting a timeframe within which to provide that advice.[41]

1.73 Proposed section 65(6) additionally provides that, when making a determination, the Operator must take into account:

(a) any advice given by a specified advisor in the period referred to in the notice; and

(b) the nature of the offence; and

(c) the length of the sentence of imprisonment; and

(d) the length of time since the person committed the offence; and

(e) any rehabilitation of the person; and

(f) any other matter that the Operator considers is relevant.

1.74 Proposed section 65(7) provides that, when taking into account the matters referred to above, the operator must give greater weight to any advice that is given by a specified advisor from the jurisdiction in which the abuse occurred, in the period referred to in the notice, than to any other matter.

Compatibility of the measure with the right to equality and non-discrimination

1.75 The right to equality and non-discrimination in the International Covenant on Civil and Political Rights (ICCPR) provides that everyone is entitled to enjoy their rights without discrimination of any kind, and that all people are equal before the law and entitled without discrimination to the equal and non-discriminatory

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40 'Specified advisor' is defined in section 64(3)(b) as the following: (i) if the abuse of the persons occurred inside a participating state or a participating territory – the Attorney-General of the state or territory, or another person nominated by that Attorney-General in writing; (ii) if the abuse of the person occurred outside a participating state or participating territory – the Commonwealth Attorney-General; (iii) if the offence was against a law of a participating state or participating territory – the Attorney-General of the state or territory, or another person nominated by that Attorney-General in writing; if the offence was against a law covered by subparagraph (iii) – the Commonwealth Attorney-General.

41 The written notice must also include sufficient information to enable the specified advisor to provide that advice. The period in which the specified advisor may provide the advice must be at least 28 days starting on the date of the notice: see proposed section 63(4) of the 2018 Bill.

protection of the law.[42] Articles 1, 2, 4 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) further describe the content of this right and the specific elements that state parties are required to take into account to ensure the elimination of discrimination on the basis of race, colour, descent, national or ethnic origin.

Racial discrimination

1.76 'Racial discrimination' is defined in article 1(1) of ICERD to mean 'any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life'. Thus, racial discrimination can be direct (that is, have a discriminatory purpose) or indirect (that is, have a discriminatory effect on the enjoyment of rights).[43] Accordingly, treatment which disproportionately affects members of a particular racial group will amount to differential treatment based on race for the purpose of international human rights law.

1.77 As acknowledged in the statement of compatibility, Aboriginal and Torres Strait Islander peoples are over-represented in the criminal justice system and are sentenced to custody at a higher rate than non-Indigenous defendants.[44] The measure may therefore indirectly discriminate on the basis of race due to the disproportionate negative impact of the measure on Aboriginal and Torres Strait Islander peoples.[45]

Criminal record

1.78 The United Nations Human Rights Committee has not considered whether having a criminal record is a relevant personal attribute for the purposes of the prohibition on discrimination in Article 26 of the ICCPR. However, relevantly, the European Court of Human Rights has interpreted the prohibition on discrimination on the grounds of 'other status' to include an obligation not to discriminate on the basis of a criminal record.[46] While this jurisprudence is not binding on Australia, the

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42 The prohibited grounds of discrimination are race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Under 'other status' the following have been held to qualify as prohibited grounds: age, nationality, marital status, disability, place of residence within a country and sexual orientation. The prohibited grounds of discrimination are often described as 'personal attributes'.

43 Committee on the Elimination of Racial Discrimination, *General Recommendation 14* (1993); See also *Althammer v Austria*, HRC 998/01, [10.2]

44 SOC, p.118.

45 SOC, p.118.

46 See *Thlimmenos v Greece*, ECHR Application No. 34369/97 (6 April 2000).

case law from the Court is useful in considering Australia's obligations under similar provisions in the ICCPR.[47] Limiting the entitlement to redress for persons with a criminal record accordingly may also engage and limit the right to equality and non-discrimination on this basis.

Limitations on the right to equality and non-discrimination

1.79 Differential treatment will not constitute discrimination if it can be shown to be justifiable, that is, if it can be shown to be based on objective and reasonable grounds such that it is rationally connected to, and proportionate in pursuit of, a legitimate objective. The statement of compatibility states that the restriction on eligibility of persons with serious criminal convictions is permissible on the following basis:

> …restricting eligibility on the basis of criminal history is necessary to achieve the legitimate aim of the Scheme aligning with community expectations around who should receive redress payments from Government, with flexibility to make relevant persons entitled to redress on a case-by-case basis, where appropriate to do so. There is a risk the public would not support a Scheme that paid redress to perpetrators of serious crimes. In particular, victims of those crimes may strongly object to redress payments being made to people who have committed crimes against them.
>
> Furthermore, the restriction on survivors with serious criminal convictions was developed in consultation with State and Territory Attorneys-General, who were almost unanimous that reasonable limitations on applications is necessary to uphold public faith and confidence in the Scheme, and a necessary part of the framework for states to opt-in to the Scheme (ensuring nationwide access to redress).[48]

1.80 The overall objectives of the redress scheme are to 'recognise and alleviate the impact of past institutional child sexual abuse and related abuse' and 'to provide justice for survivors of that abuse'.[49] These are undoubtedly legitimate objectives for the purposes of international human rights law. However, the objective of limiting entitlements to persons with serious criminal convictions is narrower and is stated to be to align this scheme with 'community expectations'. To be a legitimate objective, the objective must be one that is pressing and substantial and not one that simply

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47 See also the *Australian Human Rights Commission Act 1986* (Cth) which considers preventing discrimination in employment on the basis of a criminal record as part of Australia's obligations under International Labour Organisation Convention 111, the Discrimination (Employment and Occupation) Convention 1958, which prohibits discrimination in employment. See Australian Human Rights Commission, *'On the Record: Discrimination in Employment on the basis of Criminal Record under the AHRC Act'* (2012).

48 SOC, pp. 118-119.

49 Proposed section 3 of the 2018 Bill.

seeks an outcome that is desirable or convenient. Further, tolerance and broadmindedness are the hallmarks of a democratic society, and so restrictions on rights of persons purely based on what might offend public opinion is not generally considered a legitimate objective.[50] On this basis, the stated objective of 'aligning the scheme with community expectations' does not appear to be a legitimate objective for the purposes of international human rights law.

1.81 It is also not clear how limiting the entitlement to redress of persons with serious criminal convictions is rationally connected to the objectives of the redress scheme. Indeed, noting the overall purpose of the scheme to 'recognise and alleviate the impact of past institutional child sexual abuse' and provide justice for survivors, limiting the entitlement of certain persons based on their subsequent conduct appears to undermine this objective. This is particularly the case in circumstances where the *Final Report* of the Royal Commission noted the impact of child sexual abuse on a survivor may manifest itself in 'interconnected and complex ways', including the development of 'addictions after using alcohol or other drugs to manage the psychological trauma of abuse, which in turn affected their physical and mental health, sometimes leading to criminal behaviour and relationship difficulties.'[51] A number of survivors who appeared before the Royal Commission had described how the impact of child sexual abuse had contributed to criminal behaviour as adolescents and adults.[52]

1.82 There are also concerns as to whether the measure is proportionate. Important factors in determining whether a measure is a proportionate limitation on human rights include whether there is sufficient flexibility to treat individual cases differently and whether there are less rights restrictive approaches reasonably available. Proposed section 63 contains a number of provisions that allow a person's individual circumstances to be taken into account and to provide persons, who may have a serious criminal conviction, to be entitled to redress where the operator so determines. This is an important safeguard and allows for matters such as a person's rehabilitation to be taken into account.

