

Report snapshot³

In this report the committee has examined the following bills and legislative instruments for compatibility with human rights. The committee's full consideration of legislation commented on in the report is set out in Chapters 1 and 2.

Bills

Chapter 1: New and continuing matters

Bills introduced 4 September to 14 September 2023	23
Bills commented on in report ⁴	3
Private members or senators' bills that may engage and limit human rights	0

Chapter 2: Concluded

Bills committee has concluded its examination of following receipt of ministerial response	1
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Australian Capital Territory Dangerous Drugs Bill 2023

No comment

Australian Education Amendment (Save Our Public Schools) Bill 2023

No comment

Commonwealth Electoral Amendment (Lowering the Donation Disclosure Threshold) Bill 2023

No comment

Commonwealth Electoral Amendment (Real Time Disclosure of Political Donations) Bill 2023

No comment

³ This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 11 of 2023*; [2023] AUPJCHR 104.

⁴ The committee makes no comment on the remaining bills on the basis that they do not engage, or only marginally engage, human rights; promote human rights; and/permissibly limit human rights. This 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.

Competition and Consumer Amendment (Continuing ACCC Monitoring of Domestic Airline Competition) Bill 2023

No comment

Counter-Terrorism and Other Legislation Amendment Bill 2023

Advice to Parliament

Extension of counter-terrorism powers and proposed amendments to counter-terrorism powers*Multiple rights*

This bill seeks to extend, by three years, the operation of several counter-terrorism related provisions which are due to sunset on 7 December 2023. The committee reiterates its previous advice that these measures, particularly control orders and preventative detention orders, are likely to be incompatible with a range of human rights. The committee also considers that it remains unclear that there is an ongoing necessity for these powers, noting many have never been used. It is concerned that the statement of compatibility fails to set out the compatibility of these measure with several human rights the committee has previously identified in relation to these powers.

Further, the committee considers that no information has been provided to demonstrate the necessity and proportionality of the majority of the proposed new and broadened conditions that may be imposed under a control order, and notes that the proposed measures would facilitate the making of control orders including extremely onerous conditions that may significantly limit many human rights. As such, the committee considers that the proposed expansion of the control order measures risk constituting a disproportionate limit on multiple human rights. The committee also considers that these provisions may not comply with the rights of the child. The committee draws these human rights concerns to the attention of the Attorney-General and the Parliament.

Defence Amendment (Safeguarding Australia's Military Secrets) Bill 2023

Advice to Parliament

Offence to perform certain work or provide certain training without authorisation*Private life; work*

The committee notes that creating two new offences relating to where a former defence staff member, or an Australian citizen or permanent resident, performs certain work or training for a foreign country without a foreign work authorisation engages and limits the right to work and a private life. The committee considers that, as the bill proposes that several key matters would be set out by delegated legislation, it is not clear whether, in practice, the proposed offences would constitute a proportionate limit on these rights, as much would depend on the matters set out in delegated legislation. The

committee recommends that minor amendments be made to the bill to assist with its proportionality, and that the statement of compatibility be updated to provide a more fulsome assessment of the compatibility of the measures.

Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Bill 2023

No comment

Disability Services and Inclusion Bill 2023

No comment

Electoral Legislation Amendment (Fairer Contracts and Grants) Bill 2023

No comment

Ending Native Forest Logging Bill 2023

No comment

Fair Work Legislation Amendment (Closing Loopholes) Bill 2023

No comment

Identity Verification Services Bill 2023

Identity Verification Services (Consequential Amendments) Bill 2023

Seeking Information

Identity verification facilities and services

Rights to an effective remedy; equality and non-discrimination; privacy; social security

The Identity Verification Services Bill 2023 seeks to authorise the Attorney-General's Department to develop, operate and maintain approved identity verification facilities, which support the Document Verification Service, Face Verification Service and Face Identification Service. It also seeks to authorise the collection, use and disclosure of identification information electronically communicated to these facilities or generated using the National Driver Licence Facial Recognition Solution. In general terms, the identity verification services verify the identity of a person by comparing identification information, including biometric information such as a facial image. The bill also provides when protected information can be recorded, disclosed and accessed by entrusted persons, which includes various APS employees as well as officers of a foreign government authority or public international organisation. The Identity Verification Services (Consequential Amendments) Bill 2023 seeks to authorise the minister to disclose personal information for the purpose of participating in identity verification services and permit the automated disclosure of such information.

The committee understands the need to ensure secure and efficient identity verification, which is essential to minimise the risk of identity theft and fraud. However, the committee is concerned about the impact on the right to privacy for the millions of Australians whose data is contained in the National Driver Licence Facial Recognition Solution database and the use of biometric identity verification services. To the extent that the measures facilitate the use of biometric identity verification for the purposes of accessing social security and other government services, the measures would also engage and may limit the right to social security. The measures may also engage and limit the right to equality and non-discrimination if the measures were to have a disproportionate impact on members of certain groups or if biased or erroneous data led to discriminatory decisions. The committee is seeking further information from the Attorney-General to assess the compatibility of the measures with these rights.

