

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

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Appropriation Bills 2023-2024³

*Advice to
Parliament*

Appropriation of money to fund public services *Multiple rights*

These bills (now Acts) appropriate money from the Consolidated Revenue Fund for a range of services. Proposed government expenditure to give effect to particular policies may engage, limit or promote multiple human rights, including civil and political rights and economic, social and cultural rights. The rights of

- 1 This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 8 of 2023*; [2023] AUPJCHR 69.
- 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.
- 3 Appropriation Bill (No. 1) 2023-2024; Appropriation Bill (No. 2) 2023-2024; Appropriation Bill (No. 3) 2022-2023; Appropriation Bill (No. 4) 2022-2023; Appropriation (Parliamentary Departments) Bill (No. 1) 2022-2023; and Appropriation (Parliamentary Departments) Bill (No. 2) 2022-2023.

vulnerable groups, including women, Aboriginal and Torres Strait Islander people, people with disability, children and ethnic minorities, may be engaged where policies have a particular, direct impact on these groups. However, the statements of compatibility accompanying these bills state that no rights are engaged.

The committee received a response from the Finance Minister in relation to this. The committee considers that the allocation of funds via appropriation bills is susceptible to a human rights assessment. The committee's expectation is that statements of compatibility with human rights accompanying appropriations bills should address the compatibility of measures which directly impact human rights and which are not addressed elsewhere in legislation. In particular, the committee expects that where the appropriations bills propose a real reduction in funds available for expenditure on certain portfolios or activities that may impact human rights, the statement of compatibility should identify this and explain why this is a permissible limit.

Australian Capital Territory (Self-Government) Amendment Bill 2023

No comment

Biosecurity Amendment (Advanced Compliance Measures) Bill 2023

*Seeking
information*

Accessing information to assess biosecurity risk

Right to privacy and equality and non-discrimination

This bill seeks to amend the *Biosecurity Act 2015* to expand the Director of Biosecurity's power to require a class of persons (such as, all passengers on a particular plane) to produce a travel document (including a passport), which would be scanned and identify any relevant information about a passenger held by the Department of Agriculture (including a history of compliance with biosecurity laws). This information would be used to either assess the passenger's level of biosecurity risk or that of a good they possess, or for future profiling or assessment of biosecurity risks.

This engages and limits the right to privacy, and may limit the right to equality and non-discrimination. The committee considers further information is required to assess the compatibility of the measure with these rights, and is seeking further information from the Minister for Agriculture, Fisheries and Forestry.

Increased civil penalties

Criminal process rights

The bill seeks to increase several civil penalties in the Biosecurity Act, some by up to 900 per cent. For example, the maximum penalty for failure to comply with an entry or exit requirement under the Act would increase from 30 penalty units (currently \$9,390) to 150 penalty units (currently \$46,950).

There is a risk that penalties applying to members of the public may be considered criminal in nature under international human rights law, including because of their potential severity. The committee recommends that when civil penalties, which may apply to members of the public, are so severe such that there is a risk that they may be regarded as 'criminal' under international human rights law, consideration should be given to applying a higher standard of proof in the related civil penalty proceedings.

Broadcasting Services Amendment (Ban on Gambling Advertisements During Live Sport) Bill 2023

No comment

Broadcasting Services Amendment (Healthy Kids Advertising) Bill 2023

No comment

Classification (Publications, Films and Computer Games) Amendment (Industry Self-Classification and Other Measures) Bill 2023

No comment

Crimes Legislation Amendment (Combatting Foreign Bribery) Bill 2023

No comment

Counter-Terrorism Legislation Amendment (Prohibited Hate Symbols and Other Measures) Bill 2023

*Seeking
information*

Criminalising the public display and trading of prohibited symbols

Rights to life, security of person, prohibition against inciting national, racial or religious hatred, rights to freedom of expression and religion, equality and non-discrimination, and rights of the child

The bill seeks to introduce new criminal offences relating to the public display and trading of prohibited symbols, namely the Islamic State flag, the Nazi hakenkreuz, the Nazi double sig rune, and something that so nearly resembles these things that it is likely to be confused with, or mistaken for, that thing.

The committee notes with deep concern the rising number of disturbing events involving the public display of Nazi symbols and emphasises that these displays of hate have no place in Australia. The committee notes that Australia has obligations under international human rights law to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and to eliminate all incitement to, or acts of, racial discrimination. As such, the committee considers that if criminalising the public display and trading of prohibited symbols deters and prevents the commission of violent offences and reduces the harm caused to others by the display of symbols associated with racial and religious hatred, this would promote a number of human rights, including the rights to life and security of person and the prohibition against inciting national, racial or religious hatred.

