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# Parliamentary Joint Committee on Human Rights

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Annual Report 2023

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PO Box 6100  
Parliament House  
Canberra ACT 2600

Phone 02 6277 3823  
Fax 02 6277 5767

Email: [human.rights@aph.gov.au](mailto:human.rights@aph.gov.au)  
Website: [http://www.aph.gov.au/joint\\_humanrights/](http://www.aph.gov.au/joint_humanrights/)

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# Membership of the committee

## Current Members

Mr Josh Burns MP, Chair	Macnamara, Victoria, ALP
Mr Henry Pike MP, Deputy Chair	Bowman, Queensland, LNP
Ms Jodie Belyea MP	Dunkley, Victoria, ALP
Senator Lisa Darmanin	Victoria, ALP
Senator Matt O’Sullivan	Western Australia, LP
Ms Alicia Payne MP	Canberra, ACT, ALP
Mr Graham Perrett MP	Moreton, Queensland, ALP
Senator Gerard Rennick	Queensland, LNP
Senator David Shoebridge	New South Wales, AG
Senator Jana Stewart	Victoria, ALP
Senator Lidia Thorpe	Victoria, IND
Ms Kylea Tink MP	North Sydney, New South Wales, IND

## Former members 2023

Mr Russell Broadbent MP, Deputy Chair (22.03.2023 – 16.11.2023)	Monash, Victoria, IND
The Hon David Coleman MP, Deputy Chair (03.08.2022 – 22.03.2023)	Banks, New South Wales, LP
Senator Karen Grogan (28.07.2022 – 24.06.2024)	South Australia, ALP
Mr Peter Khalil MP (28.07.2022 – 22.03.2023)	Wills, Victoria, ALP
Ms Peta Murphy MP (22.03.2023 – 04.12.2023)	Dunkley, Victoria, ALP
Senator Jacinta Nampijinpa Price (01.08.2022 – 13.06.2023)	Northern Territory, CLP

## Secretariat in 2023

Anita Coles, Committee Secretary

Charlotte Fletcher, Principal Research Officer

Rebecca Preston, Principal Research Officer

Geoffrey Fricke, Senior Research Officer

Anita Zovak, Legislative Research Officer

Charlotte Lim, Legislative Research Officer

Rashmi Chary, Legislative Research Officer

**External Legal Adviser**

Associate Professor Jacqueline Mowbray

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# Chapter 1

## Chapter 1 - Introduction

### Establishment of the committee

1.1 The committee was established under the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Act) in March 2012. The establishment of the committee was a key element of Australia's Human Rights Framework, which was launched on 21 April 2010, and which was intended to enhance the understanding of, and respect for, human rights in Australia.<sup>1</sup>

### Role of the committee

1.2 The establishment of the committee builds on the Parliament's established traditions of legislative scrutiny. Accordingly, the committee undertakes its scrutiny function as a technical inquiry relating to Australia's international human rights obligations. The committee does not consider the broader policy merits of legislation when performing its technical scrutiny function.

1.3 The committee's purpose 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.

### Functions and powers of the committee

1.4 The committee has the following functions under the Act:

- to examine bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue; and
- to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.

1.5 The powers and proceedings of the committee are set out in the committee's resolution of appointment and the Act.<sup>2</sup>

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<sup>1</sup> See, the then Attorney-General's second reading speech on the Human Rights (Parliamentary Scrutiny) Bill 2010: The Hon. Robert McClelland MP, Attorney-General, [House of Representatives Hansard, 30 September 2010, p. 271](#).

<sup>2</sup> The committee's resolution of appointment is available on its [webpage](#).

### **Definition of human rights and the Act**

1.6 Human rights are defined in the Act as those contained in the following seven human rights treaties to which Australia is a party:

- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- International Convention on the Elimination of All Forms of Racial Discrimination (ICERD);
- Convention on the Elimination of Discrimination against Women (CEDAW);
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT);
- Convention on the Rights of the Child (CRC); and
- Convention on the Rights of Persons with Disabilities (CRPD).

1.7 The committee's analysis of legislation is against the standards set out in these seven human rights treaties. The ICCPR and the ICESCR cover all the key civil and political and economic, social and cultural rights. For the most part, the five other treaties expand or elaborate on these rights in a more detailed way. This understanding is consistent with the approach the Attorney-General's Department has adopted in providing support to executive departments and agencies.

### **Committee membership**

1.8 The resolution of appointment governing the committee's operation during the reporting period provided that the committee consist of 10 members: three members of the House of Representatives drawn from the government party; two members of the House of Representatives drawn from the opposition or any other non-aligned member; two senators drawn from the government party; two senators drawn from the opposition; and one senator from a minority party or an independent Senator.<sup>3</sup>

1.9 The committee elects as its Chair a government member from either the House of Representatives or the Senate. The Deputy Chair is elected from one of the non-government members of the committee.

### **Structure of the annual report**

1.10 This report covers the period 1 January 2023 to 31 December 2023 (the reporting period). Mr Josh Burns MP was Chair of the committee during the reporting period in the 47th Parliament.

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<sup>3</sup> The *Attorney-General's Portfolio Miscellaneous Measures Act 2023* (which finally passed both Houses on 28 May 2024) expanded membership of the PJCHR (from 10 to 12 members).



1.11 Chapter 2 sets out the committee's mode of operation, its analytical framework and the scrutiny dialogue model. Chapter 3 reports on the work of the committee during the reporting period.

### **Acknowledgements**

1.12 The committee wishes to acknowledge the work and assistance of its external legal adviser during the reporting period, Associate Professor Jacqueline Mowbray.

1.13 The committee also wishes to acknowledge the assistance of ministers and associated departments and agencies during the reporting period. The responsiveness of ministers, departments and agencies to the committee's inquiries is critical to ensuring that the committee can perform its scrutiny function effectively.

1.14 Further, the committee wishes to particularly acknowledge the dedication and commitment of its former committee colleague, the late Peta Murphy MP. Ms Murphy had indicated that she became a member in order to participate in the inquiry into Australia's human rights framework.



# Chapter 2

## Chapter 2 - The committee's mode of operation

### Overview

- 2.1 The committee examines and reports on the human rights compatibility of all bills and legislative instruments that come before the Parliament. In keeping with the longstanding conventions of the Parliament's other scrutiny committees,<sup>1</sup> the committee adopts a technical approach to its scrutiny of legislation and does not consider the policy merits of the legislation.
- 2.2 During the reporting period, the committee met via a mixture of in-person meetings when both the House of Representatives and the Senate sat, and via tele-conference when Parliament was not sitting. The approach of meeting out of the sitting period initially arose in 2020 in response to the impacts of the COVID-19 pandemic on the parliamentary timetable. The committee continued to adopt this practice in 2023 to ensure the timeliness of its reports.
- 2.3 The committee seeks to conclude and report on its examination of bills while they are still before the Parliament, so that its findings may inform the legislative deliberations of the Parliament. The committee's ability to do so is, however, dependent on Parliament's legislative program and the timeliness of responses to the committee's requests. Where a bill is passed before the committee has been able to conclude its examination, the committee nevertheless completes its examination of the legislation and reports its findings to the Parliament.
- 2.4 The committee also examines all legislative instruments tabled in the Parliament, including legislative instruments that are exempt from the disallowance process.<sup>2</sup> The committee seeks to conclude and report on its examination of legislative instruments within the timeframe for disallowance prescribed by the *Legislation Act 2003* (generally 15 sitting days after tabling).<sup>3</sup>

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<sup>1</sup> The three scrutiny committees in the Parliament are the Senate Standing Committee for the Scrutiny of Bills; the Senate Standing Committee for the Scrutiny of Delegated Legislation (formerly the Senate Standing Committee on Regulations and Ordinances); and the Parliamentary Joint Committee on Human Rights.

