

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS
CHAIR'S TABLING STATEMENT

Tuesday 9 May 2017

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' *Human Rights Scrutiny Report 4 of 2017*.

In accordance with the committee's legislative mandate under section 7(a) of the *Human Rights (Parliamentary Scrutiny) Act 2011* the committee examines the compatibility of recent bills and legislative instruments with Australia's obligations under international human rights law.

A key purpose of the scrutiny report is to provide parliament with credible technical analysis about the human rights implications of legislation. The report is therefore a technical examination and does not assess the broader merits or policy objectives of particular measures.

The committee receives legal advice in relation to the human rights compatibility of legislation. It is served by an external legal adviser to the committee and secretariat staff.

Committee members performing a scrutiny function are not, and have never been, bound by the contents or conclusions of scrutiny committee reports. Like all parliamentarians, committee members are free to engage in debates over the policy merits of legislation according to the dictates of party, conscience, belief or outlook.

Scrutiny committee members may, and often do, have different views in relation to the policy merits of legislation.

Eighteen new bills are assessed in this scrutiny report as not raising human rights concerns.

The committee is also seeking further information in relation to seven bills and legislative instruments. Such correspondence with relevant ministers, legislation proponents and officials explores questions of human rights compatibility through a dialogue model. The committee needs to request additional information where human rights matters have not been adequately addressed in the statement of compatibility.

This report contains many positive examples of constructive engagement with the committee's dialogue process. In relation to eight bills and instruments, the committee received responses from the relevant minister or legislation proponent which allowed it to conclude that the legislation was likely to be compatible with human rights.

While this process led to very constructive outcomes, the additional steps would be avoided if this type of information was included in the statement of compatibility itself.

Statements of compatibility are a critical tool for the committee, parliament more broadly and other interested persons. A comprehensive statement of compatibility that is considered and evidence-based may also permit an initial assessment that a measure

constitutes a permissible limitation without the need for further correspondence.

For the benefit of those charged with the task of preparing statements of compatibility, I would emphasise the importance of clearly setting out potential limitations. The concept of a limitation is commonplace in human rights analysis: a limitation is acceptable in many circumstances, but it requires explanation as to whether it is permissible. Where a measure may limit human rights the statement of compatibility should set out the legitimate objective of the measure, how it is rationally connected to, (which is to say it will be effective to achieve) that objective, and explain whether the limitation is proportionate to that objective. The statement should also set out any safeguards that will be applied to ensure that any limitations on human rights are implemented in the least rights restrictive form.

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

With these comments, I commend the committee's Report 4 of 2017 to the chamber.