

Chapter 1

New and continuing matters¹

- 1.1 This chapter provides assessments of the human rights compatibility of:
- bills introduced into the Parliament between 9 September and 12 September 2019 (consideration of 2 bills from this period have been deferred);²
 - legislative instruments registered on the Federal Register of Legislation between 2 August and 8 August 2019;³ and
 - one bill previously deferred.

1 This section can be cited as: Parliamentary Joint Committee on Human Rights, New and continuing matters, *Report 5 of 2019*; [2019] AUPJCHR 74.

2 See Appendix 1 for a list of legislation in respect of which the committee has deferred its consideration.

3 The committee examines all legislative instruments registered in the relevant period, as listed on the Federal Register of Legislation. To identify all of the legislative instruments scrutinised by the committee during this period, select 'legislative instruments' as the relevant type of legislation, select the event as 'assent/making', and input the relevant registration date range in the Federal Register of Legislation's advanced search function, available at: <https://www.legislation.gov.au/AdvancedSearch>.

Response required

1.2 The committee seeks a response from the relevant minister and legislation proponents with respect to the following bills.

Emergency Response Fund (Consequential Amendments) Bill 2019¹

Purpose	The bill seeks to make a number of consequential amendments to several Acts to enable the operation of the Emergency Response Fund The bill also seeks to repeal the <i>Nation-building Funds Act 2008</i> and the Education Investment Fund
Portfolio	Finance
Introduced	House of Representatives, 11 September 2019
Right	Right to education
Status	Seeking additional information

Repeal of the Education Investment Fund

1.3 The Emergency Response Fund (Consequential Amendments) Bill 2019 (the bill) seeks to make a number of consequential amendments to other legislation to enable the operation of the Emergency Response Fund. The Emergency Response Fund is sought to be established by the Emergency Response Fund Bill 2019, and it would provide for a revenue stream to be used for emergency response and recovery from natural disasters that have a significant or catastrophic impact.

1.4 Schedule 2, Part 1 of the bill seeks to repeal the *Nation-building Funds Act 2008* and the Education Investment Fund. The Emergency Response Fund will be established with an initial balance (money and investments) equal to the balance of the Education Investment Fund immediately before the establishment of the Emergency Response Fund. According to the explanatory memorandum, the last commitment from the Education Investment Fund was announced in July 2013 and all commitments have been paid.

Right to education

1.5 The investment mandates of the Education Investment Fund included payments in relation to transitional Higher Education Endowment Fund payments and the creation or development of: higher education infrastructure; research

1 This entry can be cited as: Parliamentary Joint Committee on Human Rights, Emergency Response Fund (Consequential Amendments) Bill 2019, *Report 5 of 2019*; [2019] AUPJCHR 75.

infrastructure; vocational education and training infrastructure; and eligible education infrastructure.² It is unclear from the explanatory materials whether the repeal of the Education Investment Fund and its investment mandates might result in reduced availability of funds for higher education.

1.6 Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) protects the right to education. It specifically requires, with a view to achieving the full realisation of the right to education, that '[h]igher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.' Australia has obligations to progressively introduce free higher education by every appropriate means and has a corresponding duty to refrain from taking retrogressive measures, or backwards steps, in relation to the realisation of the right to education. Retrogressive measures, a type of limitation, may be permissible under international human rights law provided that they address a legitimate objective, are rationally connected to that objective and are a proportionate way to achieve that objective.

1.7 The statement of compatibility states that the measures in the bill are administrative or machinery in nature, and do not directly advance or limit a relevant human right or freedom.³ As such, the statement of compatibility does not clarify whether repealing the Education Investment Fund and transferring its balance into the proposed Emergency Response Fund would result in a reduced availability of funds for higher education and, as such, may engage or limit the right to education.

