

## Report snapshot<sup>3</sup>

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 in Chapters 1 and 2.

### Bills

#### Chapter 1: New and continuing matters

Bills introduced 16 October to 19 October 2023	14
Bills commented on in report <sup>4</sup>	0
Private members or senators' bills that may engage and limit human rights	0

#### Chapter 2: Concluded

Bills committee has concluded its examination of following receipt of ministerial response	2
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#### Brisbane Airport Curfew and Demand Management Bill 2023

No comment

#### Childhood Gender Transition Prohibition Bill 2023

No comment

#### Crown References Amendment Bill 2023

No comment

#### Economic Inclusion Advisory Committee Bill 2023

No comment

#### Environment Protection and Biodiversity Conservation Amendment (Expanding the Water Trigger) Bill 2023

<sup>3</sup> This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 12 of 2023*; [2023] AUPJCHR 113.

<sup>4</sup> 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.

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No comment

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### Health Insurance Amendment (Professional Services Review Scheme No. 2) Bill 2023

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No comment

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### Identity Verification Services (Consequential Amendments) Bill 2023

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*Advice to Parliament*

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### Identity Verification Services Bill 2023

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*Advice to Parliament*

**Identity verification facilities and services**  
*Rights to an effective remedy; equality and non-discrimination; privacy; social security*

The Identity Verification Services Bill 2023 seeks to authorise the Attorney-General's Department to develop, operate and maintain approved identity verification facilities, which support the Document Verification Service, Face Verification Service and Face Identification Service. It also seeks to authorise the collection, use and disclosure of identification information electronically communicated to these facilities or generated using the National Driver Licence Facial Recognition Solution. In general terms, the identity verification services verify the identity of a person by comparing identification information, including biometric information such as a facial image. The bill also provides when protected information can be recorded, disclosed and accessed by entrusted persons, which includes various APS employees as well as officers of a foreign government authority or public international organisation. The Identity Verification Services (Consequential Amendments) Bill 2023 seeks to authorise the minister to disclose personal information for the purpose of participating in identity verification services and permit the automated disclosure of such information.

The committee understands the need to ensure secure and efficient identity verification, which is essential to minimise the risk of identity theft and fraud. However, the committee is concerned about the impact on the right to privacy for the millions of Australians whose data is contained in the National Driver Licence Facial Recognition Solution database and the use of biometric identity verification services. While the committee considers that the measures pursue legitimate objectives it remains concerned that the measures may not represent a proportionate limit on the right to privacy. The committee considers that the measures are accompanied by numerous important safeguards, but notes that several of these safeguards are contained in other legislation, including state and territory legislation. Without a comprehensive review of the broader legislative framework governing the identity verification facilities and services, it is not possible to conclude whether these safeguards are sufficient to protect the right to privacy. The committee therefore considers that, depending on how the measures operate in practice,

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there remains a risk that the measures may impermissibly limit the right to privacy. If this did occur, it is not clear that an individual would have access to an effective remedy with respect to any violation of rights, as access to a remedy depends on the individual being notified of the breach. With respect to the right to equality and non-discrimination, the committee considers that it is not clear that the measures are accompanied by sufficient safeguards to mitigate the risk of data verification errors that may disproportionately impact certain groups (on the basis of racial identity) and lead to discriminatory decisions.

The committee has suggested that the proportionality of the identity verification framework would be assisted by a comprehensive governmental review of all legislation governing the identity verification facilities and services and National Driver Licence Facial Recognition Solution, particularly state and territory legislation and draws its human rights concerns to the attention of the Attorney-General and the Parliament.

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#### **Paid Parental Leave Amendment (More Support for Working Families) Bill 2023**

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While this bill, in extending the Paid Parental Leave scheme, promotes the right to social security, rights of the child, rights of women, and right to protection of the family the committee notes that items 9 and 11 seek to re-apply the newly arrived residents waiting period to the eligibility test for Paid Parental Leave (other than where applicants are exempt from the test), thereby preventing new arrivals from accessing parenting payment for two years. In relation to this, the committee draws attention to its prior consideration of measures applying this waiting period (see, Social Services Legislation Amendment (Consistent Waiting Periods for New Migrants) Bill 2021, [Report 12 of 2021](#), pp. 71-78).

