

Report snapshot¹

1.1 In this report the committee has examined the following bills and legislative instruments for compatibility with human rights. The committee's full consideration of legislation commented on in the report is set out at the page numbers indicated.

Bills

Chapter 1: New and continuing matters

Bills introduced 26 to 28 September 2022	17
Bills commented on in report ²	3
Private members or senators' bills that may engage and limit human rights	1

Chapter 2: Concluded

Bills committee has concluded its examination of following receipt of ministerial response	1
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Animal Health Australia and Plant Health Australia Funding Legislation Amendment Bill 2022

No comment

Anti-Discrimination and Human Rights Legislation Amendment (Respect at Work) Bill 2022

No comment

Biosecurity Amendment (Strengthening Biosecurity) Bill 2022

The committee has deferred consideration of this bill.

- 1 This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 5 of 2022*; [2022] AUPJCHR 36.
- 2 The committee makes no comment on the remaining bills on the basis that they do not engage, or only marginally engage, human rights; promote human rights; and/permissibly limit human rights. This is based on an assessment of the bill and relevant information provided in the statement of compatibility accompanying the bill. The committee may have determined not to comment on a bill notwithstanding that the statement of compatibility accompanying the bill may be inadequate.

Crimes Legislation Amendment (Ransomware Action Plan) Bill 2022

The committee notes that this private member's bill appears to engage and may limit human rights. Should this bill proceed to further stages of debate, the committee may request further information from the legislation proponent as to the human rights compatibility of the bill.

Environment and Other Legislation Amendment (Removing Nuclear Energy Prohibitions) Bill 2022

No comment

Family Assistance Legislation Amendment (Cheaper Child Care) Bill 2022

No comment

Maritime Legislation Amendment Bill 2022

No comment

National Anti-Corruption Commission Bill 2022

National Anti-Corruption Commission (Consequential and Transitional Provisions) Bill 2022

Advice to Parliament

[pp. 7-31](#)

Investigative and reporting powers; contempt of Commission; journalist search warrants; and covert investigative powers
Multiple rights

These two bills seek to establish the National Anti-Corruption Commission, as an independent agency to investigate and report on serious or systemic corruption in the Commonwealth public sector. The committee notes that an inquiry into these bills will conclude on 10 November 2022, and therefore does not seek a response from the Attorney-General in the interests of ensuring the timeliness of its advice to Parliament.

The Commissioner's proposed investigative and reporting powers engage and limit multiple human rights, however the statement of compatibility largely provides a comprehensive explanation of how those limits are permissible. The committee [recommends](#) minor amendments to the bill and statement of compatibility. The bills would establish provisions for finding persons in contempt of the Commission, and the committee [recommends](#) an amendment to those provisions.

The bills would also enable the Commission to access information confidentially provided to journalists, including through search warrants and by invoking existing covert investigative powers. The committee [recommends](#) an amendment to the bill to strengthen existing safeguards relating to the issue of search warrants, and [recommends](#) a foundational human rights assessment of

the compatibility of the existing covert surveillance powers sought to be conferred on the Commission.

National Energy Transition Authority Bill 2022

No comment

Offshore Electricity Infrastructure Legislation Amendment Bill 2022

No comment

Ozone Protection and Synthetic Greenhouse Gas Management Reform (Closing the Hole in the Ozone Layer) Bill 2022

No comment

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Amendment Bill 2022

No comment

Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Amendment Bill 2022

No comment

Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022

*Advice to
Parliament*

[pp. 39-55](#)

Abolishing Cashless Debit Card program

Rights to social security, private life, equality and non-discrimination and rights of the child

The bill (now Act) abolishes the Cashless Debit Card (CDC) program and transitions certain individuals to the income management regime following the closure of the CDC program. In particular, the Act subjects participants in the Northern Territory who are within a specified class of persons to mandatory income management.

The committee notes that were the income management regime to be made voluntary, as advised by the minister, the human rights concerns relating to compulsory income management would be addressed. However, until a further bill is introduced to facilitate the transition to a voluntary regime, transitioning certain CDC participants to mandatory income management limits a number of human rights. As the bill has now passed both Houses of Parliament, the committee makes no further comment.

Social Services and Other Legislation Amendment (Workforce Incentive) Bill 2022

No comment

Treasury Laws Amendment (More Competition, Better Prices) Bill 2022

*Advice to
Parliament*

Increasing civil penalties
Right to a fair hearing

[pp. 32-37](#)

This bill seeks to increase the maximum financial penalties for contravention of various civil penalty provisions under competition and consumer law to \$2.5 million for individuals. The committee considers that increasing the maximum penalties is an important measure to deter serious misconduct and protect consumers against egregious conduct, but notes that there is a risk that the penalties may be so severe as to constitute a 'criminal' sanction under international human rights law, and depending on the severity of the pecuniary penalty applied and whether a person is also subject to criminal proceedings, there may be a risk that the increased civil penalties are not consistent with criminal process rights.