1.8 The committee seeks the minister's advice as to:

- **whether the repeal of the Education Investment Fund and the transfer of its balance into the proposed Emergency Response Fund may reduce the availability of funding for higher education; and**
- **if so, whether this is compatible with the right to education.**⁴

2 See *Nation-Building Funds Act 2008*.

3 Statement of compatibility, p. 5.

4 The committee's consideration of the compatibility of a measure which limits a right is assisted if the response explicitly addresses the limitation criteria set out in the committee's [Guidance Note 1](#), pp. 2-3.

National Integrity Commission Bill 2018 (No. 2)

National Integrity Commission Bill 2019¹

Purpose	The bills establish the Australian National Integrity Commission as an independent public sector anti-corruption commission for the Commonwealth
Portfolio	Senator Larissa Waters (National Integrity Bill 2018 (No. 2)); Adam Bandt MP (National Integrity Commission Bill 2019)
Introduced	National Integrity Commission Bill 2018 (No. 2): Senate, 29 November 2018 (and restored to the notice paper) National Integrity Commission Bill 2019: 9 September 2019
Rights	Privacy and reputation; not to incriminate oneself; freedom of expression and assembly; liberty; freedom of movement; effective remedy
Status	Seeking additional information

1.9 The National Integrity Commission Bill 2019 (the 2019 bill) includes almost identical measures as the National Integrity Bill 2018 (No. 2) (the 2018 bill), and as such these bills are considered together.

1.10 The committee previously examined the 2018 bill in its [Report 2 of 2019](#), and has examined other similar bills in earlier reports.² The committee has also previously raised human rights concerns in relation to Commission of inquiry related powers in royal commissions on a number of occasions.³ As the 2018 has now passed the Senate and is before the House of Representatives, the committee now seeks the

1 This entry can be cited as: Parliamentary Joint Committee on Human Rights, National Integrity Commission Bill 2018 (No. 2), National Integrity Commission Bill 2019, *Report 5 of 2019*; [2019] AUPJCHR 76.

2 Parliamentary Joint Committee on Human Rights, National Integrity Commission Bill 2017, *Report 12 of 2017* (28 November 2017) pp. 93-95; National Integrity Commission Bill 2013, *First Report of the 44th Parliament* (10 December 2013) pp. 41-48; *Report 8 of 2016* (9 November 2016) pp. 45-46.

3 See the committee's previous analysis of Commissions of inquiry and Royal Commissions: Parliamentary Joint Committee on Human Rights, *Report 5 of 2018* (19 June 2018) pp. 2-10; *Report 7 of 2018* (14 August 2018) pp. 91-110; *Report 11 of 2017* (17 October 2017) pp. 49-53; *Report 4 of 2017* (9 May 2017) pp. 28-34, *Report 6 of 2017* (20 June 2017) pp. 35-49; *Report 4 of 2017* (9 May 2017) pp. 42-45; *Report 4 of 2017* (9 May 2017) pp. 66-69; *Thirty-sixth report of the 44th Parliament* (16 March 2016) pp. 14-18; *Thirty-eighth report of the 44th Parliament* (3 May 2016) pp. 21-26; *Third Report of 2013* (13 March 2013) pp. 42-48, *Seventh Report of 2013* (5 June 2013) pp. 91-92.

legislation proponent's advice in relation to a number of matters previously commented on.

1.11 The bills seek to establish the Australian National Integrity Commission (the Commission), consisting of the National Integrity Commissioner (the Commissioner), the Law Enforcement Integrity Commissioner and the Whistleblower Protection Commissioner. They also seek to establish the appointment of the Parliamentary Joint Committee on the Australian National Integrity Commission and the Parliamentary Inspector of the Australian National Integrity Commission, as an independent officer of the Parliament. The purpose of the Commission is to promote integrity and accountability and investigate corruption in relation to Commonwealth public administration.⁴