<sup>2</sup> Legislative instruments may be exempt from disallowance as a result of exemptions in its enabling legislation, and the *Legislation Act 2003* also provides that certain legislative instruments are exempt from disallowance (see section 44).

<sup>3</sup> In the event that the committee's concerns cannot be resolved before the expiry of this period, the committee retains the option to give a 'protective' notice of motion to disallow the instrument, extending the disallowance period by a further 15 sitting days, to ensure that the ability of the Parliament to disallow the instrument is not lost pending the conclusion of the committee's examination.

### **The committee's analytical framework**

- 2.5 Australia has voluntarily accepted obligations under the seven core United Nations human rights treaties. It is a general principle of international human rights law that the rights protected by the human rights treaties are to be interpreted generously and any limitations on human rights are to be interpreted narrowly. Accordingly, the primary focus of the committee's reports is determining whether any identified limitation of a human right is permissible under international human rights law, and whether legislation could be applied in a way that may risk breaching human rights.
- 2.6 International human rights law recognises that permissible limits may be placed on most rights and freedoms—there are few absolute rights (that is, rights which cannot be limited in any circumstances).<sup>4</sup> All other rights may be limited as long as the limitation meets certain standards. In general, any measure that limits a human right must comply with the following criteria (the limitation criteria):
- be prescribed by law;
  - be in pursuit of a legitimate objective;
  - be rationally connected to (that is, effective to achieve) its stated objective; and
  - be a proportionate way to achieve that objective.
- 2.7 Where a bill or instrument limits a human right, the statement of compatibility should provide a detailed and evidence-based assessment of the measures against these limitation criteria.
- 2.8 Where relevant, the committee takes into account the views of human rights treaty bodies, as well as international and comparative human rights jurisprudence. These sources are relevant to the interpretation of the human rights against which the committee is required to assess legislation.

### ***Statements of compatibility***

- 2.9 The *Human Rights (Parliamentary Scrutiny) Act 2011* requires that each bill and disallowable legislative instrument be accompanied by a statement of compatibility.<sup>5</sup> The statement of compatibility serves as the starting point for the application of the committee's analytical framework, and sets out the legislation proponent's assessment of the extent to which the legislation engages human rights.

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<sup>4</sup> Absolute rights are: the right not to be subjected to torture, cruel, inhuman or degrading treatment or punishment (including the prohibition on non-refoulement); the right not to be subjected to slavery; the right not to be imprisoned for inability to fulfil a contract; the right not to be subject to retrospective criminal laws; the right to recognition as a person before the law.

<sup>5</sup> See *Human Rights (Parliamentary Scrutiny) Act 2011*, Part 3.

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- 2.10 The committee sets out its guidance in relation to statements of compatibility in its *Guidance Note 1*.<sup>6</sup>

### **The scrutiny dialogue model**

- 2.11 The committee's main function of scrutinising legislation is pursued through dialogue with ministers. Accordingly, where legislation raises a human rights concern which has not been adequately explained in the relevant statement of compatibility, the committee's usual approach is to publish an initial report setting out the human rights concerns it has in relation to the legislation and advising that it intends to seek further information from the minister. Any response from the minister is subsequently considered and published alongside the committee's concluding report on the matter. As well as making concluding remarks on the human rights compatibility of the relevant legislation, the committee may make recommendations to strengthen the compatibility of the legislation with Australia's human rights obligations.
- 2.12 In some cases, ministers may undertake to address the committee's concerns in the future (for example, by amending legislation or undertaking to conduct a review of the legislation in due course) or may advise that amendments have been made to address the committee's earlier concerns when introducing a future iteration of a bill.
- 2.13 In addition, the committee resolved on its establishment in the 47th Parliament that its secretariat should, where it considered it appropriate, engage directly with relevant departments immediately after the legal adviser and secretariat have identified minor, technical human rights concerns with legislation, in an attempt to resolve the matter before involving the minister or committee by reporting on the legislation publicly. Further, where a statement of compatibility is considered to be inadequate (but where it nonetheless does not appear that the legislation raises human rights concerns), the committee authorised the Committee Secretary to write to departmental officials setting out the committee's expectations for future reference.

### **Structure of the committee's scrutiny reports**

- 2.14 The structure of the committee's scrutiny reports reflects the progress of the dialogue model described above, with matters proceeding from an initial report describing the human rights engaged by the bill, to a concluding report that analyses any information received by the legislation proponent in response to the committee's initial report. The committee may also provide advice to parliament without first seeking a response from the minister, including where it has previously considered similar legislation, or where it appears that the relevant legislation will pass through the Parliament quickly.

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<sup>6</sup> See Guidance Note 1, Expectations for statements of compatibility, available on the committee's [webpage](#).

**Report snapshot**

- 2.15 The committee's report structure continues to feature a summary snapshot at the start of the report. This includes statistics regarding the number of bills and legislative instruments considered and commented on in the report, and a summary of the committee's comments in the report. The summary of the committee's views is intended to make the reports more accessible.
- 2.16 The summary snapshot also includes any minor comments the committee has made with respect to legislation. The committee may make a minor comment with respect to private members' or senators' bills where a bill appears to engage and limit human rights and this has not been adequately explained in the statement of compatibility. The committee will generally note that it may request further information with respect to the bill if it were to proceed to further stages of debate.<sup>7</sup> This approach assists in enabling the committee to manage its high workload and prioritise those bills which are more likely to move to further stages of debate.
- 2.17 The committee may also make a minor comment in relation to a bill that raises similar or related concerns to those which the committee has recently raised. For example, the committee made a minor comment on the Digital ID Bill 2023 in *Report 14 of 2023*, reiterating its previous concerns regarding the sharing of personal information for secondary purposes, as had been recently set out in *Report 12 of 2023* in relation to the Identity Verification Services Bills.<sup>8</sup>

**New and continuing matters**

- 2.18 Chapter 1 of the committee's reports include new and continuing matters. This generally includes all bills introduced during the preceding sitting week and legislative instruments tabled in the preceding period. Where the committee considers that a bill or instrument engages human rights and further information is required in order for the committee to complete its examination, these bills and instruments are the subject of substantive report entries describing the relevant measures, the human rights engaged and limited by the measure, and the information that is required in order for the committee to complete its assessment. Where the committee has considered similar issues or where it decides to draw its concerns or certain issues directly to the Parliament, Chapter 1 may also include entries that do not seek a response from the relevant minister.
- 2.19 Chapter 1 also considers continuing matters (or further response required matters), where the committee has received a response from the legislation proponent, but requires further information in order to conclude its examination

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<sup>7</sup> See, for example, the committee's minor comment on the Customs Amendment (Preventing Child Labour) Bill 2023 in [Report 14 of 2023](#) (19 December 2023) p. 3.

