

© Commonwealth of Australia 2018

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

Secretariat¹

Ms Toni Dawes, Committee Secretary
Ms Zoe Hutchinson, Principal Research Officer
Dr Kate Mitchell, Principal Research Officer
Ms Shennia Spillane, Principal Research Officer
Mr Andrew McIntyre, Senior Research Officer
Mr David Hopkins, Legislative Research Officer

External legal adviser

Dr Jacqueline Mowbray

1 The human rights committee secretariat is staffed by parliamentary officers drawn from the Department of the Senate Legislative Scrutiny Unit (LSU), which usually includes two Principal Research Officers with specialised expertise in international human rights law. LSU officers, including the Committee Secretary, regularly work across multiple scrutiny committee secretariats.

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.² **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**).

2 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	
Broadcasting Legislation Amendment (Foreign Media Ownership and Community Radio) Bill 2017	2
Charter of the United Nations (Sanctions—Democratic People’s Republic of Korea) (Documents) Amendment Instrument 2017 (No. 1) [F2017L01456]	7
Electoral Legislation Amendment (Electoral Funding and Disclosure Reform) Bill 2017	11
Enhancing Online Safety (Non-consensual Sharing of Intimate Images) Bill 2017	30
Foreign Influence Transparency Scheme Bill 2017 and Foreign Influence Transparency Scheme (Charges Imposition) Bill 2017	34
My Health Records (National Application) Rules 2017 [F2017L01558]	45
National Broadcasters Legislation Amendment (Enhanced Transparency) Bill 2017	50
Parliamentary Service Amendment (Managing Recruitment Activity and Other Measures) Determination 2017 [F2017L01353]	54
Further response required	
Fair Work Laws Amendment (Proper Use of Worker Benefits) Bill 2017	59
Bills not raising human rights concerns	78
Chapter 2—Concluded matters	79
Australian Broadcasting Corporation Amendment (Fair and Balanced) Bill 2017	79
Corporations (Aboriginal and Torres Strait Islander) Regulations 2017 [F2017L01311]	84
Defence Legislation Amendment (Instrument Making) Bill 2017	89
Financial Sector Legislation Amendment (Crisis Resolution Powers and Other Measures) Bill 2017	96

Health Insurance (General Medical Services Table) Amendment (Obstetrics) Regulations 2017 [F2017L01090]	108
Proceeds of Crime Amendment (Proceeds and Other Matters) Bill 2017	112
Social Services Legislation Amendment (Housing Affordability) Bill 2017	123
Treasury Laws Amendment (Banking Executive Accountability and Related Measures) Bill 2017	138
Appendix 1—Deferred legislation	147
Appendix 2—Short guide to human rights	149
Appendix 3—Correspondence.....	163
Appendix 4—Guidance Note 1 and Guidance Note 2	205