

Report snapshot¹

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 at the page numbers indicated.

Bills

Chapter 1: New and continuing matters

Bills introduced 6 to 16 February 2023	18
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Private members or senators' bills that may engage and limit human rights	5

Chapter 2: Concluded

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Australia Council Amendment (Creative Australia) Bill 202

No comment

Commonwealth Electoral Amendment (Cleaning up Political Donations) Bill 2023

The committee notes that this private member's bill appears to engage and may limit human rights. Should this bill proceed to further stages of debate, the committee may request further information from the member as to the human rights compatibility of the bill.

Criminal Code Amendment (Inciting Illegal Disruptive Activities) Bill 2023

The committee notes that this private senator's bill appears to engage and may limit human

1 This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 2 of 2023*; [2023] AUPJCHR 16.

2 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.

rights. Should this bill proceed to further stages of debate, the committee may request further information from the senator as to the human rights compatibility of the bill.

Electoral Legislation Amendment (Lowering the Voting Age) Bill 2023

No comment

Export Control Amendment (Streamlining Administrative Processes) Bill 2022

Advice to Parliament **Information-sharing between government agencies and other bodies**
Right to privacy

[pp. 49-62](#)

This bill seeks to amend the *Export Control Act 2020* to alter information-sharing provisions relating to government agencies and other bodies, by authorising 'entrusted persons' (which would include any level of departmental officer and certain contractors) to use and disclose 'relevant information' (which may include personal information) in a range of circumstances and for a variety of purposes. By facilitating the use and disclosure of personal information this measure engages and limits the right to privacy.

Based on the additional information provided by the Minister for Agriculture, Fisheries and Forestry, the committee considers that the measure is accompanied by a number of important safeguards, but given its breadth there is a risk that these safeguards may not be adequate in all circumstances so as to ensure that any limitation on the right to privacy will be proportionate in practice. The committee has [recommended](#) that the measure be amended to provide that when an entrusted person is considering disclosing relevant information they must consider certain matters, and that the statement of compatibility be updated.

Fair Work Amendment (Prohibiting COVID-19 Vaccine Discrimination) Bill 2023

The committee notes that this private senators' bill appears to engage and may limit human rights. Should this bill proceed to further stages of debate, the committee may request further information from the senators as to the human rights compatibility of the bill.

Housing Australia Future Fund Bill 2023

No comment

Migration (Visa Pre-application Process) Charge Bill 2023

No comment

Migration Amendment (Aggregate Sentences) Bill 2023

Advice to Parliament **Consideration of aggregate sentences for the purposes of the Migration Act**
Prohibition on the expulsion of aliens without due process; right to liberty; rights of the child; prohibition on torture and ill-treatment; right to freedom of movement; right to protection of the family; prohibition on non-refoulement; and right to an effective remedy

[pp. 11-33](#)

This bill, now Act, is in response to a Federal Court decision. It provides that

aggregate sentences may be taken into account for all relevant purposes of the Migration Act and regulations, including for the purposes of assessing whether to automatically cancel a visa on character grounds, and retrospectively validates past decisions and actions.

By expanding the bases on which a visa can be cancelled on character grounds, noting that the consequence of a visa cancellation decision is mandatory immigration detention and subsequent removal from Australia, the committee considers that the measure engages and limits multiple rights.

The committee considers that the measure pursues an important objective, that is, protecting the safety of the Australian community and the integrity of the migration system. However, prior to these amendments the *Migration Act 1958* already enabled the cancellation of visas on the basis of a person's criminal record, and as such, the committee considers this measure does not appear to address a pressing and substantial need, as required by international human rights law.

As regards proportionality, there appear to be a lack of adequate safeguards or avenues for effective review and as the measure significantly interferes with a person's human rights, it is not clear that the measure would in all circumstances constitute a proportionate limitation on rights.

The committee therefore considers there is a significant risk that the measure is incompatible with the prohibition on the expulsion of aliens without due process, the rights to freedom of movement, protection of the family and liberty, and were children to be affected, with the rights of the child. There is also a risk that the measure may not be compatible with Australia's non-refoulement obligations (were it to apply to persons to whom protection obligations are owed) and the prohibition against torture and ill-treatment (were persons to be detained for an indefinite or prolonged period of time).

The committee notes that this bill passed both Houses of Parliament within three sitting days, which did not provide the committee with adequate time to scrutinise the legislation. This is of particular concern given the significant human rights implications of this bill. The committee draws this matter to the attention of the Minister for Home Affairs and the Parliament.

