

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS
CHAIR'S TABLING STATEMENT

Tuesday 13 October 2015

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

The committee's report examines the compatibility of bills and legislative instruments with Australia's human rights obligations. This report considers bills introduced into the Parliament from 14 to 17 September 2015 and legislative instruments received from 28 August to 17 September 2015. The report also includes the committee's consideration of three responses to matters raised in previous reports.

Of the 26 bills examined in this report, 20 are assessed as not raising human rights concerns, five raise matters requiring further correspondence and one has been concluded on an advice-only basis. The committee has also concluded its examination of four instruments, and deferred its consideration of one bill and three instruments.

One of the bills considered in this report is the Health Legislation Amendment (e-Health) Bill 2015. This bill seeks to amend the law relating to personally controlled electronic health records, which provides an electronic summary of an individual's health records. Currently, a person's health records can only be included on the

register if they choose to opt-in to the system. This bill would enable trials to take place, which could then be applied Australia-wide, to enable the health records of all Australians to be automatically uploaded onto the electronic database unless the person actively opts-out of the process.

The committee considers that this raises significant privacy concerns which require further justification. In particular, the committee questions whether the objective of the bill, in automatically uploading personal sensitive health information onto the database in an attempt to drive increased use of the database by healthcare professionals, is a legitimate objective for the purposes of international human rights law. To be capable of justifying a proposed limitation of human rights, a legitimate objective must address a pressing or substantial concern and not simply seek an outcome regarded as desirable or convenient.

The committee is also concerned to know whether the limitation on the right to privacy is proportionate; in particular, whether there are adequate safeguards in place to protect an individual's privacy and whether the opt-out model is the least rights restrictive way to achieve the stated objective. As usual, I will write to the relevant Minister to seek her advice on these important questions.

This report also considers the Social Security Legislation Amendment (Further Strengthening Job Seeker Compliance) Bill 2015. This bill seeks to impose additional requirements on job seekers as a

precondition to receiving social security benefits. Under international treaties which Australia has signed up to, Australia is obliged to provide social security for people who lack access to other income and have insufficient means to access health care and support themselves and their dependents. However, under international law it is legitimate for a state to impose reasonable qualifying conditions to access social security. Many qualification conditions are considered to be reasonable under international human rights law, such as waiting periods for benefits and requirements for welfare recipients to meet certain obligations, such as a minimum number of jobs applied for or a minimum number of hours of community service. Mutual obligation or mutual responsibility is thus an accepted feature of the right to social security and, on this basis, the committee has assessed that three out of the five conditions imposed by this bill do not raise human rights concerns.

The committee does, however, have concerns as to whether the bill's limitation on the right to social security and an adequate standard of living in relation to two of the measures is justifiable. The committee has therefore decided to write to the Minister for Employment seeking further information around these issues.

As always, I encourage my fellow members and others to examine the committee's report to better inform their understanding of the committee's deliberations.

With these comments, I commend the committee's Twenty-ninth Report of the 44th Parliament to the House.