

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 17 March 2023	13
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Bills commented on in report ²	1
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Chapter 2: Concluded

Bills committee has concluded its examination of following receipt of ministerial response	0
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Education Legislation Amendment (Startup Year and Other Measures) Bill 2023

No comment

Ending Native Forest Logging Bill 2023

No comment

Financial Accountability Regime Bill 2023

No comment

Financial Accountability Regime (Consequential Amendments) Bill 2023

No comment

- 1 This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 4 of 2023*; [2023] AUPJCHR 29.
- 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.

Financial Services Compensation Scheme of Last Resort Levy Bill 2023

No comment

Financial Services Compensation Scheme of Last Resort Levy (Collection) Bill 2023

No comment

Governor-General Amendment (Cessation of Allowances in the Public Interest) Bill 2023

No comment

Improving Access to Medicinal Cannabis Bill 2023

No comment

National Health Amendment (Effect of Prosecution – Approved Pharmacist Corporations) Bill 2023

No comment

National Vocational Education and Training Regulator (Data Streamlining) Amendment Bill 2023

No comment

Social Security (Administration) Amendment (Income Management Reform) Bill 2023 and related instruments³

Seeking information

[pp. 9-25](#)

The enhanced income management regime

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

This bill seeks to expand access to the enhanced income management regime under Part 3AA of the *Social Security (Administration) Act 1999* (the Act), including by introducing eligibility criteria for both compulsory and voluntary participation in the new regime. The bill would also specify portions of welfare payments that are to be 'qualified' and 'unqualified' as well as authorise the disclosure of personal information between relevant authorities for the purposes of the operation of the enhanced income management regime.

The related legislative instruments firstly set out the terms and conditions relating to the establishment, ongoing maintenance and closure of BasicsCard bank accounts, including the limitations on the use of the qualified portion of a person's welfare payment, and secondly specify the Ngaanyatjarra Lands as an area for the purposes of the eligibility criteria relating to vulnerable welfare payment

3 Social Security (Administration) (Declinable Transactions and BasicsCard Bank Accounts) Determination 2023 [F2023L00189] and Social Security (Administration) (Declared income management area — Ngaanyatjarra Lands) Determination 2023 [F2023L00190].

recipients.

By compulsorily subjecting an individual to the enhanced income management regime and restricting how they may spend a portion of their social security payment, the measures limit the rights to social security, privacy and possibly an adequate standard of living as well as the rights of the child (to the extent that the measures apply to children). The measures also engage and limit the right to equality and non-discrimination insofar as they have a disproportionate adverse impact on certain groups of people, including Aboriginal and Torres Strait Islander persons.

The committee is seeking further information from the Minister for Social Services to assess the compatibility of these measures with multiple human rights.

Transparent and Quality Public Appointments Bill 2023

No comment

Treasury Laws Amendment (Financial Services Compensation Scheme of Last Resort) Bill 2023

No comment

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the [Federal Register of Legislation](#) between 7 February and 2 March 2023⁴ 102

Legislative instruments commented on in report⁵ 4⁶

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response 3

Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Russia and Ukraine) Amendment (No. 2) Instrument 2023 [[F2023L00139](#)]

This legislative instrument imposes 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 this legislative instrument does not appear to designate or declare any individuals who are currently within Australia's jurisdiction, the committee makes no comment in relation to this instrument at this stage.

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- 4 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](#).
 - 5 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.
 - 6 Note that two of these instruments are considered in the above bill entry relating to the Social Security (Administration) Amendment (Income Management Reform) Bill 2023.
 - 7 See, most recently, Parliamentary Joint Committee on Human Rights, [Report 15 of 2021](#) (8 December 2021), pp. 2-11.

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

Advice to
Parliament

[pp. 43-53](#)

Restriction of passengers entering Australia

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

This legislative instrument imposed 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 was not time limited but has since been repealed.

The committee considers that as the determination was designed to prevent the spread of new Covid-19 variants, it likely promoted and protected the rights to life and health. The minister advised that this determination was repealed shortly after the committee previously reported. As such, noting the determination sought to achieve the legitimate objective of seeking to prevent potential new variants of concern emerging and circulating in Australia, and as the determination was strictly time-limited and had exemptions available for individual circumstances, the committee considers any limit on human rights by this determination was likely reasonable and proportionate.