However, by criminalising certain forms of expression, the measures would also engage and limit the right to freedom of expression and, insofar as they apply to children, the rights of the child. Further, if the measures had the effect of restricting the ability of people of certain religious groups to worship, practise or observe their religion (such as Buddhists displaying the sacred Swastika and Muslims using the words of the shahada in the Islamic flag), it may engage and limit the right to freedom of religion and possibly the right to equality and non-

discrimination. The committee is seeking further information from the Attorney-General to assess the compatibility of the measures with these rights.

Criminalising the accessing or possession of 'violent extremist material'

Rights to life, security of person, prohibition against inciting national, racial or religious hatred, right to freedom of expression and rights of the child

The bill seeks to introduce new criminal offences relating to the use of a carriage service (such as an internet or mobile telephone service) for accessing or possessing 'violent extremist material', which among other things, would describe or depict or support or facilitate 'serious violence'. Serious violence captures a broad range of acts, including material that describes serious damage to property, the serious electronic interference with a financial system or disruption of a transport system.

To the extent that criminalising conduct relating to the use of a carriage service for violent extremist material may deter and prevent terrorist-related conduct and violence, the measure could promote a number of human rights, including the rights to life and security of person and the prohibition against inciting national, racial or religious hatred.

However, by criminalising the use of a carriage service to, among other things, access, share, and possess certain material, the measure would engage and limit the right to freedom of expression and, insofar as it applies to children, the rights of the child. The committee is concerned that the new offences appear to capture conduct that does not appear to be illegitimate (for example, criminalising a person accessing material via social media of footage of protestors overseas taking action to overthrow unlawful regimes). As such, the committee is seeking further information from the Attorney-General to assess the compatibility of the measures with these rights.

Expanding the offence of advocating terrorism

Rights to life, security of person, freedom of expression and rights of the child

The bill seeks to expand the existing offence of advocating terrorism to include providing instruction on the doing of a terrorist act or offence; or praising the doing of a terrorist act or offence in circumstances where there is a substantial risk that such praise might lead other persons to commit terrorist acts or offences.

To the extent that broadening the offence of advocating terrorism would deter and prevent terrorist acts and offences, the measure could promote the rights to life and security of person.

However, by criminalising certain forms of expression the measure would engage and limit the right to freedom of expression and, insofar as it applies to children, the rights of the child. The committee is seeking further information from the Attorney-General to assess the compatibility of the measures with these rights.

Environment Protection (Sea Dumping) Amendment (Using New Technologies to Fight Climate Change) Bill 2023

No comment

Freeze on Rent and Rate Increases Bill 2023

No comment

Greenhouse and Energy Minimum Standards Amendment (Administrative Changes) Bill 2023

No comment

Home Affairs Bill 2023

No comment

Inspector-General of Live Animal Exports Amendment (Animal Welfare) Bill 2023

*Advice to
Parliament*

Collection, use and disclosure of personal information
Right to privacy

This bill seeks to amend the *Inspector-General of Live Animal Exports Act 2019* (the Act) to expand the functions of the Inspector-General of Animal Welfare (Inspector-General) in relation to their powers of review. Under the current Act, the Inspector-General may require a person to give information or documents to them if they reasonably believe it is relevant to the review.

By expanding the matters in relation to which the Inspector-General may conduct a review, the measure would have the effect of expanding the scope of information, including personal information, that may be obtained, used and disclosed by the Inspector-General, which engages the right to privacy. On the basis of the advice provided by the Minister for Agriculture, Fisheries and Forestry the committee considers there are sufficient safeguards to ensure that any limitation on the right to privacy is likely to be proportionate.

Intellectual Property Laws Amendment (Regulator Performance) Bill 2023

No comment

Intelligence Services Legislation Amendment Bill 2023

*Seeking
information*

Exemption from civil and criminal liability for defence officials and others
Right to privacy and right to an effective remedy

This bill seeks to amend the *Criminal Code Act 1995* to exempt defence officials and others from civil and criminal liability for certain 'computer related conduct'.