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#### **Primary Industries (Consequential Amendments and Transitional Provisions) Bill 2023**

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No comment

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#### **Primary Industries (Customs) Charges Bill 2023**

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No comment

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#### **Primary Industries (Excise) Levies Bill 2023**

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No comment

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#### **Primary Industries (Services) Levies Bill 2023**

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No comment

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#### **Primary Industries Levies and Charges Collection Bill 2023**

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No comment

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#### **Primary Industries Levies and Charges Disbursement Bill 2023**

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No comment

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**Social Security and Other Legislation Amendment (Supporting the Transition to Work) Bill 2023**

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No comment

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## Legislative instruments

### Chapter 1: New and continuing matters

Legislative instruments registered on the [Federal Register of Legislation](#) between 7 October to 6 November 2023<sup>5</sup> 104

Legislative instruments commented on in report<sup>6</sup> 2

### Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response 2

## Charter of the United Nations (Listed Persons and Entities) Amendment (No. 2) Instrument 2023

### *Seeking Information*

### **Freezing of individuals' assets**

#### *Rights to fair hearing and privacy*

This legislative instrument lists seven individuals for counter-terrorism financing sanctions under Part 4 of the *Charter of the United Nations Act 1945* – the effect of which is to freeze existing money and assets of those listed and to make it an offence for a person to use or deal with a freezable asset (unless it is an authorised dealing) and to provide any future assets to listed persons. Of those persons listed, one person is stated to be located in Australia, thus enlivening Australia's human rights obligations.

Sanctions regime generally may promote human rights by operating to apply pressure to regimes and individuals with a view to ending the repressing of human rights and countering terrorism. However, for those in Australia who may be subject to sanctions, requiring ministerial permission to access money for basic expenses limits a person's private life as well as the privacy of their family. The

<sup>5</sup> 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](#).

<sup>6</sup> 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.

sanctions regime also limits the right to a fair hearing insofar as the minister, in making a listing, is not required to hear from the affected person at any time; or provide reasons for the listing; and there is no provision for merits review of any of the minister's decision (including any decision to grant, or not grant, a permit allowing access to funds).

On the basis of the human rights concerns identified by the committee previously in relation to sanctions regimes that apply to individuals, the committee has previously made a number of recommendations regarding sanctions regimes. These recommendations do not appear to have been implemented and as such, the committee is seeking the minister's advice in relation to this matter as well as seeking further information as to the compatibility of this instrument with the right to a private life.

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### Migration Amendment (Resolution of Status Visa) Regulations 2023

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#### *Seeking Information*

#### **Refusal of permanent visas on identity grounds**

*Right to protection of the family, equality and non-discrimination, liberty*

This measure requires that an application for a permanent 'Resolution of Status' visa must be refused where the person does not satisfy identity requirements. This applies to people who sought to claim asylum in Australia after travelling by boat without a valid visa before July 2013 and who are currently on a temporary visa.

This measure engages and may limit the right to protection of the family as it may separate family members, the right to equality and non-discrimination as it may have a disproportionate impact on people of certain nationalities, and the right to liberty as refusal of the visa may lead to mandatory immigration detention. The committee is seeking further information from the Minister for Home Affairs to assess its compatibility with these rights.

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### Social Security (Administration) (Public Interest Certificate Guidelines) (DEWR) Determination 2023

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#### *Advice to Parliament*

#### **Disclosure of information in the public interest**

*Multiple rights*

This legislative instrument establishes guidelines to assist the secretary of the Department of Employment and Workplace Relations in exercising their power to disclose social security information where this is in the public interest. Permitting the disclosure of personal social security information engages and may limit multiple human rights, including the right to privacy.