Broad coercive evidence gathering powers

1.12 The bills propose to confer wide-ranging coercive powers on the Commissioner to inquire into and report on matters relating to alleged or suspected corruption involving a public official or Commonwealth agency.⁵ The Commissioner may undertake an inquiry on their own initiative or at the request of a member of parliament.⁶ An inquiry may relate to the integrity of public officials, corruption or the prevention of corruption generally in Commonwealth agencies, or corruption generally, or the prevention of corruption, in or affecting Australia.⁷ 'Corrupt conduct' is defined broadly by clause 9 in each bill, and applies to 'corruption issues' arising no more than 10 years prior to the day the bills would commence.⁸

1.13 The Commissioner's powers would include the power to compel a person to provide information or to produce documents or things;⁹ the power to summon a person to attend hearings and require them to produce documents;¹⁰ powers for information sharing between the Commission and head of a Commonwealth agency;¹¹ the power to order an individual to deliver their passport in certain circumstances;¹² the power to apply to arrest a person and for the purposes of

4 Statement of compatibility (SOC) of the 2018 bill, p. 88, and the 2019 bill, p. 78. The statements of compatibility in relation to each bill are identical. For ease of referencing, consequent references will be made only to the page numbers of the statement of compatibility accompanying the 2018 bill.

5 Clauses 12 and 24 of the bills.

6 Clause 24 of the bills.

7 Subclause 25(1) of the bills.

8 Subclause 12(3) of the bills.

9 Clause 72 of the bills.

10 Clause 82 of the bills.

11 Clauses 57, 58 and 61 of the bills.

12 Clause 103.

executing an arrest warrant, to break into and enter relevant premises;¹³ the power to apply for warrants to enter premises and seize materials;¹⁴ and compulsory assistance powers.¹⁵ The Commission would also have public reporting obligations at the end of investigations and public inquiries,¹⁶ with the Commissioner retaining the discretion to exclude sensitive information from the report.¹⁷ Proposed offences for non-compliance with Commission orders range from 6 months imprisonment¹⁸ to two years imprisonment or 120 penalty units (currently \$25,200) or both.¹⁹

1.14 The bills provide that a person would not be excused from giving information, answering a question or producing a document or thing when given a notice under section 72, or summonsed under section 82, on the ground that to do so might tend to incriminate them.²⁰ A partial 'use immunity' would apply, which provides that information given, or documents or things produced, by persons compelled to provide them is not admissible in evidence against the person in criminal proceedings or other proceedings for the imposition or recovery of a penalty.²¹ However, no 'derivative use immunity' is provided which would prevent information or evidence *indirectly* obtained being used in criminal proceedings against the person. The penalty for non-compliance with an order to give evidence or produce a document or thing under section 72, or a summons under section 82, is imprisonment for up to two years.²²

1.15 Where the Commissioner seeks to issue an opinion or finding that is critical of a Commonwealth agency or person, the Commissioner must generally provide a reasonable opportunity for the person or agency to be heard or make submissions.²³ However, this opportunity does not have to be provided where the Commissioner is satisfied that a person may have committed a criminal offence, contravened a civil penalty provision, engaged in conduct that could be the subject of disciplinary

13 Clauses 105 and 106.

14 Clauses 113 and 114 of the bills.

15 Clause 130 of the bills would permit the authorised officer executing a search warrant to apply for an order requiring a specified person to assist with access to a computer or computer system in some circumstances.

16 Clauses 64, 70 and 233 of the bills. The Commission would also be required to produce an annual report under clause 232 of the bills.

17 Subclauses 64(4) and 156(9) of the proposed bills.

18 Subclause 130(3) of the bills, relating to a failure to comply with an order to assist with access to a computer or computer system.

19 Subclause 76(1) of the bills.

20 Subclause 79(1) and clause 102 of the bills.

21 Subclauses 79(3) and 102(4) of the bills.

22 Subclauses 77(1) and 92(3) of the bills.

23 Subclause 62(1) of the bills.

proceedings or termination of appointment or employment, and that an investigation or any related action would be compromised by giving the person the opportunity to make submissions.²⁴

1.16 Part 9 of the bill also seeks to provide for whistleblower protection and clause 178 provides that if the Whistleblower Protection Commissioner is investigating or conducting a public inquiry, Parts 5-7 of the bill would apply to the Whistleblower Protection Commissioner as if a reference to the National Integrity Commissioner were a reference to the Whistleblower Protection Commissioner. As such, all of the coercive powers conferred on the Commissioner are also conferred on the Whistleblower Protection Commissioner. The committee's comments below in relation to the Commissioner therefore apply equally to the powers of the Whistleblower Protection Commissioner.