This engages and may limit the right to an effective remedy, should the relevant conduct result in a breach of the civil and political rights of a person in Australia (such as the right to privacy). The statement of compatibility states that these amendments may indirectly create a risk that a person's right to privacy may be violated, including where conduct has inadvertently affected a computer or device inside Australia. However, it does not identify whether this would constitute a permissible limit on the right to privacy, and does not recognise that the right to an effective remedy may be engaged.

The committee is seeking further information from the Attorney-General to assess the compatibility of the measure with these rights.

Interactive Gambling Amendment (Ban on Gambling Advertisements) Bill 2023

No comment

International Organisations (Privileges and Immunities) Amendment Bill 2023

Seeking information

Extending privileges and immunities

Right of access to courts and tribunals, right to an effective remedy and prohibition against torture and inhuman treatment

This bill seeks to allow regulations to be made to extend privileges and immunities under the *International Organisations (Privileges and Immunities) Act 1963* to international organisations to which Australia is not a member and to persons representing such organisations, as well as other categories of officials that are to be prescribed by regulations.

By extending immunities to a broader range of organisations and officials, including an immunity from personal arrest or detention and from suit and other legal processes, the bill would engage and limit the right of access to courts and tribunals as well as the right to an effective remedy and potentially Australia's obligations to investigate and prosecute (or extradite) persons alleged to have committed torture. The committee is seeking further information from the Minister for Foreign Affairs and Trade to assess the compatibility of the bill with these rights.

Migration Amendment (Overseas Organ Transplant Disclosure and Other 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.

Migration Amendment (Strengthening Employer Compliance) Bill 2023

Seeking information

Employer sanctions for coercive practices

Right to just and favourable conditions of work; prohibition against slavery; rights to equality and non-discrimination and privacy

The bill seeks to establish new offences and civil penalties for coercing or otherwise pressuring a person to breach a work-related condition of their visa, or accept an exploitative work arrangement to meet a work-related condition of their visa. This engage and promote several human rights, including the rights to just and favourable conditions of work, equality and non-discrimination and the prohibition against slavery.

The bill also seeks to expand the circumstances in which an inspector may exercise their existing powers. These powers include the power to enter premises, ask questions and require the provision of documents and information. This engages and may limit the right to privacy. The committee is seeking the Minister for Home

Affairs' advice as to whether the measure constitutes a permissible limit on the right to privacy.

Publication of information about prohibited employers

Multiple rights

The bill would allow the minister to prohibit employers from employing any additional non-citizens where they have been subject to a 'migrant worker sanction'. The minister would be required to publish on the department's website the names of such employers.

The publication of information about prohibited employers may promote the right to just and favourable conditions of work, the absolute prohibition against slavery and servitude, and the right to equality and non-discrimination. However, requiring the publication of information identifying prohibited employers online also engages and limits the right to privacy. The committee seeks the Minister for Home Affairs' advice as to the compatibility of the measure with the right to privacy.

Murdoch Media Inquiry Bill 2023

The committee notes that this private senator's bill appears to engage and may limit human rights (particularly in relation to the information sharing powers and offence provisions). 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.

National Occupational Respiratory Disease Registry (Consequential Amendments) Bill 2023

No comment

National Occupational Respiratory Disease Registry Bill 2023

Seeking information

Establishment of a registry containing personal data

Rights to health; just and favourable conditions of work; privacy

The bill seeks to establish a National Occupational Respiratory Disease Registry to capture and share data on respiratory diseases thought to be occupationally caused or exacerbated, and the agents that are believed to have caused them.

This would likely promote the rights to health and to just and favourable conditions of work. However, requiring the provision of personal information, including potentially identifying affected workers by name on the registry without the person's consent, and permitting the use and disclose of that personal information, also engages and limits the right to privacy. It is not clear that the measure would constitute a proportionate limit on the right to privacy, including noting that several key terms are not defined in the bill, the potential scope of information that may be included on the registry is unclear, why the bill does not provide doctors with the flexibility to provide only limited information about patients, and the lack of clarity as to how access to the registry would occur.

The committee is seeking the Minister for Health and Aged Care's advice as to whether the measure constitutes a permissible limit on the right to privacy.

Public Service Amendment Bill 2023

No comment

Social Services Legislation Amendment (Child Support Measures) Bill 2023

*Advice to
Parliament*

Departure authorisation certificates*Right to freedom of movement*

This bill (now Act) expands the circumstances in which a child support debtor who is subject to a departure prohibition order (restricting them from leaving Australia) may be refused a departure authorisation certificate (which would allow them to leave Australia for a foreign country). It would provide that a certificate cannot be issued solely where a person has given a security for their return (as the law currently provides). The bill would require that a person must have given a security for their return and have satisfied the Child Support Registrar that they will wholly or substantially discharge the outstanding child support or carer liability (or the debt is irrecoverable or they will likely no longer have such a debt).