1.83 However, the starting point for persons who have serious criminal convictions is that they are *not* entitled to redress *unless* a determination is made by

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50 See *Hirst v the United Kingdom (No. 2)*, European Court of Human Rights App No. 74025/01, (Grand Chamber, 6 October 2005) [69]-[71]; *Dickson v United Kingdom,* European Court of Human Rights App No. 44362/04 (Grand Chamber, 4 December 2007) [68] and [72].

51 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Impacts,* Volume 3 (2017) 11. See also, James RP Ogloff, Margaret C Cutajar, Emily Mann and Paul Mullen, 'Child sexual abuse and subsequent offending and victimisation: A 45 year follow-up study'(2012) *Trends & Issues in Crime and Criminal Justice No.440*.

52 Royal Commission into Institutional Responses to Child Sexual Abuse, *Final Report: Impacts,* Volume 3 (2017) 143-145. See also Royal Commission into Institutional Responses to Child Sexual Abuse, *Interim Report, Volume 1* (2014), pp. 116-117.

the scheme operator.[53] Even where a scheme operator is satisfied that providing redress to the person would not bring the scheme into disrepute or adversely affect public confidence in or support for the scheme, the 2018 Bill provides only that the operator *may* determine the person is not prevented from being entitled.[54] Further, a person's individual circumstances (namely, the nature of the offence, the length of the sentence of imprisonment, the length of time since the commission of the offence, and any rehabilitation) are given lesser weight than advice of the specified advisor.[55] In this respect, there would appear to be other, less rights restrictive approaches available, including: making it a requirement that a person with a serious criminal conviction *is* entitled to redress *unless* a determination is made that the person receiving redress would bring the scheme into disrepute, or providing that the operator *must* determine a person with a serious criminal conviction is entitled to redress if satisfied that providing redress under the scheme would not bring the scheme into disrepute, or providing that an individual's personal circumstances be given equal weight to the submissions of the specified advisors. Further information from the minister as to these matters would assist in determining whether the disproportionate effect of the measure on Aboriginal and Torres Strait Islander peoples and those with a criminal record would be compatible with the right to equality and non-discrimination.

1.84 Another relevant factor in determining whether safeguards are sufficient includes whether there is a possibility of monitoring and access to review.[56] It is not clear from the information provided whether determinations by the scheme operator under section 63(5) are capable of being reviewed either internally or externally.[57] Further information from the minister as to whether (and, if so, by what mechanism) a determination by the scheme operator under section 63(5) may be reviewed would therefore be of assistance to determine whether the measure is a proportionate limitation on the right to equality and non-discrimination.

Committee comment

1.85 The preceding analysis indicates that the special assessment procedure for applicants with serious criminal convictions raises concerns as to the compatibility of the measure with the right to equality and non-discrimination. This is because the measure may disproportionately negatively affect Aboriginal and Torres Strait

53 Proposed sections 63(2) and 63(5) of the 2018 Bill.

54 Proposed section 63(5) of the 2018 Bill.

55 Proposed section 63(6) and 63(7) of the 2018 Bill.

56 See Parliamentary Joint Committee on Human Rights, *Guidance Note 1* (2014) p. 2.

57 The review provisions of the 2018 Bill appear to apply to determinations made under proposed section 2: see proposed section 73.

Islander peoples and so may constitute indirect discrimination on the basis of race. It may also constitute discrimination on the basis of a person's criminal record.

1.86 The committee seeks the advice of the minister as to the compatibility of the measure with the right to equality and non-discrimination, in particular:

- **whether the measure is aimed at achieving a legitimate objective for the purposes of international human rights law;**
- **how the measure is effective to achieve (that is, rationally connected to) that objective; and**
- **whether the limitation is a proportionate means of achieving the stated objective (including whether there are other, less rights restrictive, measures reasonably available, and whether determinations by the scheme operator under proposed section 63 are able to be reviewed).**

Compatibility of the measure with the right to an effective remedy

1.87 Article 2(3) of the ICCPR requires states parties to ensure that persons whose human rights under the ICCPR have been violated have access to an effective remedy. States parties are required to establish appropriate judicial and administrative mechanisms for addressing claims of human rights violations under domestic law, and to make reparation to individuals whose rights have been violated. Effective remedies can involve restitution, rehabilitation and measures of satisfaction – such as public apologies, public memorials, guarantees of non-repetition and changes in relevant laws and practices – as well as bringing to justice the perpetrators of human rights violations. Such remedies should be appropriately adapted to take account of the special vulnerabilities of certain categories of persons, including, and particularly, children.

1.88 The redress scheme seeks to provide remedies in response to historical failures of the Commonwealth and other government and non-government organisations to uphold human rights obligations, including the right of every child to protection by society and the state,[58] and the right of every child to protection from all forms of physical and mental violence, injury or abuse (including sexual exploitation and abuse).[59] Insofar as persons with serious criminal convictions may be precluded from accessing redress, restrictions on the entitlement of survivors with serious criminal convictions engages the right to an effective remedy.

1.89 The statement of compatibility does not specifically address the entitlement of survivors with serious criminal convictions from the perspective of the right to an effective remedy. For the same reasons as those discussed above in relation to the right to equality and non-discrimination, there are concerns that restricting the

58 Article 24 of the International Covenant on Civil and Political Rights: see SOC, p. 122.

59 Articles 19 and 34 of the Convention on the Rights of the Child: see SOC, p. 117.

entitlement to redress of survivors with serious criminal convictions is not compatible with the right to an effective remedy. This is particularly so as the UN Human Rights Committee has stated that while limitations may be placed in particular circumstances on the nature of the remedy provided (judicial or otherwise), states parties must comply with the fundamental obligation to provide a remedy that is effective.[60]

Committee comment

1.90 The preceding analysis indicates that restrictions on the entitlement to redress for survivors with serious criminal convictions engage the right to an effective remedy. The statement of compatibility does not address the compatibility of the measure with this right.

1.91 The committee seeks the advice of the minister as to the compatibility of the special assessment process for persons with serious criminal convictions with the right to an effective remedy.

Access to redress under the national redress scheme for persons in gaol

1.92 Proposed section 20(1)(d) of the 2018 Bill provides a person cannot make an application for redress under the scheme if the person is in gaol.[61] Proposed sections 20(2) and (3) provide that the restriction on applying for persons in gaol does not apply if the operator determines in accordance with requirements prescribed by the rules that there are 'exceptional circumstances justifying the application being made'.

Compatibility of the measure with the right to equality and non-discrimination and the right to an effective remedy

1.93 Persons who are in prison continue to enjoy all of the rights and freedoms guaranteed under international human rights law except for those that are demonstrably necessitated by the fact of incarceration (such as the right to liberty).[62] The matters discussed above in relation to the limitation on persons with serious criminal convictions apply equally to persons who are incarcerated. That is, the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal

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60 See UN Human Rights Committee, *General Comment No.29: States of Emergency (Article 4)* (2001) [14].

