

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

Tuesday 3 March 2015

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Nineteenth Report of the 44th Parliament.

This report provides the committee's view on the compatibility with human rights as defined in the *Human Rights (Parliamentary Scrutiny) Act 2011* of bills introduced during the period 9 to 12 February 2015, one bill introduced on 3 December 2014 and legislative instruments received during the period 23 January 2015 to 12 February 2015. The report also includes consideration of legislation previously deferred by the committee, as well as responses to issues raised by the committee in previous reports.

Of the nine bills considered in this report, four are assessed as not raising human rights concerns and five raise matters requiring further correspondence with ministers. The committee has deferred its consideration of the remaining bills.

A number of the bills considered are scheduled for debate during the sitting week commencing 2 March 2015, including:

- the Appropriation (Parliamentary Departments) Bill (No. 2) 2014-2015; and
- the Defence Legislation Amendment (Military Justice Enhancements – Inspector-General ADF) Bill 2014.

As always, the report outlines the committee's examination of the compatibility of these bills with our human rights obligations, and I encourage my fellow Senators and others to examine the committee's report to better inform their consideration of proposed legislation.

As Senators' would be aware, the committee's purposes is to enhance understanding of and respect for human rights in Australia and to ensure appropriate recognition of human rights issues in legislative and policy development.

The committee seeks to achieve these outcomes through constructive engagement with proponents of legislation, and this is primarily done through a dialogue model in which the committee corresponds with relevant ministers and officials to identify and explore questions of human rights compatibility. The committee then reports its findings and recommendations, and in doing so strives to provide reports that clearly signpost the committee's analytical framework and the content of various human rights. The reports are intended to simply and succinctly set out the human rights analysis of legislation, and ultimately provide clear assessments of the compatibility of legislation that are accessible to members of Parliament and to the public more broadly.

In this regard, I would like to draw attention to the committee's consideration of the Crimes Legislation Amendment (Psychoactive Substances and Other Measures) Bill 2014, about which the committee provides its concluding analysis in this report. This bill

made a number of amendments to relevant Acts to improve Commonwealth criminal justice arrangements, including in relation to the regulating of psychoactive substances that are designed and manufactured to mimic the effects of illicit drugs.

These substances have presented particular challenges to law enforcement because, while they can be banned as they are identified, manufacturers have been able to easily alter their chemical composition to avoid the law.

To address this problem, the bill introduced new offences for importing substances presented to be serious drug alternatives and for importing psychoactive substances. However, to address the ease with which these substances may be created and altered, these offences were drafted to include both a reverse evidentiary burden—whereby the defendant is required to provide evidence that they can rely on a prescribed exception to the importation offences—and an extremely broad definition of what constitutes a 'psychoactive substance'.

While the committee noted the extremely challenging nature of responding to the emergence of new psychoactive substances, the committee raised a number of issues relating to the right to a fair trial and fair hearing rights and quality of law considerations.

The committee also raised a number of issues in relation to other measures in the bill, including in relation to the imposition of mandatory minimum sentences for certain firearm trafficking and

their potential limitation of the right not to be arbitrarily detained and the right to a fair trial and fair hearing rights.

The committee's concluding remarks on these and other issues exemplify the benefits of the human rights scrutiny dialogue and the way in which it can both inform the legislative process and improve legislative outcomes.

For example, in relation to the new offences, the report notes that the information provided in the minister's responses constructively and comprehensively addressed the matters raised by the committee, such that the committee could conclude that the offences are compatible with fair trial and fair hearing rights and quality of law considerations.

In respect of concerns raised in relation to the imposition of certain mandatory minimum sentences, the minister undertook to make a clarifying amendment to the EM for the bill, which the committee regards as having provided some greater protection of judicial discretion in sentencing.

Another case which I believe reflects on the ultimate purpose and benefit of human rights scrutiny can be seen in last Friday's report of the Parliamentary Joint Committee on Intelligence and Security, the PJCIS, in relation to the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014. The committee reported on this bill in its *Fifteenth Report of the 44th Parliament* (tabled on 14 November 2014), and will soon report on a response

recently received from the Attorney-General in relation to the matters raised by the committee.

It is gratifying for the committee to see that the substance of its analysis and concerns were clearly used to inform a number of the submissions to the PJCIS inquiry, and this serves as but one example that the committee's scrutiny dialogue is one that is able to inform the Parliament and the public in the broadest sense.

In this regard, it is important to remember that the greater recognition of human rights in the policy and legislative process is well served through an inclusive human rights scrutiny dialogue model, and that the advancement of human rights should not be regarded as only belonging within the preserve of human rights practitioners and international courts, tribunals and other bodies.

With these comments I commend the committee's Nineteenth Report of the 44th Parliament to the Senate.