Right to privacy and reputation

1.17 The collection, storing and use of a person's private and confidential information under the Commission's proposed coercive evidence gathering powers engages and limits the right to privacy.²⁵ More generally, investigation of, and reporting on, individuals may impact on the right to privacy and reputation of these individuals. The right to privacy and reputation is also engaged where a critical finding is made without the person against whom the finding is made first having the opportunity to respond.

1.18 The right to privacy protects against arbitrary and unlawful interference with an individual's privacy and reputation.²⁶ Limitations on this right will be permissible where they pursue a legitimate objective, are rationally connected to that objective and are a proportionate means of achieving that objective.

1.19 The statements of compatibility note that the measures engage and limit the right to privacy but state that safeguards incorporated in the bills mean that the right to privacy has been permissibly limited.²⁷ The statements of compatibility identify the objective of the bills as being to 'prevent, investigate, expose and address corruption issues involving or affecting Commonwealth public administration.'²⁸ This appears likely to be a legitimate objective for the purposes of international human rights law. Powers to enable the Commissioner to investigate particular matters, collect evidence and report on its findings would also appear to be rationally connected to this objective.

24 Subclause 62(2) of the bills.

25 The committee has previously raised concerns as to the compatibility of identical measures with the right to privacy when it first considered the 2018 (No. 2) Bill in Parliamentary Joint Committee on Human Rights, *Report 2 of 2019* (2 April 2019) pp. 136-145.

26 International Covenant on Civil and Political Rights (ICCPR), article 17.

27 SOC, p. 88.

28 SOC, p. 88.

1.20 However, in order to be a proportionate limitation on the right to privacy, measures that permit the collection and disclosure of personal information need to be sufficiently circumscribed to ensure that they are only as extensive as is strictly necessary to achieve their objective. In this instance, the measures in the bills allow for broad powers to conduct investigations and broad inquiry powers and it is unclear whether the safeguards in place are adequate.

1.21 The bills would permit the Commission to investigate 'corrupt conduct', which is defined broadly to include a broad range of conduct by public officials as well as conduct by any person who could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by the Parliament, a Commonwealth agency or public officials.²⁹ It also extends to conduct that occurred up to 10 years before the commencement of the bills.³⁰ The broad range of conduct that is covered, as well as its retrospective application, is relevant to the proportionality of the measure. The statements of compatibility do not explain why it is necessary for the scope of the powers to extend to investigating conduct that occurred in the past.

1.22 In addition, clause 145 provides that the exercise of powers of search and arrest can be conferred on 'a staff member' of the Commission, if the Commissioner consider they have suitable qualifications or experience. The explanatory memorandum notes that it is essential that authorised officers are 'experienced, diligent and trustworthy' because they will be exercising powers of search and arrest.³¹ However, it does not explain why it is necessary or appropriate to allow these powers to be exercised by persons who are not police officers, nor does it explain why it is not possible to specify what constitutes 'suitable qualifications or experience' in the bill, rather than leaving these matters to the discretion of the Commissioner.

1.23 The right to reputation is also engaged where a critical finding is made without the person against whom the finding is made first having the opportunity to respond. The statements of compatibility note that the 'right to due process and procedural fairness is maintained in this bill to ensure that no opinions or findings that are critical of a person or agency are publicly released unless they have been given an opportunity to appear and make submissions to the Commission'.³² However, as noted above, and per subclause 62(2), there are circumstances in which the Commissioner does not have to provide a person with an opportunity to be heard. As such, it appears that the Commissioner would have the ability to make findings critical of a person without the person first having the opportunity to

29 Clause 9 of the bills.

30 Subclauses 9(3) and 12(3) of the bills.

31 Explanatory memorandum, p. 47.

32 SOC, p. 89.

respond, which raises questions as to whether the limitation on a person's right to reputation is proportionate.