61 'In gaol' in the 2018 Bill is defined by reference to section 23(5) of the *Social Security Act 1991* which provides that a person is in gaol if (a) the person is being lawfully detained (in prison or elsewhere) while under sentence for conviction of an offence and not on release on parole or licence; or (b) the person is undergoing a period of custody pending trial or sentencing for an offence.

62 *Hirst v the United Kingdom (No. 2)*, European Court of Human Rights App No. 74025/01, (Grand Chamber, 6 October 2005); *Basic Principles for the Treatment of Prisoners,* General Assembly Resolution 45/111 (14 December 1990) Principle 5.

justice system means that precluding persons who are incarcerated from making an application is likely to disproportionately negatively affect Aboriginal and Torres Strait Islander survivors of sexual abuse, raising concerns as to the compatibility of the measure with the right to equality and non-discrimination. By precluding persons who are incarcerated from applying for redress, the measure may also discriminate on the basis of criminal record. The UN Committee on Economic and Social and Cultural Rights has specifically noted that the denial of a person's legal capacity because she or he is in prison may constitute discrimination on the basis of 'other status'.[63] The measure also engages the right to an effective remedy by limiting the ability of persons who are incarcerated to access redress under the scheme.

1.94 It is noted that the statement of compatibility emphasises that persons will be able to make an application for redress if they are not in gaol at some point during the 10 years of the redress scheme.[64] Proposed section 20 therefore does not remove a person's entitlement or eligibility for redress but rather precludes that person from making an application during their period of incarceration, and to this extent for most incarcerated survivors otherwise entitled and eligible for redress the measure would be a practical limitation on the right to equality and non-discrimination and the right to an effective remedy during their period of incarceration.

1.95 The statement of compatibility does not specifically address this aspect of the 2018 Bill in light of the right to equality and non-discrimination and the right to an effective remedy. However, the statement of compatibility does provide some information as to why the restriction is necessary and permissible:

> This restriction is necessary as the Scheme will be unable to deliver appropriate Redress Support Services to incarcerated survivors, which may make it more difficult for those survivors to write an application, or for those survivors to understand the implications of releasing responsible participating institutions from liability for sexual abuse and related non-sexual abuse within the scope of the Scheme. Additionally, institutions may not be able to deliver an appropriate direct personal response to a survivor if that survivor is incarcerated. As the Scheme will run for 10 years, survivors who are incarcerated for a short period of time will be able to apply when they are no longer incarcerated. In a closed institutional setting there will also be greater difficulty maintaining survivor privacy and confidentiality.

63 UN Committee on Economic, Social and Cultural Rights, *General Comment No.20: Non-discrimination in economic, social and cultural rights* (2009) [27].

64 SOC, p.119.

> Additionally, survivors who are incarcerated for longer periods of time (i.e. five or more years) may not be entitled to redress as a result of their custodial sentence (detailed above) in the first instance.[65]

1.96 It is acknowledged that there may be practical issues associated with delivering appropriate support services to incarcerated survivors. However, while the statement of compatibility identifies some of the challenges associated with providing redress to incarcerated survivors, the statement of compatibility does not otherwise identify how the restriction pursues a legitimate objective for the purposes of international human rights law. In this respect, as noted earlier, in order to be capable of justifying a proposed limitation on human rights, a legitimate objective must address a pressing or substantial concern, and not simply seek an outcome regarded as desirable or convenient.

1.97 There may also be concerns as to proportionality. In particular, while proposed section 20 allows the operator to override the restriction on incarcerated persons applying, this may only occur in 'exceptional circumstances'. The statement of compatibility provides examples of what constitutes an exceptional circumstance for overriding this provision, including 'because they will be in gaol during the last two years of the Scheme, or they are terminally ill'.[66] However, this is not apparent from the bill itself which refers only to requirements prescribed by the rules.[67] Further information as to what would constitute 'exceptional circumstances', including the proposed content of the rules, and whether a determination under proposed section 20 is subject to review, would be of assistance in determining whether the measure is compatible with human rights.

Committee comment

1.98 The preceding analysis indicates that precluding incarcerated persons from applying for redress may engage the right to equality and non-discrimination. This is because the measure may disproportionately negatively affect Aboriginal and Torres Strait Islander peoples and so may constitute indirect discrimination on the basis of race. It may also constitute discrimination on the basis of a person's criminal record.

1.99 The committee seeks the advice of the minister as to the compatibility of the measure with the right to equality and non-discrimination, in particular:

- **whether the measure is aimed at achieving a legitimate objective for the purposes of international human rights law;**

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65 SOC, pp. 119-120.

66 SOC, p. 119.

67 Proposed section 20(2) and (3) of the 2018 Bill.

- **how the measure is effective to achieve (that is, rationally connected to) that objective; and**
- **whether the limitation is a proportionate means of achieving the stated objective (including whether there are other, less rights restrictive, measures reasonably available, and whether determinations by the scheme operator under proposed section 20 are able to be reviewed).**

1.100 The preceding analysis also raises questions as to the compatibility of the measure with the right to an effective remedy. The committee therefore seeks the advice of the minister as to the compatibility of the measure with the right to an effective remedy.

Entitlement to receive redress under the national redress scheme: persons subject to a security notice

1.101 The 2018 Bill also introduces special rules excluding entitlement to redress for persons subject to security notices from the Home Affairs minister.[68] Proposed section 64 provides that a person is not entitled to redress under the scheme while a security notice is in force in relation to the person. Proposed section 65(1) provides that the Home Affairs Minister may give the minister a written notice (a security notice) if:

> (a) the Foreign Affairs Minister gives the Home Affairs Minister a notice under subsection 66(1) in relation to the person;[69] or
>
> (b) the person's visa is cancelled under section 116 or 128 of the *Migration Act 1958* because of an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security

68 See proposed Part 3-2 of the 2018 Bill.

69 Proposed section 66 allows the foreign minister to give the home affairs minister a written notice if the foreign minister has refused to issue a travel document or cancelled a travel document of a person following a request from a competent authority on the basis the competent authority suspects on reasonable grounds that if an Australian travel document were issued to a person, the person would be likely to engage in conduct that might prejudice the security of Australia or a foreign country: see also sections 14(1)(a)(i), 14(2) and 22 of the *Australian Passports Act 2005*.

(within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*);[70] or

(c) the person's visa is cancelled under section 134B of the *Migration Act 1958* (emergency cancellation on security grounds) and the cancellation has not been revoked because of subsection 134C(3) of that Act; or

d) the person's visa is cancelled under section 501 of the *Migration Act 1958* and there is an assessment by the Australian Security Intelligence Organisation that the person is directly or indirectly a risk to security (within the meaning of section 4 of the *Australian Security Intelligence Organisation Act 1979*).

1.102 Before giving a security notice, the Minister for Home Affairs must have regard to the extent (if any) that payments to the person under the scheme have been or may be used for a purpose that might prejudice the security of Australia or a foreign country, if the Minister for Home Affairs is aware of that extent.[71] Security notices must be reviewed annually,[72] and the home affairs minister may revoke a security notice.[73]

1.103 Proposed section 20(b) of the 2018 Bill additionally provides that a person cannot make an application for redress under the scheme if a security notice is in force against the person.