Migration Amendment (Australia's Engagement in the Pacific and Other Measures) Bill 2023

No comment

Migration Amendment (Evacuation to Safety) Bill 2023

No comment

Migration Amendment (Strengthening the Character Test) Bill 2023

The committee notes that this private member's bill appears to engage and may limit human rights (see the committee's entry on a substantially similar bill in [Report 15 of 2021](#) pp. 17-34). Should this bill proceed to further stages of debate, the committee may request further information from the member as to the human rights compatibility of the bill.

National Housing Supply and Affordability Council Bill 2023

No comment

National Reconstruction Fund Corporation Bill 2022

*Advice to
Parliament*

Disclosure of official information

Right to privacy

[pp. 63-68](#)

This bill seeks to establish a National Reconstruction Fund Corporation to provide finance to projects across priority areas. It provides that a Corporation official may disclose 'official information' (namely, information relating to the affairs of a person other than a Corporation official) to an agency, body or person, including if the disclosure will assist these persons to perform or exercise any of their functions or powers.

The committee sought additional information from the Minister for Industry, Science and Resources to establish whether official information could include personal information. Based on the minister's response, the committee considers that while the disclosure of official information limits the right to privacy, this is a marginal, and non-arbitrary, limitation on the right to privacy and considers its concerns have been addressed. The committee has recommended that the statement of compatibility be updated.

Northern Territory Safe Measures Bill 2023

The committee notes that this private senator's bill appears to engage and may limit human rights. Should this bill proceed to further stages of debate, the committee may request further information from the senator as to the human rights compatibility of the bill.

Offshore Petroleum and Greenhouse Gas Storage Amendment (Stop PEP11 and Protect Our Coast) Bill 2023

No comment

Referendum (Machinery Provisions) Amendment Bill 2022

*Advice to
Parliament*

Prohibition on foreign campaigners engaging in certain referendum conduct

Rights to freedom of expression, freedom of association, privacy, and equality and non-discrimination

[pp. 69-82](#)

This bill seeks to prohibit foreign campaigners (including people in Australia who are neither citizens nor permanent residents) from engaging in certain referendum conduct, including restricting forms of expression and fundraising or donating to referendum entities. The bill would also empower the Electoral Commissioner to obtain information and documents from persons to assess compliance.

The committee acknowledges the important objective of this measure in seeking to prevent foreign state players maliciously interfering with our referendum processes. The committee considers the measure pursues the legitimate objective of protecting the integrity of Australia's electoral system and reducing the threat of foreign influence on Australia's elections. However, the committee considers it

has not been established that the measure is a proportionate limit on the rights to freedom of expression, privacy and equality and non-discrimination, as it does not allow for an individualised assessment of the threat posed by particular campaigning by foreign nationals, and provides broad information-gathering powers. Further, to the extent that restricting foreign persons fundraising or incurring electoral expenditure interferes with the ability of a domestic political association to carry out its activities, the committee considers it may also engage and limit the right to freedom of association, and it has not been established that this is a proportionate limit on rights.

The committee has [recommended](#) amending the bill to require the Electoral Commissioner to consider whether the foreign campaigner has a genuine connection to Australia, and the extent of the campaigning, gift, expenditure or fundraising undertaken by the individual.

Royal Commissions Amendment (Enhancing Engagement) Bill 2023

No comment

Treasury Laws Amendment (2023 Measures No.1) Bill 2023

No comment

Treasury Laws Amendment (Housing Measures No. 1) Bill 2023

No comment

Workplace Gender Equality Amendment (Closing the Gender Pay Gap) Bill 2023

No comment

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the Federal Register of Legislation between 3 January and 6 February 2023 ³	89
Legislative instruments previously deferred ⁴	1
Legislative instruments commented on in report ⁵	3

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response	1
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Aged Care Quality and Safety Commission Amendment (Code of Conduct and Banning Orders) Rules 2022 [[F2022L01457](#)]

Advice to Parliament

[pp. 83-101](#)

Information gathering powers and other compliance action powers

Rights to health; privacy; and rights of persons with disability

This legislative instrument establishes the Code of Conduct for Aged Care, which sets out minimum standards of conduct for approved providers and their aged care workers and governing persons. It provides that the Aged Care Quality and Safety Commissioner may take certain actions in relation to compliance with the Code, including requesting information or documents from any person.

Taking action to ensure compliance with the Code promotes the right to health and the rights of persons with disability. However, establishing broad information gathering and sharing powers also engages and limits the right to privacy. Noting the breadth of the measure and that many of the accompanying safeguards are

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- 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](#).
 - Australian Immunisation Register Amendment (Japanese Encephalitis Virus) Rules 2022 [[F2022L01712](#)], previously deferred in Parliamentary Joint Committee on Human Rights, [Report 1 of 2023](#) (8 February 2023) p. 9.
 - 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.

discretionary, depending on how the Commissioner's powers are exercised in practice, there is some risk that the measure may not be a proportionate limit on the right to privacy in all circumstances.