1.24 The committee notes that the bills would provide the proposed National Integrity Commission with broad coercive evidence gathering powers, which limits the right to privacy and reputation. In order to assess whether any limitation on this right is proportionate, the committee seeks the legislation proponents' advice as to:

- **why it is considered necessary for the scope of the Commission's powers to extend to the investigation of conduct that has occurred in the past, and the rationale for a retrospective period of 10 years;**
- **why it is considered necessary and appropriate, in clause 145, to allow persons other than police officers to execute search warrants (which include powers to conduct personal searches); and**
- **why it is considered necessary and appropriate, in subclause 62(2), that the Commission can issue an opinion or finding that is critical of a person without the person first having had the opportunity to respond.**

Right not to incriminate oneself

1.25 Requiring a person to answer questions, provide information or produce documents, even if it may incriminate them, engages and limits the right not to incriminate oneself. The specific guarantees under international human rights law of the right to a fair trial in relation to a criminal charge include the right not to incriminate oneself.³³ The right not to incriminate oneself may be subject to permissible limitations where the limitation pursues a legitimate objective, is rationally connected to that objective and is a proportionate way of achieving that objective.

1.26 The statements of compatibility state that the privilege against self-incrimination is limited to achieve the legitimate objective of ensuring 'that the public interest is served by not having crucial and relevant material relating to corruption withheld'.³⁴ The aim of serving the public interest by investigating corruption in public administration is likely to be a legitimate objective for the purposes of international human rights law. Partially removing the privilege against self-incrimination and therefore allowing access to more material in an investigation is likely to be rationally connected to (that is, effective to achieve) this objective.

1.27 In relation to the proportionality of the measure, the existence of immunities is one relevant factor in determining whether such measures impose a proportionate limitation on the right not to incriminate oneself. Use and derivative use immunities

33 ICCPR, article 14(3)(g).

34 SOC, p. 89.

prevent compulsorily disclosed information (or anything obtained as an indirect consequence of making a compulsory disclosure) from being used in evidence against a witness. As noted, a partial 'use immunity' would be provided here to persons compelled to provide self-incriminating information,³⁵ but no 'derivative use immunity' would be provided to prevent information or evidence indirectly obtained from being used in criminal proceedings against the person. While the inclusion of both use and derivative use immunities is relevant to an assessment of the proportionality of any measure that limits the right not to incriminate oneself, they are not the only factors that may be relevant to whether the limitation is the least rights restrictive approach to achieving a legitimate objective. The committee has previously raised concerns as to the compatibility of substantially similar measures in previous commission of inquiry bills with the right not to incriminate oneself.³⁶

1.28 The committee notes that the bills seek to abrogate the privilege against self-incrimination and therefore limit the right to a fair hearing.

1.29 The committee seeks the legislation proponents' advice as to why subclauses 79(3) and 102(4) do not include a 'derivative use immunity', to ensure information, documents or things obtained indirectly as a result of compelling a person to give evidence to the Commission, are not admissible in evidence against them.

Contempt of Commission

1.30 Paragraph 93(1)(d) of the bills provide that it would be a contempt of the Commission to knowingly insult, disturb or use insulting language towards the commissioner while the commissioner is exercising their powers. Paragraph 93(1)(e) provides that a person would commit a contempt if they knowingly create a disturbance in or near a place where a hearing is being held for the purpose of investigating a corruption issue or conducting a public inquiry.