Compatibility of the measure with the right to an effective remedy

1.104 The relevant principles relating to the right to an effective remedy are set out at [1.87]. Restrictions on the entitlement of survivors who are subject to a security notice engage the right to an effective remedy as such persons may be precluded from obtaining redress.

1.105 The statement of compatibility does not address whether this measure is compatible with the right to an effective remedy. However, it provides the following information about why precluding persons subject to security notices is necessary:

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70 'Security' is defined in section 4 of the *Australian Security Intelligence Organisation Act 1979* to mean: (a) the protection of, and of the people of, the Commonwealth and the several States and Territories from: (i) espionage; (ii) sabotage; (iii) politically motivated violence; (iv) promotion of communal violence; (v) attacks on Australia's defence system; or (vi) acts of foreign interference; whether directed from, or committed within, Australia or not; and (aa) the protection of Australia's territorial and border integrity from serious threats; and (b) the carrying out of Australia's responsibilities to any foreign country in relation to a matter mentioned in any of the subparagraphs of paragraph (a) or the matter mentioned in paragraph (aa).

71 Proposed section 65(2) of the 2018 Bill.

72 Proposed section 69 of the 2018 Bill.

73 Proposed section 70 of the 2018 Bill.

> This limitation is necessary to ensure that redress funds are not given to persons who may prejudice Australia's national security interests, or may use funds for purposes against Australia's security interests.[74]

1.106 The explanatory memorandum further explains that:

> These provisions ensure that those individuals assessed to be engaged in politically motivated violence overseas, fighting or actively supporting extremist groups, or that the individual would be likely to engage in conduct that might prejudice the security of Australia or a foreign country, would not be entitled to redress under the scheme.[75]

1.107 However, as noted earlier, while limitations may be placed in particular circumstances on the nature of the remedy provided (judicial or otherwise), states parties must provide a remedy that is effective where there has been a violation of human rights under the ICCPR. Therefore, while national security may generally constitute a legitimate objective to limit human rights, Australia is still obliged to provide an effective remedy. Further information as to how the right to an effective remedy will be protected for persons subject to a security notice would assist in determining compatibility with this right. This would include, for example, information as to any relevant safeguards, such as whether a security notice or a decision to revoke (or not to revoke) a security notice is capable of review.

Committee comment

1.108 The preceding analysis indicates that the restrictions on entitlement to persons subject to security notices engage the right to an effective remedy.

1.109 The committee therefore seeks the advice of the minister as to the compatibility of the restriction with this right.

Compatibility of the measure with the right to a fair trial and fair hearing

1.110 Article 14(1) of the ICCPR requires that in the determination of a person's rights and obligations in a 'suit at law', everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

1.111 The concept of 'suit at law' encompasses judicial procedures aimed at determining rights and obligations, equivalent notions in the area of administrative law and also extends to other procedures assessed on a case-by-case basis in light of the nature of the right in question.[76]

1.112 As acknowledged in the statement of compatibility to the 2018 Bill, a determination of a person's entitlement to redress as a result of sexual abuse, and a

74 SOC, pp. 121-122.

75 Explanatory Memorandum, p. 55.

76 See UN Human Rights Committee, *General Comment 32: Article 14, Right to Equality before Courts and Tribunals and to Fair Trial* (2007) [16].

finding of responsibility on the part of institutions for such abuse, involves the determination of rights and obligations and is likely to constitute a 'suit at law'.[77] In relation to a security notice, removing a person's entitlement to redress while a security notice is in force in relation to the person[78] may similarly engage fair trial and fair hearing rights. For example, it is possible that a security notice may be in force in relation to a person for the entire duration of the scheme, removing an otherwise entitled person's entitlement to redress entirely. The application or continuance of a security notice may therefore similarly involve a determination of the person's rights and obligations.

1.113 If the security notice process were to constitute a 'suit at law', there may be fair trial and fair hearing concerns, as it is unclear whether persons subject to the notice have the benefit of any hearing where, for example, they may be able to make representations to the home affairs minister or the foreign affairs minister as to whether a security notice should be given, or as part of the annual review process, or in determining whether a security notice should be revoked. Further information from the minister would assist in determining the compatibility of the security notice process with this right.

Committee comment

1.114 The preceding analysis raises questions as to whether removing a person's entitlement under the scheme while a security notice is in force engages and limits fair trial and fair hearing rights under Article 14 of the ICCPR.

1.115 The committee seeks the advice of the minister as to the compatibility of the security notice procedures with fair trial and fair hearing rights under Article 14 of the ICCPR.

Entitlement to receive redress under the national redress scheme: child applicants

1.116 For children who will turn 18 years before the scheme sunset day, who make an application for redress, there is a special process for such applicants to be

77 SOC p. 126; See Parliamentary Joint Committee on Human Rights, *Report 2 of 2018* (13 February 2018) [2.179]-[2.189].

78 Proposed section 64 of the 2018 Bill.

prescribed by the redress scheme rules.[79] As a result of these provisions, the 2018 Consequential Amendments Bill seeks to exempt the 2018 Bill from the *Age Discrimination Act 2004*.[80]

Compatibility of the measure with the right to equality and non-discrimination and the right to an effective remedy

1.117 The relevant principles relating to the right to equality and non-discrimination are set out at [1.75] above. While 'age' is not listed as a prohibited ground of discrimination in Article 26 of the ICCPR, the UN Human Rights Committee has stated that a distinction related to age which is not based on reasonable and objective criteria may amount to discrimination based on the ground of 'other status'.[81] Additionally, the Convention on the Rights of the Child (CRC) requires states parties to respect and ensure rights under the CRC to each child without discrimination.[82] This includes an obligation to ensure that children are protected against all forms of violence and all forms of sexual abuse without discrimination.[83] The relevant principles relating to the right to an effective remedy are set out above at [1.87].

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79 Proposed section 21 of the 2018 Bill. It is noted that proposed section 20(1)(c) provides a person who is a child who will not turn 18 before the scheme sunset day cannot make an application for redress. The effect of this is that children under eight when the scheme commences will not be able to receive redress under the scheme. Proposed section 20(1)(c) engages the right to equality and non-discrimination and the right to an effective remedy. However, the SOC explains at pp. 120-121 that only around 50 of more than 8,000 survivors that attended private sessions were under the age of 8 years. The SOC explains that, as found by the Royal Commission, while it was possible that some individuals would wish to seek redress while they are still a minor, it is not expected that many minors will apply as it would almost always be within the time limitations to commence proceedings through civil litigation, and an individual would be more than likely to receive larger payment either through settlement or civil litigation than they might during the scheme. The SOC also explains alternative avenues that were considered, such as requiring minors to have a nominee arrangement or paying amounts into a trust account, and explains why this approach was not considered to be appropriate. Based on the information provided (particularly the availability of civil litigation for survivors under the age of 8 and the explanation of less rights restrictive approaches that were considered), this aspect of the measure appears to be compatible with the right to an effective remedy and appears to constitute a permissible limitation on the right to equality and non-discrimination.

80 Schedule 5 to the 2018 Consequential Amendments Bill.

81 *Love v Australia* (983/01), UN Human Rights Committee (2003) [8.2].

