

Chapter 3

Chapter 3- Work of the committee in 2023

3.1 This chapter provides information about the work of the committee during 2023,¹ 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;² sought ministerial advice on 10 per cent (24 plus one further response required);³
- a total of 1 957 legislative instruments⁴—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.

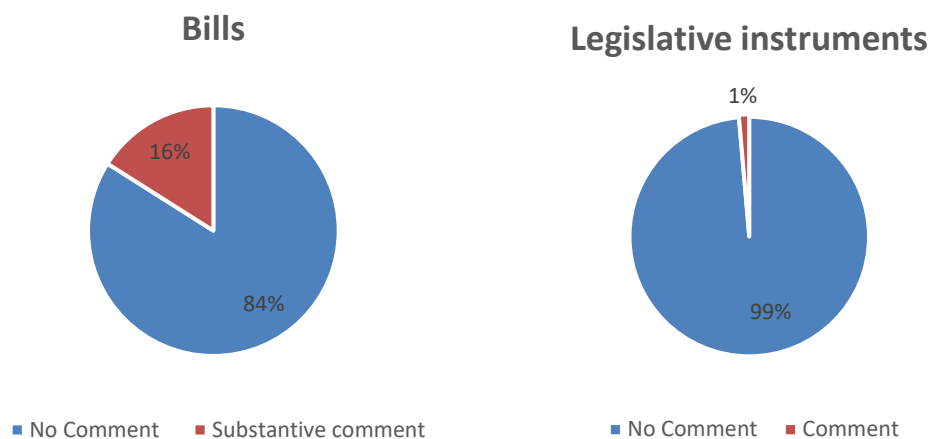
¹ The reporting period covers 1 January 2023 to 31 December 2023. The committee’s first scrutiny report of the reporting period, [Report 1 of 2023](#), was tabled on 8 February 2023 and its final scrutiny report of 2023, [Report 14 of 2023](#), was tabled on 19 December 2023.

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

³ 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.

⁴ 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 2012–2022.⁵

Reports tabled during the period

3.4 The committee tabled fourteen scrutiny reports during the reporting period.⁶ 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;⁷
- (2) right to equality and non-discrimination;⁸
- (3) rights of the child;⁹

⁵ 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).

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

⁷ International Covenant on Civil and Political Rights, article 17.

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

⁹ Convention on the Rights of the Child.

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

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.

¹⁰ International Covenant on Economic, Social and Cultural Rights, article 9.

¹¹ International Covenant on Economic, Social and Cultural Rights, article 11.

¹² International Covenant on Economic, Social and Cultural Rights, article 12.

¹³ Convention on the Rights of Persons with Disability.

¹⁴ International Covenant on Civil and Political Rights, article 2(3).