The committee has [recommended](#) that the legislative instrument be amended to include in more detail the circumstances in which the Commissioner's information gathering powers may be exercised and the threshold that should be met before the Commissioner takes compliance action, and that the statement of compatibility with human rights be updated.

Publication of a register of banning orders

Right to health; rights of persons with disability; and right to privacy and reputation

This legislative instrument provides for additional matters that must be included on the register of banning orders for current and former aged care workers, including an individual's last known place of residence and other information that the Commissioner considers is necessary to identify an individual. The instrument also provides that the register of banning orders may be published on the Commission's website, unless publication would be contrary to the public interest or the interests of one or more care recipients.

Publishing the register of banning orders to protect vulnerable older Australians promotes the right to health and the rights of persons with disability. However, publishing this data also engages and limits the right to privacy. The committee considers that it has not been demonstrated that publishing the register on a publicly available website (that means that the names of those on the register will appear in a general google search) constitutes a proportionate limit on the right to privacy. In particular, the committee considers that it is not clear that making the register available as an online resource accessible via a secure portal by aged care providers would not be as effective to achieve the stated objective.

The committee has [recommended](#) that the instrument be amended to ensure the register be made readily available to all aged care providers but not published on a public website; require the Commissioner to correct information on the register they know to be misleading or inaccurate; and that the department's internal processes relating to the permissible inclusion of information on the register be reviewed.

Australian Immunisation Register Amendment (Japanese Encephalitis Virus) Rules 2022 **[F2022L01712]**

*Seeking
information*

Expansion of requirement to report vaccination information

Rights to health and privacy

[pp. 34-37](#)

This legislative instrument requires all registered vaccination providers to report the administration of a relevant vaccine for the Japanese encephalitis virus to the Australian Immunisation Register. The primary legislation provides that the minister (or their delegate) may authorise 'a person' to use or disclose protected information contained in the Register for a specified purpose where satisfied 'it is in the public interest' to do so.

Adding a new vaccination to the Register, and so increasing the ability for the government to enhance the monitoring of the disease, may promote the right to health. However, requiring vaccination providers to report a recipient's personal

information to the Register limits the right to privacy. There is a risk that the existing broad ministerial discretion to disclose personal information to 'any person' and for any purpose if it is considered to be 'in the public interest' to do so, does not sufficiently safeguard the right to privacy. The committee seeks a response from the Minister for Health and Aged Care to its previous recommendation that the ministerial discretion in the *Australian Immunisation Register Act 2015* be amended.

Biosecurity (Entry Requirements—Human Coronavirus with Pandemic Potential) Determination 2023 [F2023L00009]

Seeking

information

[*pp. 38-44*](#)

Restriction of passengers entering Australia

Rights to life; health; freedom of movement; privacy; equality and non-discrimination

This legislative instrument imposes entry requirements on passengers to provide proof of a negative test for COVID-19 taken within a 48-hour period prior to boarding a flight that has commenced from the People's Republic of China or the Special Administrative Region of Hong Kong or Macau and ends in Australian territory. The measure does not appear to be time limited, and the explanatory statement does not explain why the determination was made.

While the measure may promote the rights to life and health for persons in Australia, the measure may mean that persons who cannot produce a negative Covid-19 test may be temporarily banned from entering Australia, including Australian citizens and permanent residents. As such, this engages and may limit a number of other human rights. The committee seeks further information from the Minister for Health and Aged Care to assess the compatibility of this measure with the rights to freedom of movement, privacy and equality and non-discrimination.

Federal Court Legislation Amendment Rules 2022 [F2023L00033]

Seeking

information

[*pp. 45-48*](#)

Access to court documents

Right to freedom of expression

These rules provide that a person who is not a party to a Federal Court proceeding cannot inspect certain court documents in a proceeding until after the first directions hearing or the hearing (whichever is earlier).

Restricting access to court documents, which journalists may use to help them accurately report on cases before the Federal Court, engages and limits the right to freedom of expression. The statement of compatibility accompanying the instrument does not identify that this right is engaged, and the explanatory statement provides no information as to why this amendment was considered necessary. The committee is seeking further information from the Attorney-General in order to assess the compatibility of the measure with the right to freedom of expression.

Instruments imposing sanctions on individuals⁶

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.⁷ 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.

6 See Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 1) Instrument 2023 [F2023L00074]; Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Thematic Sanctions) Amendment (No. 1) Instrument 2023 [F2023L00075]; and Autonomous Sanctions (Designated and Declared Persons – Myanmar) Amendment Instrument 2023 [F2023L00076].

7 See, most recently, Parliamentary Joint Committee on Human Rights [Report 15 of 2021](#) (8 December 2021) pp. 2-11.