

© Commonwealth of Australia 2017

ISSN 2204-6356 (Print)

ISSN 2204-6364 (Online)

PO Box 6100
Parliament House
Canberra ACT 2600

Phone: 02 6277 3823

Fax: 02 6277 5767

Email: human.rights@aph.gov.au

Website: http://www.aph.gov.au/joint_humanrights/

This document was prepared by the Parliamentary Joint Committee on Human Rights and printed by the Senate Printing Unit, Department of the Senate, Parliament House, Canberra.

Membership of the committee

Members

Mr Ian Goodenough MP, Chair	Moore, Western Australia, LP
Mr Graham Perrett MP, Deputy Chair	Moreton, Queensland, ALP
Mr Russell Broadbent MP	McMillan, Victoria, LP
Senator Carol Brown	Tasmania, ALP
Ms Madeleine King MP	Brand, Western Australia, ALP
Mr Julian Leeser MP	Berowra, New South Wales, LP
Senator Nick McKim	Tasmania, AG
Senator Claire Moore	Queensland, ALP
Senator James Paterson	Victoria, LP
Senator Linda Reynolds CSC	Western Australia, LP

Secretariat

Ms Toni Dawes, Committee Secretary
Ms Zoe Hutchinson, Principal Research Officer
Ms Jessica Strout, Principal Research Officer
Ms Eloise Menzies, Senior Research Officer
Ms Alice Petrie, Legislative Research Officer

External legal adviser

Dr Aruna Sathanapally

Committee information

Under the *Human Rights (Parliamentary Scrutiny) Act 2011* (the Act), the committee is required to examine bills, Acts and legislative instruments for compatibility with human rights, and report its findings to both Houses of the Parliament. The committee may also inquire into and report on any human rights matters referred to it by the Attorney-General.

The committee assesses legislation against the human rights contained in the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR); as well as five other treaties relating to particular groups and subject matter.¹ **Appendix 2** contains brief descriptions of the rights most commonly arising in legislation examined by the committee.

The establishment of the committee builds on Parliament's established tradition of legislative scrutiny. The committee's scrutiny of legislation is undertaken as an assessment against Australia's international human rights obligations, to enhance understanding of and respect for human rights in Australia and ensure attention is given to human rights issues in legislative and policy development.

Some human rights obligations are absolute under international law. However, in relation to most human rights, prescribed limitations on the enjoyment of a right may be justified under international law if certain requirements are met. Accordingly, a focus of the committee's reports is to determine whether any limitation of a human right identified in proposed legislation is justifiable. A measure that limits a right must be **prescribed by law**; be in pursuit of a **legitimate objective**; be **rationaly connected** to its stated objective; and be a **proportionate** way to achieve that objective (the **limitation criteria**). These four criteria provide the analytical framework for the committee.

A **statement of compatibility** for a measure limiting a right must provide a **detailed and evidence-based assessment** of the measure against the limitation criteria.

Where legislation raises human rights concerns, the committee's usual approach is to seek a response from the legislation proponent, or else draw the matter to the attention of the proponent on an advice-only basis.

More information on the committee's analytical framework and approach to human rights scrutiny of legislation is contained in Guidance Note 1 (see **Appendix 4**).

1 These are the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the Convention on the Elimination of Discrimination against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the Convention on the Rights of Persons with Disabilities (CRPD).

Table of contents

Membership of the committee	iii
Committee information	iv
Chapter 1—New and continuing matters	1
Response required	
Crimes Legislation Amendment (Powers, Offences and Other Measures) Bill 2017	3
Defence Legislation Amendment (2017 Measures No. 1) Bill 2017	7
Fair Work Amendment (Corrupting Benefits) Bill 2017	12
Fair Work Amendment (Protecting Vulnerable Workers) Bill 2017	17
Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Bill 2017	28
Social Services Legislation Amendment Bill 2017	35
Treasury Laws Amendment (2017 Measures No. 1) Bill 2017	39
Advice only	
Banking and Financial Services Commission of Inquiry Bill 2017.....	42
Criminal Code Amendment (Prohibition of Full Face Coverings in Public Places) Bill 2017	46
Human Rights Legislation Amendment Bill 2017	50
People of Australia's Commission of Inquiry (Banking and Financial Services) Bill 2017	66
Extradition (People's Republic of China) Regulations 2017 [F2017L00185].....	70
Bills not raising human rights concerns	74
Chapter 2—Concluded matters	75
Biosecurity Amendment (Ballast Water and Other Measures) Bill 2017	75
Competition and Consumer Amendment (Exploitation of Indigenous Culture) Bill 2017	81
Crimes Legislation Amendment (International Crime Cooperation and Other Measures) Bill 2016.....	90

Migration Legislation Amendment (Code of Procedure Harmonisation) Bill 2016	99
Native Title Amendment (Indigenous Land Use Agreements) Bill 2017.....	112
Protection of the Sea (Prevention of Pollution from Ships) Amendment (Polar Code) Bill 2017	125
Therapeutic Goods Amendment (2016 Measures No. 1) Bill 2016	130
Veterans' Affairs Legislation Amendment (Digital Readiness and Other Measures) Bill 2016	134
Federal Financial Relations (National Specific Purpose Payments) Determination 2015-16 [F2016L01934]	139
Migration Legislation Amendment (2016 Measures No. 4) Regulation 2016 [F2016L01696]	143
Social Security (Class of Visas – Qualifying Residence Exemption) Determination 2016 [F2016L01858]	149
Appendix 1—Deferred legislation	155
Appendix 2— Short guide to human rights	157
Appendix 3—Correspondence.....	171
Appendix 4—Guidance Note 1 and Guidance Note 2	208