The minister advised that such determinations will be in force for as long as is required to achieve its purpose and in general such determinations will sunset after 10 years. The committee remains concerned that there is no legislative requirement to regularly review such determinations. The committee considers there is some risk, without a legislative requirement to regularly review the continued necessity for such measures, that these could continue beyond that which is strictly necessary.

The committee has [recommended](#) that the *Biosecurity Act 2015* be amended to provide that a determination made under these provisions must not be in force longer than the period that the Health Minister considers necessary and in any case, must not be longer than 3 months. The committee considers that its concerns have been addressed by the repeal of this instrument and makes no further comment in relation to this legislative instrument.

Fair Entitlements Guarantee Regulations 2022 [[F2022L01529](#)]

Advice to
Parliament

[pp. 54-63](#)

Financial assistance scheme for textile, clothing and footwear industry contract outworkers

Rights to just and favourable conditions of work and equality and non-discrimination

This legislative instrument continues the scheme of financial assistance for textile, clothing and footwear (TCF) industry contract outworkers in situations where their employer has become insolvent. It provides that an individual must be an Australian citizen or a holder of a permanent visa or a special category visa to be eligible for financial assistance.

Providing financial assistance for eligible TCF contract outworkers during an insolvency event promotes the right to just and favourable conditions of work, but by excluding workers on the basis of their visa status this measure may also limit

this right and the right to equality and non-discrimination.

The committee considers that the overall objective of the scheme, that providing financial support to vulnerable workers during an insolvency event, is a legitimate objective. However, it considers that the specific objective sought to be achieved by excluding certain workers on the basis of their migration status – that is, to achieve legislative consistency – is not sufficient to constitute a legitimate objective for the purposes of international human rights law. Regarding proportionality, the committee notes that the only safeguard identified appears unlikely to be effective in practice and the measure offers no flexibility to consider individual circumstances. As such, the committee considers there to be a risk that limiting eligibility on the basis of migration status may not constitute a proportionate limitation on rights.

The committee has [recommended](#) some amendments to assist with the proportionality of the measure and otherwise draws these human rights concerns to the attention of the Minister for Employment and Workplace Relations and the Parliament.

Federal Court Legislation Amendment Rules 2022 [\[F2023L00033\]](#)

*Advice to
Parliament*

Access to court documents
Right to freedom of expression

[pp. 64-72](#)

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 considers that, based on the additional information provided by the Chief Justice regarding the ability to access such documents by making an application to the court, its concerns have been addressed. The committee has [recommended](#) that the statement of compatibility be updated.

Migration (Regional Processing Country—Republic of Nauru) Designation (LIN 23/017) 2023 [\[F2023L00093\]](#)

*Seeking
information*

Designation of Nauru as a regional processing country
Multiple rights

[pp. 26-34](#)

This legislative instrument designates Nauru as a regional processing country, the effect of which is to enable the operation of section 198AD of the *Migration Act 1958*, which requires that an officer must, as soon as reasonably practicable, remove an unauthorised maritime arrival from Australia and take them to a regional processing country.

By designating Nauru, this measure has the effect of requiring the removal of any future unauthorised maritime arrivals from Australia to Nauru, which engages and limits multiple human rights.

The committee is seeking further information from the Minister for Home Affairs to assess the compatibility of this instrument with multiple human rights.

Social Security (Tables for the Assessment of Work-related Impairment for Disability Support Pension) Determination 2023 [F2023L00188]

*Seeking
information*

[pp. 35-42](#)

Eligibility for the Disability Support Pension

Rights to social security, adequate standard of living, equality and non-discrimination and rights of persons with disability

This legislative instrument sets out the rules that must be used when assessing whether a person meets the work-related impairment level for the purposes of assessing eligibility for the Disability Support Pension (DSP).

By supporting the provision of a social security payment specifically to support persons with disability, this measure promotes the rights to social security, an adequate standard of living, equality and non-discrimination and the rights of persons with disability for those who are eligible for the DSP. However, in restricting which persons may be eligible for the DSP according to the work-related impairment tables set out in the instrument, the measure also limits these human rights.

The committee is seeking further information from the Minister for Social Services to assess the compatibility of this instrument with these rights.