82 Article 2(1) Convention on the Rights of the Child.

83 Articles 19 and 34 read with Article 2(1) of the CRC. See Committee on the Rights of the Child, *General Comment No.13: The right of the child to freedom from all forms of violence* (2011) [60].

1.118 While the statement of compatibility states that the CRC 'does not explicitly exclude different processes based on age',[84] the different application process for child applicants directly engages the right to equality and non-discrimination. By providing for a special application process for children who will turn 18 before the scheme sunset day, the measure also engages the right to an effective remedy.

1.119 The statement of compatibility provides information as to why the different application process is necessary and permissible:

> The restriction on some children applying for redress, and the special process for how children's applications are treated, is necessary to protect those children’s interests. As a requirement of the Scheme is to release responsible participating institutions from any liability for sexual abuse and related non-sexual abuse within the scope of the Scheme (restricting their right to later pursue civil litigation), it is necessary to ensure that the effect of the release is fully understood. Survivors who are children are unlikely to be able to fully comprehend the implications of such a decision, especially when the impact of their abuse may not have been fully realised yet.
>
> Furthermore, a component of the application process is for survivors to articulate the impact that the relevant abuse has had on them. As the impact of child abuse in a person’s early years may not be realised until later in the person’s life, an application submitted as a child may not contain the relevant detail. Similarly, a child survivor’s ability to articulate their experience would likely increase with age. While children who will turn 18 years of age before the Scheme sunset day are able to make an application for redress as a child, it is important that they are able to provide the Operator with updated information once they are an adult, which the special process will allow.
>
> Whilst other avenues to include children, such as requiring them to have a nominee arrangement were considered, numerous stakeholders raised concerns about nominees not making decisions in the best interests of the survivor, or not using redress payments for the benefit of the survivor. Additionally, even if the Scheme were to require that payments go into a trust account, the necessary interaction with the minor’s parent or guardian would present complexities. Some minors who have been sexually abused in an institutional setting may have fractured relationships with their parents or guardians, and may remain in out of home care. Due to these relationships, the minor may not trust that their parent or guardian will make choices in their best interest.
>
> The special process described strikes the right balance between safeguarding the interests of children whilst allowing them to have some indication of their likely redress entitlement. This will allow these children

84 SOC, p. 120.

> to pursue a range of different options. Some survivors may wait until they turn 18 in order to access redress, whilst others (supported by their parent/ or guardian/s) may choose to pursue civil litigation.
>
> …
>
> Child survivors and their families, including both those who are unable to access redress under the Scheme and those who have to wait until they are 18 to receive a redress determination, will be able to access the Scheme's community support services, as well as legal support services to receive advice about available options outside of the Scheme.[85]

1.120 The information provided by the minister indicates that the measure has been introduced so as to protect the best interests of the child and has been considered appropriate in light of other, less rights restrictive, options. This is relevant to the compatibility of the measure with the right to equality and the right to an effective remedy.

1.121 However, there are concerns as to whether the broad power to determine the special process for child applicants by way of rules is compatible with these rights. This is because, as discussed earlier, in the absence of sufficient safeguards, the broad scope of the power to determine a person's entitlement to eligibility or ineligibility could be exercised in such a way as to be incompatible with human rights. Further information is required as to the proposed content of the redress scheme rules as it relates to the special process for child applicants so as to determine whether the application process as it applies to children is compatible with the right to an effective remedy and the right to equality and non-discrimination.[86]

Committee comment

1.122 The preceding analysis indicates that the special process for child applicants, to be prescribed in the rules, raises concerns as to compatibility with the right to an effective remedy and the right to equality and non-discrimination.

1.123 The committee seeks further information as to the proposed process for child applicants, including:

- **A copy of the proposed rules prescribing the process for child applicants (or, if no copy is available, a detailed outline of the proposed rules); and**
- **Information as to safeguards in the proposed rules to protect the right to an effective remedy and the right to equality and non-discrimination (including whether the rules will be subject to disallowance or other parliamentary oversight, and whether decisions by the operator pursuant to the rules will be capable of being reviewed).**

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85 SOC, pp. 120-121.

86 This includes information as to the extent to which the rules will be subject to parliamentary oversight, noting section 44(1)(a) of the *Legislation Act 2003*.

Social Security (Assurances of Support) Determination 2018 [F2018L00425]

Social Security (Assurances of Support) Amendment Determination 2018 [F2018L00650]

Purpose	Introduces requirements for parents to give assurances of support for visa entrants
Portfolio	Social Services
Authorising legislation	*Social Security Act 1991*
Last day to disallow	F2018L00425: 15 sitting days after tabling (tabled House of Representatives and Senate 8 May 2018) F2018L00650: 15 sitting days after tabling (tabled House of Representatives 24 May 2018)
Right	Protection of the family (see **Appendix 2**)
Status	Seeking additional information

Requirements for persons to give assurances of support

1.124 The determination (as amended by the amended determination)[1] seeks to introduce requirements that must be met for an individual or body (an assurer) to be permitted to give an 'assurance of support' for migrants seeking to enter Australia on certain visa subclasses (assurees).[2] An assurance of support is a legally binding commitment by the assurer to financially support the assuree for the duration of the assurance period,[3] including assuming responsibility for repayment of any

1 The Social Security (Assurances of Support) Determination 2018 [F2018L00425] (the determination) was amended by the Social Security (Assurances of Support) Amendment Determination 2018 [F2018L00650] (the amended determination) on 24 May 2018.

2 Visa subclasses for which it is a mandatory condition of grant of the visa to have an assurance of support include the visa subclass 103 (parent), subclass 143 (contributory parent), subclass 864 (contributory aged parent); subclass 114 (aged dependent relative); subclass 115 (remaining relative). There are also several visa subclasses for which the Minister for Home Affairs may request an assurance of support as a condition of the grant, including subclass 117 (orphan relative); subclass 101 (child); subclass 102 (adoption); subclass 151 (former resident); subclass 202 (global humanitarian visa – community support programme entrants).

3 The length of the assurance period depends on the type of visa. For example, for a contributory parent visa, the period of assurance may be 10 years; for a community support programme entrant, the period is 12 months: explanatory statement to the determination, p. 2.

recoverable social security payments received by the assuree during the assurance period.[4]

1.125 Individuals who give an assurance of support must meet an income requirement in order to be an assurer.[5] Section 15(2) of the amended determination provides that an individual giving an assurance of support as a single assurer meets the income requirement for a financial year if the amount of the individual's assessable income for the year is at least the total of:

(a) the applicable rate of newstart allowance multiplied by the total of:

(i) one (representing the individual giving the assurance of support); and

(ii) the total number of adults receiving assurance under an assurance of support given by the person; and

(b) the amount obtained by adding together, for each child of the person giving assurance under an assurance of support:

(i) the base FTB child rate[6] as at 1 July in the financial year; and

(ii) the applicable supplement amount[7] as at 1 July in the financial year.[8]

1.126 The amended determination provides an example of how this provision is designed to operate:

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4 Section 1061ZZGA(a) of the *Social Security Act 1991*; Statement of compatibility (SOC) to the amended determination, pp. 1,3. Recoverable social security payments for the purpose of assurances of support includes widow allowance, parenting payment, youth allowance, austudy payment, newstart allowance, mature age allowance, sickness allowance, special benefit and partner allowance.