This limits the right to freedom of movement, and may limit the right to equality and non-discrimination. The Minister for Social Services provided detail advice to the committee in relation to this measure. The committee notes the importance of seeking to ensure that parents pay their outstanding child support debt, and considers that, in many circumstances, the measure would constitute a proportionate limit on the right to freedom of movement. However, the committee considers that if an outstanding debt consisted largely of late fees and penalties, but the child support debt itself had been largely paid back, an ongoing departure prohibition order may not constitute a proportionate limit on the right to freedom of movement. Further, the committee considers that restricting the circumstances in which a debtor may travel overseas may risk disproportionately impacting persons on the basis of nationality, and that such differential treatment may not be permissible in some circumstances. However, as the bill has passed the committee makes no further comment.

Treasury Laws Amendment (2023 Law Improvement Package No. 1) Bill 2023

No comment

Treasury Laws Amendment (2023 Measures No. 3) Bill 2023

No comment

Treasury Laws Amendment (Making Multinationals Pay Their Fair Share – Integrity and Transparency) Bill 2023

No comment

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the Federal Register of Legislation between 27 May and 19 June 2023 ⁴	190
Legislative instrument previously deferred ⁵	1
Legislative instruments commented on in report ⁶	1

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response	4
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Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) Amendment (No. 7) Instrument 2023 [[F2023L00762](#)]

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 Migration (Granting of contributory parent visas, parent visas and other family visas in financial year 2022/2023) Instrument (LIN 23/016) 2023 [[F2023L00609](#)], deferred in *Report 7 of 2023* (21 June 2023).
 - 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 See, most recently, Parliamentary Joint Committee on Human Rights, [Report 15 of 2021](#) (8 December 2021), pp. 2-11.

Extradition (Republic of North Macedonia) Regulations 2023 [F2023L00447]

*Advice to
Parliament*

Extraditions to the Republic of North Macedonia

Rights to life; prohibition against torture and other cruel, inhuman or degrading treatment or punishment; rights to liberty; fair trial; presumption of innocence

These regulations declare the Republic of North Macedonia to be an 'extradition country' for the purposes of the *Extradition Act 1988*. Facilitating the extradition of persons in Australia to the Republic of North Macedonia to face proceedings in relation to serious offences (including alleged offences) engages and may limit multiple rights. In order to assess the compatibility of the instrument with rights it is necessary to consider the compatibility of the Extradition Act with multiple rights.

The Attorney-General provided advice in relation to this to the committee. Noting the importance of the rights that may be affected by extradition, such as the prohibition against torture and other cruel, inhuman or degrading treatment or punishment and the rights to a fair hearing and equality and non-discrimination the committee is concerned that many of the specified safeguards in relation to extradition rely on the exercise of ministerial discretion. The committee also considers the presumption against bail in the Extradition Act, and the lack of any ability to challenge the lawfulness of such continued detention is incompatible with the rights to liberty and effective remedy. The committee has made [recommendations](#) to amend the Extradition Act to improve its human rights compatibility and draws this to the attention of the Attorney-General and Parliament.

Migration (Granting of contributory parent visas, parent visas and other family visas in financial year 2022/2023) Instrument (LIN 23/016) 2023 [F2023L00609]

*Seeking
information*

Capping numbers of parent visas

Right to protection of the family and rights of the child

This legislative instrument determines the maximum number of visas that may be granted for certain classes of visas between 1 July 2022 and 30 June 2023 (inclusive).

Capping the number of parent visas and other family visas, which may limit the ability of certain family members (including parents of children aged under 18) to join others in Australia, engages and may limit the right to protection of the family and the rights of the child.

Noting that the instrument is not accompanied by a statement of compatibility (as this is not required as a matter of law), the committee is seeking further information from the Minister for Home Affairs to assess the compatibility of this measure with these rights.

Migration (Specification of evidentiary requirements – family violence) Instrument (LIN 23/026) 2023 [F2023L00382]

*Advice to
Parliament*

Evidence of family violence

Right to equality and non-discrimination

This legislative instrument specifies the items of acceptable evidence for a non-judicially determined claim of family violence for the purposes of the Migration Regulations 1994. If a person on a visa who was in a relationship with their sponsor can make out a claim of family violence they may be eligible for a permanent visa. If they are unable to make out such a claim, they may be required to leave Australia.