1.31 Clause 96 of the bills provides that a person may be detained by a constable or 'authorised officer' for the purposes of bringing them before the relevant court for the hearing of an application to deal with contempt.³⁷ The court may impose a

35 Subclauses 79(3) and 102(4) of the bills.

36 See, for example, Parliamentary Joint Committee on Human Rights *Report 12 of 2017* (28 November 2017) p. 95; *Report 7 of 2018* (14 August 2018) pp. 92-96; *Report 11 of 2017* (17 October 2017) pp. 49-50; *Report 6 of 2017* (20 June 2017) pp. 36-37; *Report 4 of 2017* (9 May 2017) pp. 42-43; *Report 4 of 2017* (9 May 2017) pp. 66-67.

37 'Authorised officer' is defined in clauses 8 and 145 of the bills to mean 'a staff member of the Commission whom the National Integrity Commission considers has suitable qualifications or experience' or a member of the Australian Federal Police. The bills do not explain what qualifications or experience would be necessary for such appointment.

condition on release including, for example, that they surrender any travel document or passport.³⁸

Right to freedom of expression and freedom of assembly

1.32 Prohibiting insulting language or communication, or the wilful disturbance or disruption of a hearing of the Commission, engages and may limit the right to freedom of expression and the right to freedom of assembly. The right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds, either orally, in writing or print, in the form of art, or through any other media of an individual's choice.³⁹ The right to freedom of assembly protects the right of individuals and groups to meet and engage in peaceful protest and other forms of collective activity in public.⁴⁰ These rights may be subject to permissible limitations that are necessary to protect the rights or reputations of others, national security, public order, or public health or morals and the limitations must be rationally connected and proportionate to such objectives.

1.33 The statements of compatibility do not address whether these rights are engaged or permissibly limited by the measures. While the protection of the Commission's office and holding of hearings may be a legitimate objective for the purposes of the international law, it is not clear whether the terms 'insults, disturbs or uses insulting language' towards the commissioner are drawn so broadly that they may limit legitimate criticism of, or objection to, the Commission and its activities. The committee previously raised these concerns in relation to the 2017 version of these bills,⁴¹ and in relation to such powers in the case of Commissions of inquiry and Royal Commissions.⁴²

1.34 The committee notes that clause 93, in making it a contempt of the Commission for a person to: insult the National Integrity Commissioner; or create a disturbance in or near a place where a commission hearing is being held, limits the rights to freedom of expression and assembly.

38 Clause 96(4)(a) of the bills.

39 ICCPR, article 19(2).

40 ICCPR, article 21.

41 Parliamentary Joint Committee on Human Rights, National Integrity Commission Bill 2017, *Report 12 of 2017* (28 November 2017) p. 95.

42 See, for example, Commission of Inquiry (Coal Seam Gas) Bill 2017, *Report 11 of 2017* (17 October 2017) pp. 51-52; Banking and Financial Services Commission of Inquiry Bill 2017, *Report 4 of 2017* (9 May 2017) pp. 43-44; People of Australia's Commission of Inquiry (Banking and Financial Services) Bill 2017, *Report 4 of 2017* (9 May 2017) p. 68.

1.35 The statements of compatibility do not address these rights, and as such, the committee seeks the legislation proponents' advice as to the compatibility of clause 93 with the rights to freedom of expression and assembly,⁴³ in particular:

- **why these provisions are necessary to 'protect the rights or reputations of others, national security, public order, or public health or morals'; and**
- **what safeguards are in place to permit legitimate criticism of, or objection to, the proposed Commission and its activities.**

Right to liberty

1.36 Empowering the Commissioner to authorise the detention of a witness, without requiring an application to a court, engages and limits the right to liberty. This right, which prohibits arbitrary detention, requires that the State should not deprive a person of their liberty except in accordance with law. The notion of 'arbitrariness' here includes elements of inappropriateness, injustice and lack of predictability.⁴⁴

1.37 The statements of compatibility do not acknowledge that the right to liberty is engaged and, consequently, provide no assessment of whether the limitation is permissible.

1.38 The committee notes that clause 96, in empowering the National Integrity Commissioner to direct the detention of a witness who the Commissioner considers is in contempt of the Commission, limits the right to liberty.