5 Section 14(1) of the determination.

6 'Base FTB child rate' refers to the base Family Tax Benefit rate. The rate has the meaning and is determined by clause 8 of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*. See further the explanation at [1.126] below.

7 'Applicable supplement amount' has the meaning and is determined by clause 38A(2) of Schedule 1 to the *A New Tax System (Family Assistance) Act 1999*. See further the explanation at [1.126].

8 Section 15(2) of the amended determination. The determination before amendment required a higher level of income in order to meet the income requirement, namely the newstart income cut-off amount multiplied by the total of: (i) one (representing the individual giving the assurance of support); and (ii) the total number of adults receiving assurance under the assurance of support given by the person; and (iii) if the individual giving assurance under the assurance of support has a partner – one; and (b) 10% of the newstart income cut-off amount multiplied by: (i) the number of children of the individual giving assurance under the assurance of support; and (ii) the number of children of any adults receiving assurance under the assurance of support.

If a person with 2 children applies to give an assurance of support for a migrating family of 2 parents and 2 children on 1 July 2017, the minimum required income amount of the person is the total of:

- $45 186 (the applicable newstart allowance of $15 062 multiplied by the total number of adult assurers and adult assurees (3)); and
- the base FTB [(family tax benefit)] child rate and the applicable supplement amount for each of the assurer's children.

The base FTB child rate and the applicable supplement are only added to the income requirement for the assurer's children. They do not apply to the children of the assurees.[9]

1.127 For an individual that gives an assurance of support jointly with another individual or other individuals, the individual assurer meets the income requirement for a financial year if the combined amount of assessable income of the assurers for the year is at least the total of the following amounts:

(a) the applicable rate of newstart allowance multiplied by the total of:

(i) the total number of individuals giving assurance under the assurance of support; and

(ii) the total number of adults receiving assurance under an assurance of support given by the individual; and

(b) the amount obtained by adding together, for each child of an individual giving assurance under the assurance of support:

(i) the base FTB child rate as at 1 July in the financial year; and

(ii) the applicable supplement amount as at 1 July in the financial year.[10]

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9 Section 15(2) of the amended determination. Before the amendment, the determination required that if a partnered individual with one child applied to give an assurance of support for a migrating family of two parents and two children, the minimum required income amount of the individual would have been the total of: (a) $115 476 (the newstart income cut-off amount of $28 869 multiplied by the total number of individuals giving assurance, persons receiving an assurance, and the partner of the individual giving assurance (4)); and (b) $8 661 (10% of the newstart income cut-off amount of $28 869 multiplied by the total number of children of both the individual giving assurance, and the persons receiving assurance (3)).

10 Section 16(2) of the amended determination. The determination before amendment required a higher level of income in order to meet the income requirement, namely (a) the newstart income cut-off amount multiplied by the total of: (i) the total number of individuals giving assurance under the assurance of support; and (ii) the total number of adults receiving assurance under an assurance of support given by the individual; and (iii) the total number of partners of the individuals that are jointly giving assurance under the assurance of support; and (b) 10% of the newstart income cut-off amount multiplied by (i) the number of children of the individuals giving assurance under the assurance of support; and (ii) the number of children of any adults receiving assurance under the assurance of support.

1.128 The amended determination provides an example of how this provision is designed to operate:

> If a joint assurer (who has a partner and 2 children) gives an assurance of support with the partner for a migrating family of 2 parents and 2 children on 1 July 2017, the combined minimum required income of both assurers is the total of:
>
> - $60 248 (the applicable newstart allowance of $15 062 multiplied by the total number of adult assurers and adult assurees (4)); and
> - the base FTB child rate and the applicable supplement amount for each of the assurers' children.
>
> The base FTB child rate and the applicable supplement are only added to the income requirement for the assurers' children. They do not apply to the children of the assurees.[11]

Compatibility of the measure with the right to protection of the family

1.129 The right to respect for the family is protected by articles 17 and 23 of the International Covenant on Civil and Political and Rights (ICCPR) and article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Under these articles, the family is recognised as the natural and fundamental group unit of society and, as such, is entitled to protection. An important element of protection of the family is to ensure family members are not involuntarily separated from one another. Laws and measures which prevent family members from being together will engage this right.

1.130 Additionally, under article 3(1) of the Convention on the Rights of the Child (CRC), Australia is required to ensure that, in all actions concerning children, the best interests of the child are a primary consideration. It requires legislative, administrative and judicial bodies and institutions to systematically consider how children's rights and interests are or will be affected directly or indirectly by their decisions and actions.[12] Under article 10 of the CRC, Australia is required to treat applications by minors for family reunification in a positive, humane and expeditious manner.

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11 Section 16(2) of the amended determination. Before the amendment, the determination required that for two joint assurers (who each have a partner and two children) give an assurance of support for a migrating family of two parents and three children, the combined minimum required income amount of both assurers is the total of: (a) $173 214 (the newstart income cut-off amount of $28 869 multiplied by the total number individuals giving assurance, persons receiving an assurance, and the partners of the individuals giving assurance (6)); and (b) $20 208 (10% of the newstart income cut-off amount of $28 869 multiplied by the total number of children of both the individuals giving the assurance, and the persons receiving assurance (7)).

12 UN Committee on the Rights of Children, *General Comment 14 on the right of the child to have his or her best interest taken as primary consideration* (2013).

1.131 A measure which limits the ability of certain family members to join others in a country is a limitation on the right to protection of the family.[13] By requiring individuals (relevantly, including family members) to meet certain income requirements in order to sponsor family members to come to Australia, the measure creates a financial barrier for family members to join others in a country and therefore may limit the right to protection of the family.

1.132 Limitations on the right to protection of the family will be permissible where the limitation is in pursuit of a legitimate objective, and is rationally connected and proportionate to the pursuit of that objective.

1.133 The statement of compatibility to the determination and the amended determination do not acknowledge that this right is engaged by the measure. However the statement of compatibility describes the objective of the determination as 'protecting social security outlays by the Commonwealth while allowing the migration of people who might not otherwise be permitted to come to Australia'.[14] While this may be capable of constituting a legitimate objective, further information is required to determine whether the objective is legitimate in the context of this specific measure. In this context, the committee's usual expectation where a measure may limit a human right is that the accompanying statement of compatibility provides a reasoned and evidence-based explanation of how the measure supports a legitimate objective for the purposes of international human rights law.

1.134 Additionally, as noted above, a limitation must be rationally connected to, and a proportionate way to achieve, its legitimate objective in order to be justifiable in international human rights law. As to proportionality, while it is noted that the income requirement for assurers is significantly lower in the amended determination than the original determination,[15] the income requirement in the amended determination is nonetheless substantial. Further information is required to determine whether the measure is rationally connected and proportionate to the stated objective of the measure.

Committee comment

1.135 The preceding analysis indicates the requirements for persons to give assurances of support for visa entrants may engage and limit the right to protection of the family.