The committee [recommends](#) that when civil penalties are so severe such that there is a risk that they may be regarded as 'criminal' under international human rights law, consideration be given to applying a higher standard of proof in the related civil penalty proceedings, and draws its concerns to the attention of the Assistant Minister and the Parliament.

Treasury Laws Amendment (Australia-India Economic Cooperation and Trade Agreement Implementation) Bill 2022

No comment

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the [Federal Register of Legislation](#) between 2 to 27 September 2022³ 102

Legislative instruments commented on in report⁴ 0

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response 3

Migration Amendment (Protecting Australia's Critical Technology) Regulations 2022 [F2022L00541]

Migration Amendment (Postgraduate Research in Critical Technology—Student Visa Conditions) Regulations 2022 [F2022L00866]

Advice to Parliament

Restriction on visa holders relating to critical technologies

Rights to education, work, freedom of expression, equality and non-discrimination

[pp. 65-76](#)

These two legislative instruments regulate the ability for specified visa holders to undertake study or research, and may be liable to visa cancellation, where there is an 'unreasonable risk of unwanted transfer of critical technology by the visa holder'.

By allowing for visa cancellations for people in Australia and establishing requirements for certain visa holders to gain the minister's approval to change their course of study or to communicate certain matters, these measures engage and may limit the rights to education, work, freedom of expression, and equality and non-discrimination.

The committee considers the measure pursues the important objective of seeking to protect national security, public order, public health and safety, and Australia's international relations by preventing the unwanted transfer of critical technology to malicious actors. The committee considers that this measure may be

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- 3 The committee examines all legislative instruments registered in the relevant period, as listed on the Federal Register of Legislation. To identify all of the legislative instruments scrutinised by the committee during this period, select 'legislative instruments' as the relevant type of legislation, select the event as 'assent/making', and input the relevant registration date range in the Federal Register of Legislation's [advanced search function](#).
 - 4 The committee makes no comment on the remaining legislative instruments on the basis that they do not engage, or only marginally engage, human rights; promote human rights; and/permissibly limit human rights. This is based on an assessment of the instrument and relevant information provided in the statement of compatibility (where applicable). The committee may have determined not to comment on an instrument notwithstanding that the statement of compatibility accompanying the instrument may be inadequate.

compatible with human rights, if the detail of what constitutes a 'critical technology' is sufficiently clear and accessible. It is intended that this detail will be specified in a future legislative instrument and the committee notes it will examine any such future instrument for compatibility with human rights.

Migration (Daily Maintenance Amount for Persons in Detention) Determination (LIN 22/031) 2022 [F2022L00877]

Advice to
Parliament

Liability for costs of detention

Right not to be punished twice, and right to humane treatment in detention

[pp. 56-64](#)

This legislative instrument increases the determined daily cost of maintaining a person in immigration detention. Persons convicted of people smuggling and illegal foreign fishing offences are liable to repay the Commonwealth for the cost of their immigration detention.

The committee considers there is a risk that, for some affected persons, the penalty being imposed may be so severe as to amount to a criminal penalty under human rights law, meaning that the right not to be punished twice would apply and would risk being violated. The committee also considers that, having regard to previous findings by the United Nations Human Rights Committee regarding immigration detention in Australia, there may also be a risk that increasing the daily fee for certain immigration detainees has the effect of exacerbating detention conditions which have previously been found to amount to cruel, inhuman or degrading treatment, and which could constitute an impermissible breach of the right to humane treatment in detention. The committee draws these human rights concerns to the attention of the Minister and the Parliament.

Instruments imposing sanctions on individuals⁵

A number of legislative instruments impose sanctions on individuals. The committee has considered the human rights compatibility of similar instruments on a number of occasions, and retains scrutiny concerns about the compatibility of the sanctions regime with human rights.⁶ However, as these legislative instruments do not appear to designate or declare any individuals who are currently within Australia's jurisdiction, the committee makes no comment in relation to these instruments at this stage.

5 See, Charter of the United Nations (Listed Persons and Entities) Amendment (No. 2) Instrument 2022 [F2022L01210]; Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 20) Instrument 2022 [F2022L01231].

6 See, most recently, Parliamentary Joint Committee on Human Rights, [Report 15 of 2021](#) (8 December 2021), pp. 2-11.