<sup>8</sup> Parliamentary Joint Committee on Human Rights, [Report 14 of 2023](#) (19 December 2023) p. 3.

of the matter. Where the committee considers that legislation does not engage, or only marginally engages, human rights; promotes human rights; and/or permissibly limits human rights, it lists these bills in a 'no comment' section of the report, or in relation to instruments, states it has no comment in relation to the remaining instruments registered in the relevant period.<sup>9</sup>

### ***Concluded matters***

2.20 Chapter 2 of the committee's reports examine responses received in relation to the committee's requests for information, on the basis of which the committee has concluded its examination of the legislation in question. Ministerial responses are published in full alongside the report on the committee's website.<sup>10</sup> These responses are also extracted and analysed in Chapter 2 of the report. As noted above, the committee's concluding remarks on legislation may include findings as to the human rights compatibility of the legislation, and recommendations to address any human rights concerns.

### **Legal advice**

2.21 The committee is assisted by an external legal adviser on a part-time basis, who is appointed by the Presiding Officers of the Parliament. The committee's legal adviser during the reporting period was Associate Professor Jacqueline Mowbray. Associate Professor Mowbray has extensive research and teaching experience in international law and human rights. She has also published widely on related matters, including, as co-author, of a leading work on the International Covenant on Economic, Social and Cultural Rights. Associate Professor Mowbray previously served as co-director of the Sydney Centre for International Law and as editor of the *Australian International Law Journal*. During her time as legal adviser to the committee she remained employed by the University of Sydney.

2.22 In addition to the external legal adviser, the human rights committee secretariat also includes staff with expertise in international human rights law and legislative scrutiny.

### **Committee publications and resources**

2.23 In addition to its regular reports on the human rights compatibility of legislation, the committee has produced a number of publications and resources

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<sup>9</sup> Each report states that the committee examines the legislative instruments registered on the Federal Register of Legislation during a specified period. Due to the very high volume of legislative instruments examined by the committee, instruments on which no substantive comment is made are not listed in the report itself. All legislative instruments scrutinised by the committee during the stated period can be viewed on the Federal Register of Legislation using its [advanced search function](#).

<sup>10</sup> Ministerial responses are available on the committee's [webpage](#).

to assist ministers, departments and interested parties more generally in engaging with the committee and its work.

### *Committee guidance notes*

2.24 The committee has produced two guidance notes, which are available on the committee's [webpage](#).

#### [Guidance Note 1](#) – *Expectations for statements of compatibility*

2.25 This note sets out the committee's approach to human rights assessments and provides guidance as to statements of compatibility. It is primarily designed to assist in the preparation of statements of compatibility.

#### [Guidance Note 2](#) – *Offence provisions, civil penalties and human rights*

2.26 This guidance note sets out some of the key human rights compatibility issues in relation to provisions that create offences and civil penalties. It is not intended to be exhaustive, but to provide guidance on the approach in relation to assessing the human rights compatibility of such provisions.

### *Guide to human rights*

2.27 The committee's [Guide to human rights](#) (the guide) provides an introduction to the key human rights protected by the human rights treaties relevant to the committee's assessments of legislation.

2.28 The guide is intended to provide a brief and accessible overview of Australia's human rights obligations, the key human rights considered by the committee, and the manner in which human rights may be permissibly limited. Case studies are provided to illustrate how human rights may be engaged and limited in practice. The guide also includes a references section for those seeking more comprehensive information about the rights listed in the guide. The guide is available on the committee's [webpage](#).

### *Scrutiny Update*

2.29 Following the tabling of a scrutiny report, the committee secretariat sends a *Scrutiny Update* publication to all parliamentarians, Senate committee office staff and individuals and organisations that have subscribed to receive the publication. The *Scrutiny Update* provides a summary of the legislation commented on by the committee as set out in full in its scrutiny report. It includes information that may be useful to parliamentarians when debating legislation and also serves to raise awareness about the role and functions of the committee.

### *Index of bills and legislative instruments*

2.30 The [Index of bills and legislative instruments](#) lists all the bills examined by the committee, and those legislative instruments in relation to which the committee has substantively commented on. The index contains a shorthand description of any rights engaged by the legislation and the action taken by the committee (that



is, whether the committee made no comment, an advice-only comment, or a comment requiring a response from the minister); and the relevant report(s) in which the committee's full comments may be found.

### *Scrutiny reports and databases*

2.31 The committee's scrutiny reports themselves are also a key resource. These are available on the committee's [webpage](#). They can be downloaded as single PDF documents or separate chapters. The scrutiny reports are also available on the Australasian Legal Information Institute (AustLII) [website](#) where each report entry for legislation is available separately and is individually searchable.

### *Interaction with other committees*

2.32 The committee also assists the work of the Senate's eight legislative standing committees,<sup>11</sup> or relevant joint committees,<sup>12</sup> by drawing attention to comments it has made in its scrutiny reports to the relevant committee secretariat about a bill in which the other committee is currently inquiring into.

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<sup>11</sup> Such as the Senate Standing Committees on Community Affairs, Economics, Education and Employment, Legal and Constitutional Affairs; the Select Committee on Workforce Australia Employment Services; and the Joint Committee on Electoral Matters.

<sup>12</sup> For example, the Parliamentary Joint Committee on Intelligence and Security.



# Chapter 3

## Chapter 3- Work of the committee in 2023

3.1 This chapter provides information about the work of the committee during 2023,<sup>1</sup> including statistics, major themes arising from the legislation examined, and information as to the committee’s impact during the reporting period.

### Legislation considered

3.2 During the reporting period, the committee assessed legislation for its compatibility with Australia’s international human rights obligations including:

- a total of 231 bills—of these bills, the committee made no comment on 78 per cent (180); commented on 6 per cent (13) to draw Parliament’s attention to the bill but did not require a response;<sup>2</sup> sought ministerial advice on 10 per cent (24 plus one further response required);<sup>3</sup>
- a total of 1 957 legislative instruments<sup>4</sup>—of these legislative instruments, the committee did not comment on 98.6 per cent (1 930); commented on 0.4 per cent (7) to draw Parliament’s attention to the legislative instruments but did not require a response; and sought ministerial advice on 1 per cent (20) of the legislative instruments.