1.136 The committee therefore seeks the advice of the minister as to:

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13 See, for example, *Sen v the Netherlands* (Application no. 31465/96) (2001) ECHR; *Tuquabo-Tekle And Others v The Netherlands (Application no. 60665/00)* (2006) ECHR [41]; *Maslov v Austria (Application no. 1638/03)* (2008) ECHR [61]-[67].

14 SOC to the amended determination, p.1.

15 See above at [1.125] to [1.128] and accompanying footnotes.

- **whether there is reasoning or evidence that establishes that the stated objective addresses a pressing or substantial concern or whether the proposed changes are otherwise aimed at achieving a legitimate objective for the purposes of international human rights law;**
- **whether the measure is rationally connected to (that is, effective to achieve) that objective; and**
- **whether the measure is a proportionate means of achieving its objective.**

Various Parks Management Plans[1]

Purpose	Provides management plans for particular parks
Portfolio	Environment and Energy
Authorising legislation	*Environment Protection and Biodiversity Conservation Act 1999*
Last day to disallow	15 sitting days after tabling (tabled Senate 21 March 2018, House 26 March 2018). Subject to a motion to disallow by Senator Pratt on 21 March 2018.
Rights	Freedom of expression (see **Appendix 2**)
Status	Seeking additional information

Regulation of commercial media within the parks

1.137 Each of the park management plans include rules for commercial media to operate in the parks. The plans provide that news-of-the day reporting may be undertaken on terms determined by the Director and subject to the Director being notified. Commercial media activities other than news-of-the-day reporting are subject to further conditions including a permit being issued.[2]

Compatibility of the measure with the right to freedom of expression

1.138 The right to freedom of expression includes the communication of information or ideas through the media. Providing that news-of-the day reporting is to be on the terms determined by the Director engages and may limit the right to freedom of expression. The requirement that other commercial media activities are subject to further conditions including the issuing of a permit also engages and limits this right.

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1 Coral Sea Marine Park Management Plan 2018 [F2018L00327]; Temperate East Marine Parks Network Management Plan 2018 [F2018L00321]; North-West Marine Parks Network Management Plan 2018 [F2018L00322]; North Marine Parks Network Management Plan 2018 [F2018L00324]; South-West Marine Parks Network Management Plan 2018 [F2018L00326].

2 North Marine Parks Network Management Plan 2018 [F2018L00324] p. 51, [4.2.6]; Temperate East Marine Parks Network Management Plan 2018 [F2018L00321] p. 51 [4.2.5]; North-West Marine Parks Network Management Plan 2018 [F2018L00322] p. 54 [4.2.6]; South-West Marine Parks Network Management Plan 2018 [F2018L00326] p. 50 [4.2.4]; Coral Sea Marine Park Management Plan 2018 [F2018L00327] p. 43, [4.2.5].

1.139 While the right to freedom of expression may be subject to permissible limitations in a number of circumstances,[3] the statements of compatibility provided no assessment of this right. Accordingly, it is unclear from the information provided the extent of any limitation on the right to freedom of expression and whether that limitation is permissible.

Committee comment

1.140 The right to freedom of expression is engaged and may be limited by the park management plans. This was not addressed in the statements of compatibility.

1.141 The committee therefore seeks the advice of the minister as to the compatibility of the measure with the right to freedom of expression including information as to:

- **the extent of the limitation the measure imposes on the right to freedom of expression (such as, information about the terms determined by the Director in relation to news-of-the day reporting and the process for the issue of a permit or permission for other reporting);**
- **whether the measure is aimed at achieving a legitimate objective for the purposes of human rights law;**
- **how the measure is effective to achieve (that is, rationally connected to) that objective; and**
- **whether the limitation is a reasonable and proportionate measure to achieve the stated objective (including the existence of any safeguards).**

3 Limitations must be prescribed by law, pursue a legitimate objective, and be rationally connected and proportionate to that objective. Additionally, the right may only be limited for certain prescribed purposes, that is, where it is necessary to respect the rights of others, or to protect national security, public safety, public order, public health or morals.

Advice only

1.142 The committee draws the following bills and instruments to the attention of the relevant minister or legislation proponent on an advice only basis. The committee does not require a response to these comments.

Appropriation Bill (No. 1) 2018-2019

Appropriation Bill (No. 2) 2018-2019

Appropriation (Parliamentary Departments) Bill (No. 1) 2018-2019

Appropriation Bill (No. 5) 2017-2018

Appropriation Bill (No. 6) 2017-2018

Purpose	Seeks to appropriate money from the Consolidated Revenue for services
Portfolio	Finance
Introduced	House of Representatives, 8 May 2018
Rights	Multiple rights (see **Appendix 2**)
Status	Advice only

Background

1.143 The committee has considered the human rights implications of appropriations bills in a number of previous reports,[1] and the bills have been the subject of correspondence with the Department of Finance.[2] During the 44th Parliament, the Minister for Finance invited the committee to meet with departmental officials about this issue.[3]

1 See, Parliamentary Joint Committee on Human Rights, *Third report of 2013* (13 March 2013) p. 65; *Seventh report of 2013* (5 June 2013) p. 21; *Third report of the 44th Parliament* (4 March 2014) p. 3; *Eighth report of the 44th Parliament* (24 June 2014) p. 5 and p. 31; *Twentieth report of the 44th Parliament* (18 March 2015) p. 5; *Twenty-third report of the 44th Parliament* (18 June 2015) p. 13;*Thirty-fourth report of the 44th Parliament* (23 February 2016) p. 2; *Report 2 of 2017* (21 March 2017) p.44; *Report 5 of 2017* (14 June 2017) p. 42; *Report 3 of 2018* (27 March 2018) p. 97.

2 Parliamentary Joint Committee on Human Rights, *Seventh report of 2013* (5 June 2013) p. 21; and *Eighth report of the 44th Parliament* (18 June 2014) p. 32.

3 See, for example, Parliamentary Joint Committee on Human Rights, *Eighth Report of the 44th Parliament* (June 2014) pp. 5-7, 33.

Potential engagement and limitation of human rights by appropriations Acts

1.144 As stated in the analysis of previous appropriations bills, proposed government expenditure to give effect to particular policies may engage and limit and/or promote a range of human rights. This includes rights under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).[4]

1.145 The committee has previously noted that:

> …the allocation of funds via appropriations bills is susceptible to a human rights assessment that is directed at broader questions of compatibility—namely, their impact on progressive realisation obligations and on vulnerable minorities or specific groups. In particular, the committee considers there may be specific appropriations bills or specific appropriations where there is an evident and substantial link to the carrying out of a policy or program under legislation that gives rise to human rights concerns.[5]

Compatibility of the bills with multiple rights

1.146 As with previous appropriations bills, the current bills are accompanied by a brief statement of compatibility, which notes that the High Court has stated that, beyond authorising the withdrawal of money for broadly identified purposes, appropriations Acts 'do not create rights and nor do they, importantly, impose any duties'.[6] The statements of compatibility conclude that, as their legal effect is limited in this way, the bills do not engage, or otherwise affect, human rights.[7] The statements of compatibility also state that '[d]etailed information on the relevant appropriations…is contained in the portfolio [Budget] statements'.[8] No further assessment of the human rights compatibility of the bills is provided.