The Minister for Immigration, Citizenship and Multicultural Affairs provided further information to the committee. The committee considers there is a risk that applicants from non-English speaking backgrounds or certain cultural backgrounds may face more difficulties obtaining evidence of family violence and, consequently, the measure appears to limit the right to equality and non-discrimination. As it is not clear that the measure provides sufficient flexibility, or is accompanied by sufficient safeguards, it is not clear that this would constitute a permissible limit on the right.

The committee [recommends](#) that a review of this measure to be conducted in the next 12 months consider the concerns noted in this report (including consideration of whether people from non-English speaking backgrounds or certain cultural backgrounds are more frequently unable to provide evidence of non-judicially determined family violence in practice).

Public Service Regulations 2023 [\[F2023L00368\]](#)

*Advice to
Parliament*

Direction to attend medical examination

Rights to privacy, work and equality and non-discrimination and rights of people with disability

These regulations allow an Agency Head to direct an APS employee to undergo a medical examination by a medical practitioner nominated by the Agency to assess the employee's fitness for duty and give the Agency Head a report of the examination within a specified period. By directing an employee to undergo a medical examination and provide the results of that examination to their employer, the measure engages and limits the right to privacy. To the extent that the measure has a disproportionate impact on people with disability, it may engage and limit the rights of people with disability and the right to equality and non-discrimination. Depending on the outcome of the medical examination and any consequential action taken by the employer, the measure may also engage and limit the right to work.

The Minister for the Public Service provided advice to the committee making clear the legitimate objective of the measure of enabling heads of the public service to meet their work, health and safety obligations by ensuring people only return to work when it is safe to do so. The committee notes that there are several safeguards accompanying the measure and were the power to be used in the specific circumstances set out in the minister's response, it would likely be reasonable and proportionate. However, the committee is concerned that the measure is drafted in broad terms that could allow the power to be used in circumstances that may be an impermissible limit on the right to privacy and may unlawfully discriminate against persons with disabilities. The committee considers that it is likely that the measure does not impermissibly limit the right to work as existing discrimination and fair work protections continue to apply. The committee has made [recommendations](#) to

assist with the proportionality of the measure and otherwise draws its concerns to the attention of the minister and the Parliament.

Use and disclosure of personal information

Right to privacy

The regulations authorise an Agency Head, the Australian Public Service Commissioner and the Merit Protection Commissioner to use and disclose personal information that is in their possession or under their control in certain circumstances. This engages and limits the right to privacy.

The committee considers the measure pursues the legitimate objective of effectively managing employment related matters across the APS and maintaining public confidence in the APS, and is accompanied by sufficient safeguards that assist with proportionality. On this basis, the committee considers that the measure would likely constitute a permissible limitation on the right to privacy.

Telecommunications (Interception and Access) (Enforcement Agency – NSW Department of Communities and Justice) Declaration 2023 [F2023L00395]

*Advice to
Parliament*

Access to telecommunications data by corrective service authorities

Right to privacy

The *Telecommunications (Interception and Access) Act 1979* (TIA Act) provides that an authorised officer in an enforcement agency can authorise the disclosure of telecommunications data if it is for the purposes of enforcing the criminal law or a law imposing a pecuniary penalty, or for the protection of public revenue. This legislative instrument declares the NSW Department of Communities and Justice to be an enforcement agency, and each staff member of Corrective Services NSW to be an officer, for the purpose of the TIA Act.

The power to declare a corrective services authority as an enforcement body, meaning it may access telecommunications data, engages and limits the right to privacy. The Attorney-General provided advice as to the necessity of this power, and the committee acknowledges the importance of correctional facilities being able to investigate criminal activity or threats to the order of the prison. However, noting that all other corrective services agencies access such data via the police, and that Corrective Services NSW has traditionally done so, the committee considers the necessity of this power has not been established. Further, as the declaration enables thousands of employees of Corrective Services NSW to access telecommunications data, rather than restricting this to only those with a specific need to access such data, the declaration appears insufficiently defined. As such, the committee considers this declaration is not compatible with the right to privacy. The committee recommends that at a minimum the declaration be amended to specify only those staff members who require access to telecommunications data to be officers for the purposes of the Act, and draws this to the attention of the Attorney-General and Parliament.