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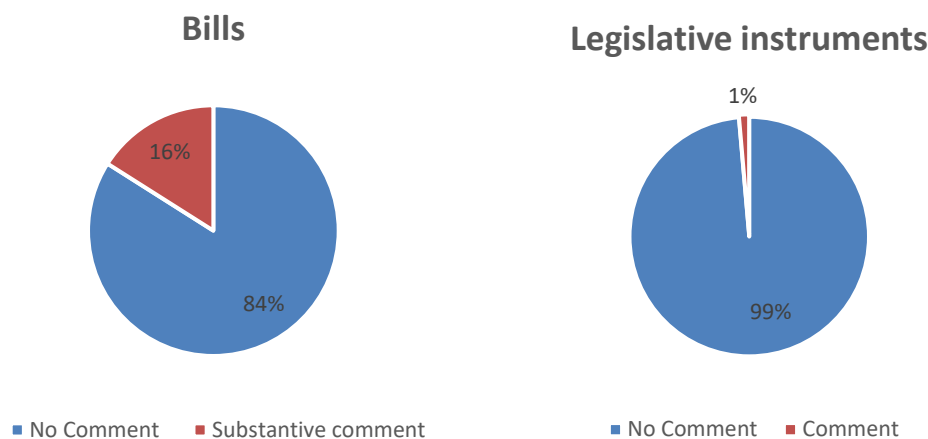
<sup>1</sup> The reporting period covers 1 January 2023 to 31 December 2023. The committee’s first scrutiny report of the reporting period, [Report 1 of 2023](#), was tabled on 8 February 2023 and its final scrutiny report of 2023, [Report 14 of 2023](#), was tabled on 19 December 2023.

<sup>2</sup> Bills included in the list ‘Advice Only Private Bills’ were treated as bill with no committee comment for statistical purposes.

<sup>3</sup> The committee also indicated, in relation to 14 private member’s and senator’s bills (6 per cent of all bills considered), that the bill appeared to engage human rights and if the bill did proceed to further stages of debate then it may request further information. These are treated as a ‘no comment’ for the purposes of the pie chart below.

<sup>4</sup> Note: [Report 1 of 2023](#) reported on legislative instruments registered between 11 November 2022 – 2 January 2023, and [Report 14 of 2023](#) reported on legislative instruments registered up to 7 December 2023. This is because legislative instruments are continuously being registered on the Federal Register of Legislation and are not reported on immediately.

**Figure 3.1: Legislation considered during the reporting period**



3.3 These proportions of bills and legislative instruments in relation to which the committee made a substantive comment in 2023 broadly reflect trends observed in relation to the committee's operation from 2012–2022.<sup>5</sup>

### Reports tabled during the period

3.4 The committee tabled fourteen scrutiny reports during the reporting period.<sup>6</sup> This is a usual number for a twelve-month period.

3.5 The committee also tabled its [Annual Report 2022](#) on 21 June 2023.

### Commonly engaged rights

3.6 The most commonly engaged human rights identified in legislation substantively commented on during the reporting period included both civil and political rights and economic, social and cultural rights. These were, in order of most commonly engaged, the:

- (1) right to privacy;<sup>7</sup>
- (2) right to equality and non-discrimination;<sup>8</sup>
- (3) rights of the child;<sup>9</sup>

<sup>5</sup> From 2012–2022, the committee examined a total of 2 254 bills and commented on 602 (27 per cent), and examined more than 18 000 legislative instruments, commenting on 466 (an average of 3 per cent overall). See further, [Reflections on the 10th anniversary of the Parliamentary Joint Committee on Human Rights](#) (August 2022).

<sup>6</sup> From *Report 1 of 2023* to *Report 14 of 2023*. The committee's scrutiny reports are available on its [webpage](#).

<sup>7</sup> International Covenant on Civil and Political Rights, article 17.

<sup>8</sup> International Covenant on Civil and Political Rights, articles 2 and 26; International Covenant on Economic, Social and Cultural Rights, article 2(2).

<sup>9</sup> Convention on the Rights of the Child.

- (4) right to social security;<sup>10</sup>
- (5) right to an adequate standard of living;<sup>11</sup>
- (6) right to health;<sup>12</sup>
- (7) rights of persons with disability;<sup>13</sup>
- (8) right to an effective remedy;<sup>14</sup>
- (9) right to protection of the family/respect for family life;<sup>15</sup>
- (10) right to freedom of expression or opinion;<sup>16</sup>
- (11) right to freedom of movement;<sup>17</sup> and
- (12) right to liberty.<sup>18</sup>

3.7 During the reporting period, the rights listed above accounted for 69 per cent of rights which the committee reported on substantively within both primary and delegated legislation. The right to privacy continued to be the most frequently considered right on which the committee commented.

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<sup>10</sup> International Covenant on Economic, Social and Cultural Rights, article 9.

<sup>11</sup> International Covenant on Economic, Social and Cultural Rights, article 11.

<sup>12</sup> International Covenant on Economic, Social and Cultural Rights, article 12.

<sup>13</sup> Convention on the Rights of Persons with Disability.

<sup>14</sup> International Covenant on Civil and Political Rights, article 2(3).

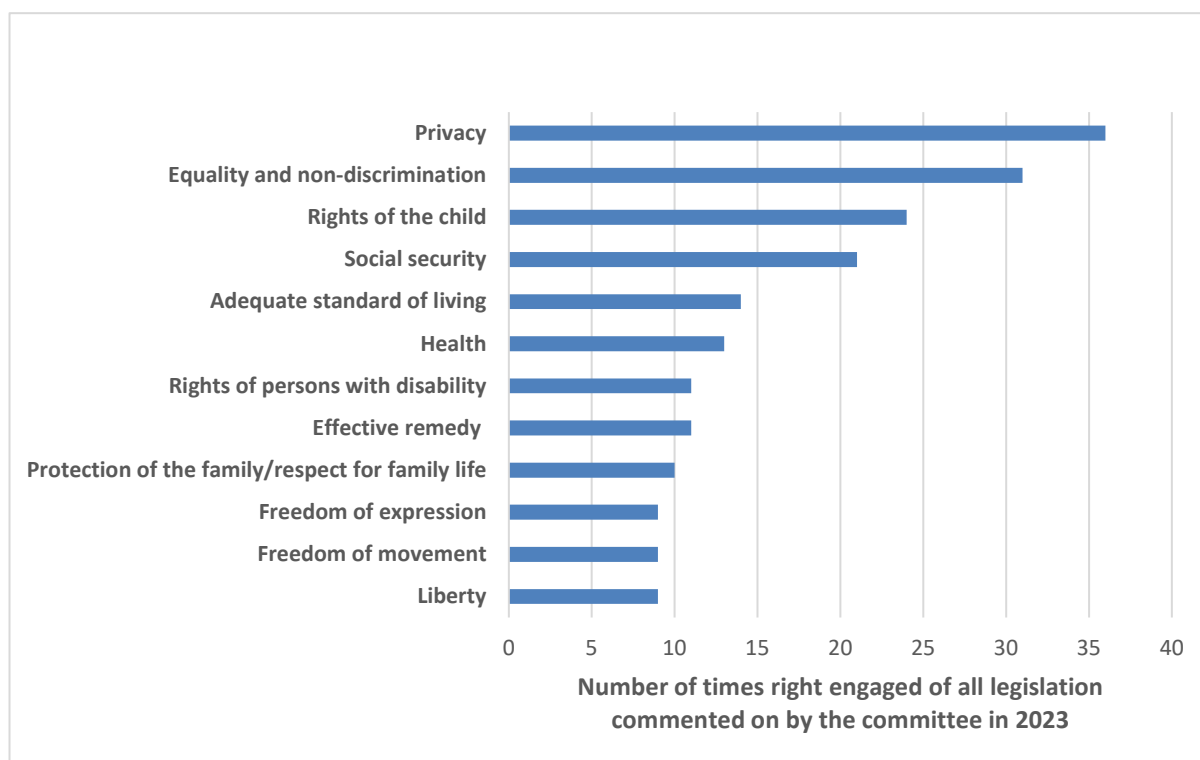
<sup>15</sup> International Covenant on Economic, Social and Cultural Rights, article 10(1); International Covenant on Civil and Political Rights, article 17 and 23.