Interactive Gambling Amendment (Credit and Other Measures) Bill 2023

No comment

National Housing Finance and Investment Corporation Amendment (Unlocking Regional Housing) Bill 2023

No comment

Offshore Petroleum and Greenhouse Gas Storage Amendment (Domestic Reserve) Bill 2023

No comment

Public Health (Tobacco and Other Products) (Consequential Amendments and Transitional Provisions) Bill 2023

No comment

Public Health (Tobacco and Other Products) Bill 2023

No comment

Royal Commissions Amendment (Private Sessions) Bill 2023

No comment

Social Security Amendment (Australian Government Disaster Recovery Payment) Bill 2023

No comment

Statutory Declarations Amendment Bill 2023

No comment

Treasury Laws Amendment (Support for Small Business and Charities and Other Measures) Bill 2023

No comment

Water Amendment (Restoring Our Rivers) Bill 2023

No comment

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the Federal Register of Legislation between 29 August to 6 October 2023 ⁵	246
Legislative instruments commented on in report ⁶	7

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response	0
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Social Security (Administration) Income Management Regime instruments⁷

Advice to Parliament

The income management regimes

Rights to social security; adequate standard of living; equality and non-discrimination; rights of the child; privacy

These instruments operationalise aspects of both the enhanced income management regime under Part 3AA of the Act, including by specifying eligibility criteria for mandatory participation in the regime, and the income management regime under Part 3B of the Act, including specifying the Northern Territory as a Territory where a person may be subject to the income management regime.

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](#).

⁶ The committee makes no comment on the remaining legislative instruments on the basis that they do not engage, or only marginally engage, human rights; promote human rights; and/permissibly limit human rights. This is based on an assessment of the instrument and relevant information provided in the statement of compatibility (where applicable). The committee may have determined not to comment on an instrument notwithstanding that the statement of compatibility accompanying the instrument may be inadequate.

⁷ Social Security (Administration) (Enhanced Income Management Regime—State Referrals) Determination 2023 [F2023L01173]; Social Security (Administration) (Enhanced Income Management Regime—Commonwealth Referrals and Exemptions) Determination 2023 [F2023L01172]; Social Security (Administration)(Specified Income Management Territory—Northern Territory) Instrument 2023 [F2023L01269]; Social Security (Administration) (Recognised State or Territory—Northern Territory) Determination 2023 [F2023L01273]; Social Security (Administration) (Declared Child Protection State—New South Wales, Queensland, South Australia and Victoria) Determination 2023 [F2023L01274].

For many years the committee has raised concerns regarding the compatibility of compulsory income management with multiple human rights. In particular, by subjecting an individual to mandatory income management and restricting how they may spend a portion of their social security payment, the measure limits the rights to social security and a private life, and possibly the right to an adequate standard of living. Due to the disproportionate impact on certain groups with protected attributes, including Aboriginal and Torres Strait Islander peoples and children, the measures also engage and limit the right to equality and non-discrimination and the rights of the child. By operationalising aspects of the mandatory income management regimes, these same human rights concerns apply to these instruments.

The committee draws these same human rights concerns to the attention of the Parliament and notes that it will consider these instruments more comprehensively as part of its human rights compatibility review of compulsory income management, required to be completed by September 2024.

Social Security (Administration) (Public Interest Certificate Guidelines) (DEWR) Determination 2023

Seeking Information

Disclosure of personal information in the public interest

Multiple rights

This legislative instrument establishes guidelines to assist the secretary of the Department of Employment and Workplace Relations in exercising their power to disclose social security information where this is in the public interest. Permitting the disclosure of personal social security information engages and may limit multiple human rights, including the right to privacy.

The committee notes that this is the first opportunity it has had to consider the compatibility of this measure with human rights in ten years, and considers that the statement of compatibility accompanying this measure is incomplete and insufficient. The committee is seeking further information from the Minister for Employment and Workplace Relations as to the compatibility of the measure with human rights.

Telecommunications (Interception and Access — Independent Commission Against Corruption of South Australia) Declaration 2023

Advice to Parliament

Declaration as interception agency

Privacy

The committee considers that it is not able to conclude that declaring a body to be an interception agency, and thereby able to intercept private communications, constitutes a permissible limit on the right

to privacy. As the committee has noted on numerous occasions, the *Telecommunications (Interception and Access) Act 1979* was enacted prior to the establishment of the committee, and the corresponding requirement that a statement of compatibility with human rights with respect to the Act be drafted. As such, the Act has not, as a whole, been reviewed for compliance with Australia's human rights obligations. Of those specific powers in the Act that have been reviewed by the committee, the committee previously raised concerns as to the compatibility of a number of these powers with human rights, particularly the right to privacy.

The committee recommends that the Attorney-General's Department conduct a foundational privacy assessment of the human rights compatibility of the Act.

Instruments imposing sanctions on individuals⁸

A number of legislative instruments impose sanctions on individuals. The committee has considered the human rights compatibility of similar instruments on a number of occasions, and retains scrutiny concerns about the compatibility of the sanctions regime with human rights.⁹ However, as these legislative instruments do not appear to designate or declare any individuals who are currently within Australia's jurisdiction, the committee makes no comment in relation to these instruments at this stage.

⁸ See Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment (No. 1) Instrument 2023 [F2023L01226]; Charter of the United Nations (Listed Persons and Entities) Amendment (No. 1) Instrument 2023 [F2023L01230].

⁹ See, most recently, Parliamentary Joint Committee on Human Rights, [Report 15 of 2021](#) (8 December 2021), pp. 2–11 (Autonomous Sanctions), and [Report 10 of 2021](#) (25 August 2021) pp. 117–128 (Charter of UN Sanctions).