1.39 The statements of compatibility do not address this right, and as such, the committee seeks the legislation proponents' advice as to the compatibility of clause 96 with the right to liberty,⁴⁵ in particular:

- **why it is necessary to allow for a person to be detained without a court order; and**
 - **what safeguards are in place to protect against arbitrary detention.**
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43 The committee's consideration of the compatibility of a measure which limits a right is assisted if the response explicitly addresses the limitation criteria set out in the committee's [Guidance Note 1](#), pp. 2-3.

44 ICCPR, article 9.

45 The committee's consideration of the compatibility of a measure which limits a right is assisted if the response explicitly addresses the limitation criteria set out in the committee's [Guidance Note 1](#), pp. 2-3.

Order for a witness to deliver passport

1.40 Under clause 103 of the bills, the Commissioner may apply to a judge of the Federal Court for an order that a person deliver their passport to the Commissioner in certain circumstances. These include where a person has appeared at, or been summonsed to attend a hearing, and there are reasonable grounds to believe that the person may be able to give evidence or produce documents or things relevant to the inquiry, and there are reasonable grounds for suspecting that the person has a passport and intends to leave Australia.⁴⁶

Right to freedom of movement

1.41 The right to freedom of movement includes the right to leave a country.⁴⁷ As such, where a person is required to surrender their passport this engages and limits the right to freedom of movement. The right to leave a country can permissibly be limited, including where it is rationally connected and proportionate to achieve the legitimate objectives of protecting the rights and freedoms of others, national security, public health or morals, and public order.

1.42 However, the statements of compatibility do not address the engagement of this right, and so no assessment is provided as to whether the measures constitute a permissible limitation. The committee notes that clause 103 would apply to a person who has already appeared at the hearing and who is not subject to a summons to appear, so long as the Commissioner has reasonable grounds for believing they may be able to give further evidence relevant to the investigation or public inquiry. This could potentially restrict such a person from leaving Australia for an indefinite period of time pending completion of the Commission's investigation or public inquiry.

1.43 The committee notes that clause 103, in empowering the National Integrity Commissioner to apply to a court for an order that a witness surrender their passport, limits the right to freedom of movement.

1.44 The statements of compatibility do not address this right, and as such, the committee seeks the legislation proponents' advice as to the compatibility of clause 103 with the right to freedom of movement,⁴⁸ in particular:

- **why this provision is necessary to 'protect the rights or reputations of others, national security, public order, or public health or morals'; and**
- **what safeguards are in place to ensure a person who has given evidence (and is not subject to a summons) is not indefinitely prevented from**

46 Clause 103 of the 2018 bills.

47 ICCPR, article 12.

48 The committee's consideration of the compatibility of a measure which limits a right is assisted if the response explicitly addresses the limitation criteria set out in the committee's [Guidance Note 1](#), pp. 2-3.

leaving Australia pending completion of the Commission's investigation or inquiry.

Immunity from civil liability

1.45 Clause 274 seeks to confer immunity from civil proceedings in the following instances:

- on a staff member of the Commission who has done, or omitted to do, something in good faith, in the performance or purported performance, or exercise or purported exercise, of that staff member's functions, powers or duties under, or in relation to, the proposed bills; or
- on a person whom the Commissioner has asked, in writing, to assist a staff member of the Commission, who has done, or omitted to do, an act in good faith for the purpose of assisting that staff member.

1.46 Furthermore, under clause 274(3), if information, evidence, a document or thing has been given or produced to the Commissioner, a person is not liable 'to an action, suit or proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the information or evidence was given or the document or thing was produced'.

Right to an effective remedy

1.47 Giving immunity from civil liability to persons means others are not able to bring civil actions to enforce legal rights, which may engage the right to an effective remedy.⁴⁹ This right requires state parties to establish appropriate judicial and administrative mechanisms for addressing claims. While limitations may be placed in particular circumstances on the nature of the remedy provided (judicial or otherwise), state parties must comply with the fundamental obligation to provide a remedy that is effective.⁵⁰

1.48 The statements of compatibility do not identify that this right is engaged, and so no assessment of its engagement is provided.