<sup>16</sup> International Covenant on Civil and Political Rights, articles 19 and 20.

<sup>17</sup> International Covenant on Civil and Political Rights, article 12.

<sup>18</sup> International Covenant on Civil and Political Rights, article 9.

**Figure 3.2: Human rights engaged by legislation commented on in 2023**



## Timeliness

### *Timeliness of committee reports*

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

### *Bills*

3.9 During this reporting period, the committee concluded its consideration on the vast majority of bills prior to their passage. However, on some occasions, bills were passed by the Parliament before the committee could finalise its deliberations.<sup>19</sup> During the reporting period, nine per cent of bills passed prior to (or on the same day) the committee tabled its final report (21 bills out of 231).

<sup>19</sup> In some instances where this occurred, the committee noted with concern that the short timeframe within which a bill was passed did not provide the committee with adequate time to scrutinise the legislation and seek further information in order to provide appropriate advice to Parliament as to the human rights compatibility of the bill. For example, the Migration Amendment (Bridging Visa Conditions) Bill 2023 passed both Houses of Parliament on the same day of its introduction, 16 November 2023, prior to the committee reporting on 29 November 2023. See [Report 13 of 2023](#), Migration Amendment (Bridging Visa Conditions) Bill 2023, Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023, pp. 12–42.

However, for seven of the 21 bills that passed before the committee had published a final report, the committee had published an initial comment in advance of its passage. As the committee's initial reports generally contain a detailed human rights analysis, this means that a human rights analysis of 94 per cent of new bills was available to inform members of parliament prior to the passage of legislation.<sup>20</sup>

### *Legislative instruments*

3.10 Of the 1 957 legislative instruments assessed by the committee during this reporting period, the committee substantively reported on 1.4 per cent of those instruments (27). Of those instruments subject to disallowance, the committee concluded its examination of 100 per cent of these legislative instruments within the disallowance timeframe.

### *Timeliness of responses*

3.11 The responsiveness of ministers to the committee's requests for information regarding human rights concerns is critical to the effectiveness of the scrutiny process.<sup>21</sup> Although the committee requests a response within a specified timeframe (generally within two weeks), this request does not affect the passage of the legislation.<sup>22</sup> Further, there is no legal or procedural requirement that a minister provide the response within this period.

3.12 During 2023, the committee made 44 requests for additional information from ministers,<sup>23</sup> 42 of which were received during the 2023 reporting period. 22 of the responses received in 2023 (52 per cent) were received within the requested time frame (including where an extension had been provided). The remaining 20 responses were received after the requested due date, however four of those late responses (nine per cent of all those requested) were received just one day late.<sup>24</sup>

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<sup>20</sup> For further information on the committee's scrutiny process see Chapter 2, 'The scrutiny dialogue model'.

<sup>21</sup> For further information on the committee's scrutiny process see Chapter 2, 'The scrutiny dialogue model'.

<sup>22</sup> In contrast, if bills are referred to a standing or select committee they cannot be considered in a committee of the whole until that committee reports, see Senate standing order 115. This does not apply to the consideration of bills by the scrutiny committees, such as the Parliamentary Joint Committee on Human Rights or the Senate Standing Committee for the Scrutiny of Bills.

<sup>23</sup> There was also one request made to the Minister for Social Services seeking further information regarding the Social Services Legislation Amendment (Child Support Measures) Bill 2023, following an initial response in [Report 6 of 2023](#). This was concluded in [Report 8 of 2023](#).

<sup>24</sup> For an in-depth analysis of the trend of increased timeliness in ministerial responses from 2012 to 2022, see *Reflections on the 10<sup>th</sup> anniversary of the Parliamentary Joint Committee on Human Rights*, available [online](#).

### **Inquiry into Australia's Human Rights Framework**

3.13 On 15 March 2023, pursuant to section 7(c) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, the Attorney-General referred to the committee the following matters for inquiry and report by 31 March 2024:

- to review the scope and effectiveness of Australia's 2010 Human Rights Framework and the National Human Rights Action Plan;
- to consider whether the Framework should be re-established, as well as the components of the Framework, and any improvements that should be made;
- to consider developments since 2010 in Australian human rights law (both at the Commonwealth and State and Territory levels) and relevant case law; and
- to consider any other relevant matters.

3.14 During the reporting period, the committee received 335 public submissions, over 4,000 form or campaign letters, and held six public hearings, during which it heard evidence from a range of community groups, religious organisations, government bodies and experts. All 4,000 form letters were in support of a Human Rights Act and of the submissions, over 87 per cent were in favour and only 4 per cent were opposed.

### **Inquiry into Compulsory Income Management**

3.15 In September 2023, the committee was given the function (under section 243AA of the *Social Security (Administration) Act 1999*) to review compulsory enhanced income management and compulsory income management for compatibility with human rights and report to the Parliament.

3.16 The committee must complete its first review by 4 September 2024, and subsequent reviews must be completed within three years thereafter.

### **Major themes**

3.17 In 2023, the committee continued to comment on a wide range of legislation. The legislation considered across this period reflected several of the major themes that the committee has observed since its establishment in 2012. These include legislation relating to migration, social security, and the collection, use and sharing of personal information.

### **Migration**

3.18 The committee considered numerous bills and legislative instruments that introduced, extended or amended various measures relating to migration.<sup>25</sup>

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<sup>25</sup> See, for example, Parliamentary Joint Committee on Human Rights, Migration Amendment (Aggregate Sentences) Bill 2023, [Report 2 of 2023](#) (8 March 2023) pp. 11–33; Migration (Regional Processing Country – Republic of Nauru) Designation (LIN 23/017), [Report 4 of 2023](#) (29 March 2023) pp. 26–34 and [Report 6 of 2023](#) (14 June 2023) pp. 65–86; Migration (Specification of evidentiary



These measures frequently engaged and limited multiple human rights. In general, the committee considered objectives such as protecting national security and the safety of the Australian community to be capable of constituting legitimate objectives for the purposes of international human rights law. However, questions often arose as to the necessity of the measures and whether they addressed a concern pressing and substantial enough to warrant limiting rights. The committee also raised significant concerns regarding proportionality, particularly where measures involved arbitrary detention and the exercise of coercive powers.