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Based on the information provided by the minister, the committee considers that some of the grounds for disclosure pursuant to a public interest certificate may constitute a proportionate limit on the right to privacy, noting the presence of relevant safeguards and the restricted circumstances in which information may be disclosed. However, noting a wide range of sensitive personal information could be disclosed pursuant to this certificate and there is no legislative requirement that a decision maker consider the right to privacy before issuing a public interest certificate, the committee is concerned that there may be some risk that this disclosure power could be exercised in circumstances that do not constitute a proportionate limit on the right to privacy.

The committee notes that if a person's disability and purported inability to give notice of their circumstances were to be used as a basis for issuing a certificate, without regard to the person's right to enjoy legal capacity on an equal basis with others, this is likely to be incompatible with the rights of persons with disability. The committee further notes that insufficient information has been provided to fully determine whether the measure permissibly limits other rights such as the right to equality and non-discrimination and the rights of the child.

The committee has suggested some amendments to the instrument to assist with the proportionality, and draws these human rights concerns to the attention of the minister and the Parliament.

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## Social Security (Remote Engagement Program Payment) Determination 2023

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### *Advice to Parliament*

#### **Remote engagement program**

*Rights to adequate standard of living; equality and non-discrimination; just and favourable conditions of work; social security; work*

This instrument determines the arrangements between the Commonwealth and Paupiyala Tjarutja Aboriginal Corporation and the Commonwealth and Ngaanyatjarra Council Aboriginal Corporation as the remote engagement program. It also determines the part of that program that is a remote engagement placement and the rate of the remote engagement program payment (that is, \$190 per fortnight). The remote engagement program is intended to replace the Community Development Program.

To the extent that the measure provides opportunities for job seekers to develop employment skills and facilitates the payment of a supplementary social security payment, it promotes the rights to work, social security, an adequate standard of living and equality and non-discrimination. However, these rights may also be limited. For example, if work performed as part of the remote engagement program placement was characterised as a form of employment for the purposes of international human rights law, the measure may

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engage and limit the right to just and favourable conditions of work, noting that the rate of payment is insufficient to amount to fair remuneration. The measure may also engage and limit the rights to social security and an adequate standard of living if the remote engagement program placement is ended and the payment removed on unreasonable grounds.

The committee considers the measure pursues a legitimate objective and notes that as the program is still in its trial phase and has thus not been subject to evaluation, it is not possible to conclude on its likely effectiveness to achieve the stated objective. The committee considers that the measure is accompanied by some important safeguards but remains concerned that a placement may be ended in circumstances that may not always be reasonable. Were this to happen, there is a risk that the payment may be removed on unreasonable grounds and thus constitute a retrogressive measure that risks impermissibly limiting the rights to social security and an adequate standard of living. The committee also considers, however, that were the supplementary payment to be removed only in circumstances that are reasonable, subject to due process, and provided for in law, the measure would likely be compatible with these rights.

The committee also remains concerned that if the placement were to constitute a form of employment for the purposes of international human rights law, the rate of pay for a minimum 15 hours per week (being \$6.33 per hour) is insufficient to amount to fair and equal remuneration. While the committee notes that the remote engagement program payment is in addition to the participant's other social security entitlements, were the participant to be paid the minimum wage for the hours worked as part of the program, they would receive a higher fortnightly income amount than that offered by the program. As such, if the placement were to constitute a form of employment for the purposes of international human rights law, the committee considers that the measure may not, in all circumstances, constitute a proportionate limitation on the right to just and favourable conditions of work. The committee further considers that if the measure impermissibly limits the above rights, it would also likely constitute unlawful discrimination, particularly with respect to Aboriginal and Torres Strait Islander peoples, as it is not clear that the differential treatment is based on reasonable and objective criteria.

The committee has suggested recommendations to assist with the proportionality of the measure and otherwise draws these human rights concerns to the attention of the Minister for Indigenous Australians and the Parliament.

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### Instrument imposing sanctions on individuals<sup>7</sup>

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A legislative instrument imposes 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.<sup>8</sup> However, as this legislative instrument does not appear to designate or declare any individuals who are currently within Australia's jurisdiction, the committee makes no comment in relation to this instrument at this stage.

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<sup>7</sup> See Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment (No. 2) Instrument 2023 [F2023L01391].

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