1.49 The committee notes that clause 274, in conferring immunity from civil liability on certain persons, may limit the right to an effective remedy.

1.50 The statements of compatibility do not address this right, and as such, the committee seeks the legislation proponents' advice as to whether clause 274 limits the right to an effective remedy, in particular whether there are any other mechanisms by which a person whose rights are violated may seek a remedy.

49 ICCPR, article 2(3).

50 See UN Human Rights Committee, *General Comment No. 29: States of Emergency (Article 4)* (2001) [14].

Advice only¹

1.51 The committee reiterates its views as set out in its previous reports on the following bills. These bills have been reintroduced in relevantly substantially similar terms to those previously commented on:

- Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2019²
[Report 11 of 2017](#), pp. 2-14; [Report 13 of 2017](#), pp. 37-61.
- Social Services Legislation Amendment (Payment Integrity) Bill 2019
[Report 7 of 2017](#), pp. 17-20; [Report 10 of 2017](#), pp. 75-81.

1.52 The committee notes that the following private senators' bills appears to engage and may limit human rights. Should either of these bills proceed to further stages of debate, the committee may request further information from the legislation proponent as to the human rights compatibility of the bill:

- Family Law (Self-Assessment) Bill 2019
- Product Stewardship Amendment (Packaging and Plastics) Bill 2019

1 This section can be cited as: Parliamentary Joint Committee on Human Rights, Advice only, *Report 5 of 2019*; [2019] AUPJCHR 77.

2 The committee previously commented on Schedule 13 of the Crimes Legislation Amendment (Sexual Crimes Against Children and Community Protection Measures) Bill 2017 which had provided that adverse information did not need to be disclosed to an offender in the course of making certain parole decisions. As the 2019 bill no longer includes this measure, the committee does not reiterate its comments in relation to this.

Bills and instruments with no committee comment³

1.53 The committee has no comment in relation to the following bills which were introduced into the Parliament between 9 September and 12 September 2019. This is on the basis that the bills do not engage, or only marginally engage, human rights; promote human rights; and/or permissibly limit human rights:⁴

- ANL Legislation Repeal Bill 2019
- Customs Amendment (Product Specific Rule Modernisation) Bill 2019
- Customs Amendment (Safer Cladding) Bill 2019
- Emergency Response Fund Bill 2019
- National Health Amendment (Safety Net Thresholds) Bill 2019
- National Housing Finance and Investment Corporation Amendment Bill 2019
- Paid Parental Leave Amendment (Work Test) Bill 2019
- Social Services Legislation Amendment (Better Targeting Student Payments) Bill 2019

1.54 The committee has examined the legislative instruments registered on the Federal Register of Legislation between 2 August 2019 and 8 August 2019.⁵ The committee has determined not to comment on instruments from this period on the basis that the instruments do not engage, or only marginally engage, human rights; promote human rights; and/or permissibly limit human rights.

3 This section can be cited as: Parliamentary Joint Committee on Human Rights, Bills and instruments with no committee comment, *Report 5 of 2019*; [2019] AUPJCHR 78.

4 Inclusion in the list is based on an assessment of the bill and relevant information provided in the statement of compatibility accompanying the bill. The committee may have determined not to comment on a bill notwithstanding that the statement of compatibility accompanying the bill may be inadequate. Where the committee considers that a statement of compatibility is inadequate it may write to the relevant minister setting out its concerns, see Parliamentary Joint Committee on Human Rights, *Annual Report 2018*, pp. 36-37.

5 The committee examines all legislative instruments registered in the relevant period, as listed on the Federal Register of Legislation. To identify all of the legislative instruments scrutinised by the committee during this period, select 'legislative instruments' as the relevant type of legislation, select the event as 'assent/making', and input the relevant registration date range in the Federal Register of Legislation's advanced search function, available at: <https://www.legislation.gov.au/AdvancedSearch>.