- 3.19 For example, the committee commented on various legislation introduced and passed by both Houses of Parliament in response to the decision of the High Court of Australia in *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs*,<sup>26</sup> which found the detention of non-citizens for whom there is no real prospect of removal from Australia becoming practicable in the reasonably foreseeable future to be unlawful. On 16 November 2023, the Migration Amendment (Bridging Visa Conditions) Bill 2023 (the first bill, now Act) was introduced and passed both Houses of Parliament on the same day. It amended the *Migration Act 1958* (Migration Act) and the Migration Regulations 1994 to grant certain non-citizens for whom there is no real prospect of their removal from Australia becoming practicable in the reasonably foreseeable future a Subclass 070 (Bridging (Removal Pending)) visa subject to specified mandatory visa conditions, breach of which is a criminal offence carrying a mandatory minimum sentence.
- 3.20 On 27 November 2023, the Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 (the second bill, now Act) was introduced into the House of Representatives and passed that chamber the same day. At its introduction, it sought to complement and reinforce the amendments introduced by the first bill. In particular, it sought to amend the Migration Act

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requirements – family violence) Instrument (LIN 23/026) 2023, [Report 6 of 2023](#) (14 June 2023) pp. 26–29 and [Report 8 of 2023](#) (2 August 2023) pp. 154–163; Migration (Granting of contributory parent visas, parent visas and other family visas in financial year 2022/2023) Instrument (LIN 23/016) 2023, [Report 8 of 2023](#) (2 August 2023) pp. 97–100 and [Report 9 of 2023](#) (6 September 2023) pp. 170–180; Migration Amendment (Resolution of Status Visa) Regulations 2023, [Report 12 of 2023](#) (15 November 2023) pp. 20–30 and [Report 13 of 2023](#) (29 November 2023) pp. 49–68; Migration Amendment (Bridging Visa Conditions) Bill 2023 and Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023, [Report 13 of 2023](#) (29 November 2023) pp. 12–42; Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Bill 2023 and Crimes Legislation Amendment (Community Safety Orders and Other Measures) Regulations 2023, [Report 14 of 2023](#) (19 December 2023) pp. 31–59; Australian Citizenship Amendment (Citizenship Repudiation) Bill 2023, [Report 14 of 2023](#) (19 December 2023) pp. 9–30.

<sup>26</sup> See *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs & Anor* [2023] HCATrans 154 (8 November 2023); *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] HCA 37 (28 November 2023).

to introduce new criminal offences with mandatory minimum sentences for breach of certain visa conditions and to empower authorised officers to do all things necessary or convenient in relation to monitoring devices and related monitoring equipment, and to collect, use or disclose to any other person personal information relating to the visa holder. On 29 November 2023 in *Report 13 of 2023*,<sup>27</sup> the committee sought a response from the Minister for Home Affairs in relation to compatibility of the first and second bills with a range of human rights.<sup>28</sup>

- 3.21 On 5 December 2023, the Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023 (the third bill, now Act) was introduced into the Senate and passed the same day, subject to significant government amendments.<sup>29</sup> The amendments introduced a scheme for the making of Community Safety Orders. In particular, it allowed the minister to apply to a Supreme Court for a community safety detention order, which would cause a person to be detained in prison, or a community safety supervision order, which would cause a person to be subject to a number of conditions, breach of which would be a criminal offence. On 7 December 2023, the Crimes Legislation Amendment (Community Safety Orders and Other Measures) Regulations 2023 was registered. This legislative instrument amended the Criminal Code Regulations 2019 to prescribe, for the purposes of section 394.44 of this measure, a number of persons and entities from whom the minister may request information, and to whom the minister may disclose information. The committee commented on the third bill and related regulations in *Report 14 of 2023*.<sup>30</sup>
- 3.22 In general, the committee considered that the various measures introduced in response to the High Court decision pursued the legitimate, and extremely important, objective of protecting community safety. However, the committee considered there remained questions as to whether the measures were accompanied by sufficient safeguards such that the limitations on rights would be proportionate, and as such, considered it had not been established that the

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<sup>27</sup> Migration Amendment (Bridging Visa Conditions) Bill 2023 and Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023), [Report 13 of 2023](#) (29 November 2023) pp. 12–42.

<sup>28</sup> Including the rights to liberty, life, security of person, privacy, work, fair trial, adequate standard of living, health, social security and effective remedy; freedom of expression, movement and association; criminal process rights; and prohibition on inhuman and degrading treatment.

<sup>29</sup> Migration Amendment (Bridging Visa Conditions and Other Measures) Bill 2023, government amendments, [Sheet SY101]. See also supplementary explanatory memorandum. This also included a change of name to the bill, to the Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Bill 2023.

<sup>30</sup> Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Bill 2023 and Crimes Legislation Amendment (Community Safety Orders and Other Measures) Regulations 2023, [Report 14 of 2023](#) (19 December 2023) pp. 31–59.

measures were compatible with multiple human rights.<sup>31</sup> Additionally, the committee noted that a number of the bills passed both Houses of Parliament on the same day they were introduced and acknowledged that while urgent bills are sometimes necessary, this meant the committee was unable to scrutinise the bills for compatibility with human rights prior to their passage.

### *Social security*

- 3.23 The committee considered various measures relating to social security, including measures relating to compulsory income management.<sup>32</sup> For example, the committee commented on the Social Security (Administration) Amendment (Income Management Reform) Bill 2023 (now Act) and related legislative instruments, which expanded access to, and operationalised key aspects of, the enhanced income management regime under part 3AA of the *Social Security (Administration) Act 1999* (Social Security Act) as well as the income management regime under part 3B of the Social Security Act.<sup>33</sup>
- 3.24 The committee has considered measures relating to compulsory income management on numerous occasions since 2013<sup>34</sup> and has consistently stated that such measures engage multiple human rights. In general, the committee considered that to the extent that income management ensures a portion of an individual's welfare payment is available to cover essential goods and services, the income management regime could have the potential to promote rights,

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<sup>31</sup> See Migration and Other Legislation Amendment (Bridging Visas, Serious Offenders and Other Measures) Bill 2023 and Crimes Legislation Amendment (Community Safety Orders and Other Measures) Regulations 2023, [Report 14 of 2023](#) (19 December 2023) p. 58.

<sup>32</sup> See, for example, Parliamentary Joint Committee on Human Rights, Social Security (Administration) Amendment (Income Management Reform) Bill 2023, [Report 4 of 2023](#) (29 March 2023) pp. 9–25 and [Report 5 of 2023](#) (9 May 2023) pp. 58–80; Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2023, [Report 4 of 2023](#) (29 March 2023) pp. 35–42 and [Report 5 of 2023](#) (9 May 2023) pp. 77–88; Social Security and Other Legislation Amendment (Miscellaneous Measures) Bill 2023, [Report 9 of 2023](#) (6 September 2023) pp. 28–33; Social Security (Remote Engagement Program Payment) Determination 2023, [Report 10 of 2023](#) (13 September 2023) pp. 5–18 and [Report 12 of 2023](#) (15 November 2023) pp. 83–104; Social Security (Administration) Income Management Regime instruments, [Report 11 of 2023](#) (18 October 2023) pp. 42–51; Social Security (Administration) (Public Interest Certificate Guidelines) (DEWR) Determination 2023, [Report 11 of 2023](#) (18 October 2023) pp. 52–58.