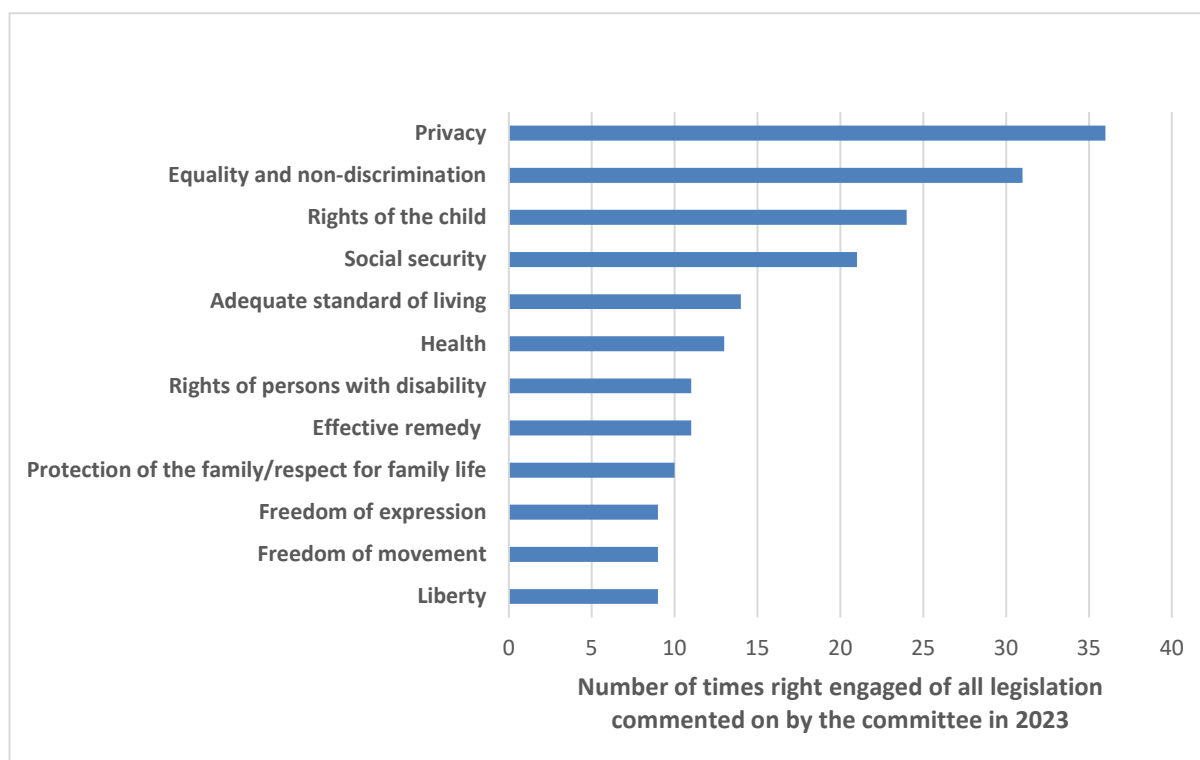
¹⁵ International Covenant on Economic, Social and Cultural Rights, article 10(1); International Covenant on Civil and Political Rights, article 17 and 23.

¹⁶ International Covenant on Civil and Political Rights, articles 19 and 20.

¹⁷ International Covenant on Civil and Political Rights, article 12.

¹⁸ 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.¹⁹ 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).

¹⁹ 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.²⁰

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.²¹ Although the committee requests a response within a specified timeframe (generally within two weeks), this request does not affect the passage of the legislation.²² 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,²³ 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.²⁴

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

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

²² 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.

²³ 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](#).

²⁴ For an in-depth analysis of the trend of increased timeliness in ministerial responses from 2012 to 2022, see *Reflections on the 10th 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.²⁵

²⁵ 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*,²⁶ 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

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.

²⁶ 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*,²⁷ 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.²⁸

- 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.²⁹ 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*.³⁰
- 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

²⁷ 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.

²⁸ 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.

²⁹ 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.

³⁰ 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.³¹ 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.³² 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.³³
- 3.24 The committee has considered measures relating to compulsory income management on numerous occasions since 2013³⁴ 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,

³¹ 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.

³² 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.

³³ 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.

³⁴ 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.³⁵ 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 function³⁶ to review compulsory enhanced income management and compulsory income management for compatibility with human rights and

³⁵ 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.

³⁶ *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 2024.³⁷

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).³⁸ 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.

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

³⁸ 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).³⁹ For example the committee commented on the *Telecommunications (Interception and Access) Amendment Bill 2023* (now Act),⁴⁰ 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

³⁹ 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.

⁴⁰ *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).⁴¹

- 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.⁴² The dissenting report by Senator Scarr cited in detail the committee's comments with respect to the limitation on the right to privacy.⁴³
- 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.⁴⁴ 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.⁴⁵

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

⁴¹ Senator Rice, *Senate Hansard*, 28 November 2023, p. 6111.

⁴² 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.

⁴³ 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.

⁴⁴ 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.

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

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