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4 See, Parliamentary Joint Committee on Human Rights, *Third report of 2013* (13 March 2013); *Seventh report of 2013* (5 June 2013); *Third report of the 44th Parliament* (4 March 2014); and *Eighth Report of the 44th Parliament* (24 June 2014), *Report 5 of 2017* (14 June 2017) p. 42.

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

6 Appropriation Bill (No. 1) 2018-2019: explanatory memorandum (EM), statement of compatibility (SOC), p. 3; Appropriation Bill (No. 2) 2018-2019: EM, SOC, p. 4; Appropriation (Parliamentary Departments) Bill (No. 1) 2018-2019: EM, SOC, p. 4; Appropriation Bill (No. 5) 2018-2019: EM, SOC, p. 4; Appropriation Bill (No. 6) 2018-2019: EM, SOC, p. 4.

7 Bill No. 1, EM, SOC, p. 3; Bill No. 2, EM, SOC, p. 4; Parliamentary Departments, EM, SOC, p. 4; Bill No. 5, EM, SOC, p. 4; Bill No. 6 2018-2019: EM, SOC, p. 4.

8 Bill No. 1, EM, SOC, p. 3; Bill No. 2, EM, SOC, p. 4; Parliamentary Departments, EM, SOC, p. 4; Bill No. 5, EM, SOC, p. 4; Bill No. 6 2018-2019: EM, SOC, p. 4.

1.147 A full human rights analysis in respect of such statements of compatibility can be found in the committee's *Report 9 of 2016*.[9] Under international human rights law, Australia has obligations to respect, protect and fulfil human rights. These include specific obligations to progressively realise economic, social and cultural (ESC) rights using the maximum of resources available;[10] and a corresponding duty to refrain from taking retrogressive measures, or backwards steps, in relation to the realisation of these rights. This means that any reduction in allocated government funding for measures which realise socio-economic rights, such as specific health and education services, may be considered as retrogressive in respect of the attainment of ESC rights and, accordingly, must be justified for the purposes of international human rights law.

1.148 The cited view of the High Court that appropriations Acts do not create rights or duties as a matter of Australian law does not address the fact that appropriations may nevertheless engage human rights for the purposes of international law, as specific appropriations reducing expenditure may be regarded as retrogressive, or as limiting rights. The appropriation of funds facilitates the taking of actions which may affect both the progressive realisation of, and the failure to fulfil, Australia's obligations under the treaties listed in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.149 As previously stated, while such bills present particular difficulties for human rights assessments because they generally include high-level appropriations for a wide range of outcomes and activities across many portfolios, the allocation of funds via appropriations bills is susceptible to a human rights assessment directed at broader questions of compatibility.[11]

Committee comment

1.150 The committee notes that, as with previous appropriations bills, the statements of compatibility for the current bills provide no assessment of their

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9 Parliamentary Joint Committee on Human Rights, *Report 9 of 2016* (22 November 2016) pp. 30-33.

10 See, UN Office of the High Commissioner for Human Rights, *Manual on Human Rights Monitoring*, http://www.ohchr.org/Documents/Publications/Chapter20-48pp.pdf; Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

11 There are a range of international resources to assist in the preparation of human rights compatibility assessments of budgets: See, for example, Diane Elson, *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW*, (Unifem, 2006) *https://www.internationalbudget.org/wp-content/uploads/Budgeting-for-Women%E2%80%99s-Rights-Monitoring-Government-Budgets-for-Compliance-with-CEDAW.pdf*; UN Practitioners' Portal on Human Rights Approaches to Programming, *Budgeting Human Rights*, http://hrbaportal.org/archives/tools/budgeting-human-rights; Rory O'Connell, Aoife Nolan, Colin Harvey, Mira Dutschke, Eoin Rooney*, Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (Routledge, 2014).

compatibility with human rights on the basis that they do not engage or otherwise create or impact on human rights. However, while the committee acknowledges that appropriations bills present particular challenges in terms of human rights assessments, the appropriation of funds may engage and potentially limit or promote a range of human rights that fall under the committee's mandate.

1.151 Given the difficulty of conducting measure-level assessments of appropriations bills, the committee recommends that consideration be given to developing alternative templates for assessing their human rights compatibility, drawing upon existing domestic and international precedents. Relevant factors in such an approach could include consideration of:

- **whether the bills are compatible with Australia's obligations of progressive realisation with respect to economic, social and cultural rights;**
- **whether any reductions in the allocation of funding are compatible with Australia's obligations not to unjustifiably take retrogressive or backward steps in the realisation of economic, social and cultural rights; and**
- **whether the allocations are compatible with the rights of vulnerable groups (such as children; women; Aboriginal and Torres Strait Islander Peoples; persons with disabilities; and ethnic minorities).**

1.152 The committee would welcome the opportunity to engage further with the department on these and related matters concerning statements of compatibility for appropriations bills.

1.153 The committee recommends that departmental officials meet with the committee secretariat on behalf of the committee to develop workable approaches to statements of compatibility for appropriations bills and seeks the advice of the minister as to this course of action.

Bills not raising human rights concerns

1.154 Of the bills introduced into the Parliament between 8 and 31 May 2018, the following did not raise human rights concerns (this may be because the bill does not engage or promotes human rights, and/or permissibly limits human rights):

- Aged Care (Single Quality Framework) Reform Bill 2018;
- Air Services Amendment Bill 2018 (No. 2);
- Australian Research Council Amendment Bill 2018;
- Corporations (Fees) Amendment (ASIC Fees) Bill 2018;
- Corporations (Review Fees) Amendment Bill 2018;
- Criminal Code and Other Legislation Amendment (Removing Commonwealth Restrictions on Cannabis) Bill 2018;
- Defence Amendment (Sovereign Naval Shipbuilding) Bill 2018;
- Export Legislation Amendment (Live-stock) Bill 2018;
- Fair Work Amendment (Making Australia More Equal) Bill 2018;
- Health Insurance (Approved Pathology Specimen Collection Centres) Tax Amendment Bill 2018;
- Health Legislation Amendment (Improved Medicare Compliance and Other Measures) Bill 2018;
- Live Sheep Long Haul Export Prohibition Bill 2018;
- National Consumer Credit Protection (Fees) Amendment (ASIC Fees) Bill 2018;
- Social Services Legislation Amendment (Maintaining Income Thresholds) Bill 2018;
- Space Activities Amendment (Launches and Returns) Bill 2018;
- Superannuation Auditor Registration Imposition Amendment (ASIC Fees) Bill 2018;
- Superannuation Industry (Supervision) Amendment (ASIC Fees) Bill 2018;
- Treasury Laws Amendment (Accelerated Depreciation for Small Business Entities) Bill 2018;
- Treasury Laws Amendment (APRA Governance) Bill 2018;
- Treasury Laws Amendment (Axe the Tampon Tax) Bill 2018;
- Treasury Laws Amendment (Medicare Levy and Medicare Levy Surcharge) Bill 2018;
- Treasury Laws Amendment (Personal Income Tax Plan) Bill 2018;

- Treasury Laws Amendment (Tax Integrity and Other Measures No. 2) Bill 2018;
- Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018;
- Veterans' Affairs Legislation Amendment (Veteran-centric Reforms No. 2) Bill 2018; and
- Water Amendment Bill 2018.