<sup>33</sup> Parliamentary Joint Committee on Human Rights, Social Security (Administration) Amendment (Income Management Reform) Bill 2023, [Report 4 of 2023](#) (29 March 2023) pp. 9–25 and [Report 5 of 2023](#) (9 May 2023) pp. 58–80; and Social Security (Administration) Income Management Regime instruments, [Report 11 of 2023](#) (18 October 2023) pp. 42–51.

<sup>34</sup> The committee conducted an inquiry into three Acts providing for income management (known as the Stronger Futures package of legislation) in 2013 and again in 2016. See Parliamentary Joint Committee on Human Rights, [Eleventh Report of 2013: Stronger Futures in the Northern Territory Act 2012 and related legislation](#) (June 2013) pp. 45–62; and [2016 Review of Strong Futures measures](#) (16 March 2016) pp. 37–62.

including the right to an adequate standard of living and the rights of the child. The committee also considered that providing participants of part 3AA enhanced income management with access to the SmartCard, which offers superior technology and banking functions as well as improved access to businesses, was a positive measure.

- 3.25 However, the committee also found that subjecting an individual to compulsory income management both under part 3AA and part 3B of the Social Security Act and restricting how they may spend a portion of their social security payment limits the rights to social security, privacy, equality and non-discrimination (insofar as the measures have a disproportionate impact on certain groups with protected attributes, particularly Aboriginal and Torres Strait Islander peoples), the rights of the child and potentially the right to an adequate standard of living (if being subject to compulsory income management caused difficulties in accessing and meeting basic needs).
- 3.26 In assessing whether these limitations were permissible, the committee generally considered the objective underpinning compulsory income management, that is, to combat social harms caused by the use of harmful products, to be legitimate. However, the committee questioned the necessity of extending compulsory income management into the foreseeable future, particularly in light of previous statements made by the minister to this committee regarding the government's intention to make income management voluntary in the future.<sup>35</sup> The committee considered that based on evaluations of the previous cashless debit card and part 3B income management regimes thus far, it had not been demonstrated that compulsory income management has been effective to achieve (that is, rationally connected to) the stated objective. With respect to proportionality, the committee concluded that, in the absence of adequate safeguards and sufficient flexibility to consider individual circumstances, and in light of the potentially significant interference with human rights that may result from participation in the regime, compulsory income management risks impermissibly limiting the rights to social security, privacy, equality and non-discrimination and the rights of the child as well as potentially the right to an adequate standard of living if participants experienced difficulties in meeting basic needs.
- 3.27 Additionally, during this reporting period, the committee was given the function<sup>36</sup> to review compulsory enhanced income management and compulsory income management for compatibility with human rights and

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<sup>35</sup> Parliamentary Joint Committee on Human Rights, Rights, Social Security (Administration) Amendment (Income Management Reform) Bill 2023, [Report 4 of 2023](#) (29 March 2023) p. 19; Social Security (Administration) Amendment (Repeal of Cashless Debit Card and Other Measures) Bill 2022, [Report 5 of 2022](#) (20 October 2022) pp. 39–55.

<sup>36</sup> *Social Security (Administration) Act 1999*, section 243AA.

report to the Parliament. The above legislation will therefore be considered again by the committee as part of its first review, which must be completed by 4 September 2024.<sup>37</sup>

### *Collection, use and sharing of personal information*

- 3.28 The committee considered various measures relating to the collection, use and sharing or disclosure of personal information. Such measures engage and limit the right to privacy, which includes respect for private and confidential information, particularly the storing, use and sharing of such information, as well as the right to control the dissemination of information about one's private life. Other rights may also be engaged depending on the type of personal information collected and the persons to whom such information is shared.
- 3.29 For example, the committee commented on the Identity Verification Services Bill 2023 and the Identity Verification Services (Consequential Amendments) Bill 2023 (now Acts).<sup>38</sup> The Identity Verification Services Bill 2023 authorised 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 authorised 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 provided when protected information can be recorded, disclosed and accessed by entrusted persons, which includes various Australian Public Service employees as well as officers of a foreign government authority or public international organisation. The Identity Verification Services (Consequential Amendments) Bill 2023 authorised the minister to disclose personal information for the purpose of participating in identity verification services and permitted the automated disclosure of such information.
- 3.30 While the committee considered the measures pursued the legitimate objective of preventing identity fraud and theft and ensuring secure and efficient identity verification, it remained concerned that the measures did not represent a proportionate limitation on the right to privacy, particularly in light of the large dataset held in the National Driver Licence Facial Recognition Solution and the use of biometric data. The committee considered that while the measures were accompanied by numerous important safeguards, several of these safeguards were contained in other legislation, including state and territory legislation.

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<sup>37</sup> See Parliamentary Joint Committee on Human Rights, [Inquiry into compulsory income management](#).

<sup>38</sup> See Parliamentary Joint Committee on Human Rights, Identity Verification Services Bill 2023 and Identity Verification Services (Consequential Amendments) Bill 2023, [Report 11 of 2023](#) (18 October 2023) pp. 15–42, and [Report 13 of 2023](#) (15 November 2023) pp. 31–66.

Without a comprehensive review of the broader legislative framework governing the identity verification facilities and services, the committee considered it was not possible to conclude whether these safeguards were sufficient to protect the right to privacy. The committee therefore considered that, depending on how the measures operated in practice, there remained a risk that they impermissibly limited the right to privacy. If this did occur, it was 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. Additionally, with respect to the right to equality and non-discrimination, the committee considered that it was not clear that the measures were 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.

- 3.31 The committee 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.
- 3.32 The committee also considered legislation that amended, or was made for the purposes of, the *Telecommunications (Interception and Access) Act 1979* (TIA Act).<sup>39</sup> For example the committee commented on the *Telecommunications (Interception and Access) Amendment Bill 2023* (now Act),<sup>40</sup> which amended the TIA Act to remove the requirement that the Attorney-General specify the persons, manner and purposes for which foreign intelligence information may be communicated and permitted the Director-General of Security and other persons to whom foreign intelligence information is communicated to communicate that information to 'another person', and to use and make record of the information.
- 3.33 The committee considered that broadening the scope of information-sharing provisions with respect to foreign intelligence information may promote the rights to life and security of person insofar as it facilitates the sharing of intelligence information for the purposes of identifying and disrupting threats to Australia's national security. However, authorising the sharing, use and

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<sup>39</sup> See, for example, Parliamentary Joint Committee on Human Rights, *Telecommunications (Interception and Access) (Enforcement Agency – NSW Department of Communities and Justice) Declaration 2023*, [Report 6 of 2023](#) (14 June 2023) pp. 39–44 and [Report 8 of 2023](#) (2 August 2023) pp. 181–189; *Telecommunications (Interception and Access) Amendment Bill 2023*, [Report 9 of 2023](#) (6 September 2023) pp. 34–44; *Telecommunications (Interception and Access – Independent Commission Against Corruption of South Australia) Declaration 2023*, [Report 11 of 2023](#) (18 October 2023) pp. 59–62.

<sup>40</sup> *Telecommunications (Interception and Access) Amendment Bill 2023*, [Report 9 of 2023](#) (6 September 2023) pp. 34–44.

recording of foreign intelligence information also engages and limits the right to privacy. The committee considered that it had not been demonstrated that this specific measure was necessary and addressed a pressing and substantial concern, noting that no information was provided with respect to its necessity in the explanatory material. The measures also did not appear to be sufficiently circumscribed or accompanied by sufficient safeguards. As such, the committee considered there to be a risk that the measure may constitute an arbitrary limitation on the right to privacy, and affected persons may not have access to an effective remedy. Additionally, if information is communicated with foreign persons or agencies where there are substantial grounds for believing there is a real risk that disclosure of information to that person may expose a person to the death penalty or to torture or ill-treatment, the committee considered there to be a risk the measure would not be compatible with Australia's obligations with respect to these rights.

- 3.34 The committee also noted with significant concern from a scrutiny perspective that this bill passed both Houses of Parliament two sitting days after its introduction and, as a result, the committee was unable to scrutinise this legislation while it was before the Parliament.

### **Committee impact**

- 3.35 The full extent of the committee's impact can sometimes be difficult to quantify, as it is likely that the committee has an unseen influence in relation to the development of legislation before its introduction into the Parliament and on consideration of future legislation. In addition, it can routinely be challenging to track the influence of the committee on legislative amendments without very close consideration of the committee's recommendations and consequent changes (particularly where amendments are made that reflect the committee's suggestions but the committee's role is not noted). Nevertheless, during the reporting period there was specific evidence that the committee continues to have an impact in relation to the consideration of human rights in the legislation making process.
- 3.36 During this reporting period the committee's reports continued to inform parliamentarian's consideration of legislation, evidenced through the numerous references to the committee's reports during parliamentary debates. For example, in moving to disallow the Social Security (Administration) (Enhanced Income Management Regime—Commonwealth Referrals and Exemptions) Determination 2023 and the Social Security (Administration) (Enhanced Income Management Regime—State Referrals) Determination 2023, Senator Rice referred to the committee's comments on those instruments, stating:

...Evidently, the existing income management regime is not voluntary, and neither will Labor's new SmartCard regime be.

This was made crystal clear in a recent scrutiny report of the Parliamentary Joint Committee on Human Rights. With regard to the instruments we're debating today, they concluded:

While facilitating the operation of a regime that provides participants with access to superior technology and improved banking functions is, in itself, an important aim, it remains unclear why this enhanced income management regime must operate on a mandatory basis (or why legislation is required to improve this technology).<sup>41</sup>

- 3.37 The committee's reports also informed the work of other parliamentary committees. For example, the Senate Legal and Constitutional Affairs Legislation Committee referenced the committee's consideration of the Identity Verification Services Bill 2023 and the Identity Verification Services (Consequential Amendments) Bill 2023 in its inquiry report in relation to these bills.<sup>42</sup> The dissenting report by Senator Scarr cited in detail the committee's comments with respect to the limitation on the right to privacy.<sup>43</sup>
- 3.38 Further, during the reporting period explanatory materials with respect to several bills were updated directly in response to concerns raised by the committee.<sup>44</sup> For example, the supplementary statement of compatibility to the National Reconstruction Fund Corporation Bill 2023 included an assessment of the right to privacy with respect to the disclosure provisions in response to the committee's request for such an assessment.<sup>45</sup>

### *Liaison with departments*

- 3.39 The committee resolved on its establishment in the 47th Parliament that its secretariat should, where it considered it appropriate, engage directly with relevant departments immediately after the legal adviser and secretariat have

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<sup>41</sup> Senator Rice, *Senate Hansard*, 28 November 2023, p. 6111.

<sup>42</sup> Senate Legal and Constitutional Affairs Legislation Committee, *Identity Verification Services Bill 2023 and the Identity Verification Services (Consequential Amendments) Bill 2023 [Provisions]* (November 2023) p. 21.

<sup>43</sup> Senate Legal and Constitutional Affairs Legislation Committee, *Identity Verification Services Bill 2023 and the Identity Verification Services (Consequential Amendments) Bill 2023 [Provisions]* (November 2023) p. 57.

<sup>44</sup> Updates were made by way of addendums or supplementary explanatory memorandums. See, for example, National Occupational Respiratory Disease Registry Bill 2023; National Occupational Respiratory Disease Registry (Consequential Amendments) Bill 2023; Crimes and Other Legislation Amendment (Omnibus) Bill 2023; Export Control Amendment (Streamlining Administrative Processes) Bill 2022; Social Security and Other Legislation Amendment (Miscellaneous Measures) Bill 2023; Family Law Amendment Bill 2023; Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023; and Migration Amendment (Strengthening Employer Compliance) Bill 2023.

<sup>45</sup> National Reconstruction Fund Corporation Bill 2023, [supplementary statement of compatibility](#), pp. 3–5.



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identified minor, technical human rights concerns with legislation, in an attempt to resolve the matter before involving the minister or committee by reporting on the legislation publicly. This is intended to help departmental officials understand the type of information that should be included in a statement of compatibility. Further, where a statement of compatibility is considered to be inadequate (but where it nonetheless does not appear that the legislation raises human rights concerns), the committee authorised the Committee Secretary to write to departmental officials setting out the committee's expectations for future reference.

- 3.40 In 2023, the secretariat wrote to departments on 9 occasions in relation to 8 legislative instruments and one bill to provide feedback on the content of statements of compatibility. Providing feedback in this manner in relation to legislation facilitates the committee's educative function, providing departments with information to inform future legislative drafting. In relation to legislative instruments (and their explanatory materials), this feedback can be incorporated directly by departmental officers, because legislative instruments can often be amended and updated by departmental officers or other delegates directly.

#### *Engagement with international stakeholders*

- 3.41 The committee and its secretariat engaged with a number of international stakeholders during the reporting period. Such engagement allows the committee to exchange ideas and promote understanding of the role and work of the committee. For example, in July 2023 the committee secretariat met with the Azerbaijan Center for Legal Examination and Legislative Initiatives (at their request) to discuss the scrutiny work of the committee. In November 2023, the committee Chair and secretariat met with a delegation of senior officials from the Government of Lao PDR to discuss the work of the committee, including its scrutiny function and its inquiry into Australia's human rights framework.

***Further stakeholder engagement***

3.42 The committee also met with the Australian Human Rights Commission (the AHRC) on a number of occasions during the reporting period, including to receive a briefing on the Commission's *Free & Equal* position paper (launched on 7 March 2023). The committee also hosted a briefing on 29 March 2023 by the AHRC for all parliamentarians and their staff on its *Free & Equal* position paper.

**Mr Josh Burns MP**

**Chair**