

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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Biosecurity Amendment (Advanced Compliance Measures) Bill 2023

Advice to Parliament

Accessing information to assess biosecurity risk

Right to privacy and equality and non-discrimination

The bill (now Act) amends the *Biosecurity Act 2015* (Biosecurity Act) 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 may be scanned and identify any relevant information about a passenger held by the Department of Agriculture. This information may 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 rights to privacy and equality and non-discrimination. The committee does not consider that building a profiling database of personal

¹ This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 9 of 2023*; [2023] AUPJCHR 85.

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.

information on travellers to determine their level of risk based on nationality is based on reasonable and objective criteria and as such considers it to be unlikely to be compatible with the right to equality and non-discrimination. The committee is also concerned that the measure is not appropriately circumscribed and does not contain sufficient safeguards to protect the right to privacy. The committee has suggested some amendments to assist with proportionality and draws this to the attention of the minister and Parliament.

Increased civil penalties

Criminal process rights

The bill (now Act) seeks to increase several civil penalties in the Biosecurity Act, some by up to 900 per cent. 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 draws this to the attention of the minister and Parliament.

Climate Change Amendment (Duty of Care and Intergenerational Climate Equity) Bill 2023

No comment

Copyright Legislation Amendment (Fair Pay for Radio Play) Bill 2023

No comment

Counter-Terrorism and Other Legislation Amendment Bill 2023

Seeking

Information

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 has previously concluded that these measures, particularly control orders and preventative detention orders, are likely to be incompatible with a range of human rights. Noting that since these powers were last reviewed Australia's terrorism threat level has been downgraded, and that there is a current review of related counter-terrorism powers, the committee is seeking further information to assess the human rights compatibility of extending these measures.

The bill also seeks to amend provisions relating to control orders to align them with the conditions that can be imposed under an extended supervision order. No specific information has been provided to demonstrate either the inadequacy of the existing range of available control order conditions, or the need for each proposed additional potential condition. As such, the committee is seeking further information from the Attorney-General in relation to this.

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

*Advice to
Parliament*

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 reiterates its deep concern over 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. 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 such symbols, this would promote a number of human rights.

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 restrict 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), they may engage and limit the right to freedom of religion and possibly the right to equality and non-discrimination. The committee also notes that the prohibition on trading in prohibited symbols would impact the disposal of private property, which may limit the right to a private life.

The committee considers that the measures pursue a vitally important objective and are accompanied by some important safeguards. However, the committee notes that many of the safeguards are discretionary and thus retains some concerns that they may not be adequate in all circumstances. The committee considers that in circumstances where the measures restrict expression that reaches the threshold of hate speech, it would likely constitute a permissible limitation on the right to freedom of expression. However, the committee is concerned that there is a risk that in some circumstances, depending on how the measures are implemented by law enforcement in practice, they may not be fully compatible with the rights to freedom of expression, freedom of religion and equality and non-discrimination. Finally, the committee considers that in the absence of any requirement to consider non-judicial alternatives to the prosecution and detention of children or any other legislative safeguards to protect the rights of the child, there is a significant risk that the measures are not compatible with the rights of

the child. The committee has recommended a number of amendments to the bill to assist with the proportionality of these measures and draws this to the attention of the Attorney-General and Parliament.

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 for accessing or possessing 'violent extremist material', which among other things, would describe, depict, support or facilitate 'serious violence'. Serious violence captures a broad range of acts, including material that describes serious damage to property.

To the extent that the measure may deter and prevent terrorist-related conduct and violence, it could promote a number of human rights. However, the measure would also limit the right to freedom of expression and the rights of the child. The committee considers that while the measure pursues the legitimate objectives of national security, public order and the rights of others, given its breadth, there remains a risk that all material potentially captured by the measure would not necessarily be of such a nature so as to justify prohibition on these grounds and it has not been demonstrated that the accompanying safeguards would be sufficient. The committee notes with respect to the rights of the child that there is no requirement to consider non-judicial alternatives to prosecution and detention of children. As such, the committee considers that the measure does not appear to be compatible with the right to freedom of expression and the rights of the child. The committee recommends a number of amendments to the bill to assist with the proportionality of this measure and draws this to the attention of the Attorney-General and Parliament.

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, and the praising of, the doing of a terrorist act or offence.

If the measure were to deter and prevent terrorist acts and offences, it could promote the rights to life and security of person. However, by criminalising certain forms of expression the measure would limit the right to freedom of expression and the rights of the child. The committee considers that while the measure generally pursues the important aim of preventing terrorism, it has not been demonstrated why existing legislation is insufficient to achieve this objective and whether the measure represents a proportionate limitation on these rights. The committee remains concerned that the measure may not be sufficiently circumscribed or accompanied by sufficient safeguards. As such, the committee considers that the measure does not appear to be compatible with the right to freedom of expression and the rights of the child. The committee recommends a number of amendments to the bill to assist with the proportionality of this measure and draws this to the attention of the Attorney-General and Parliament.

Electoral Legislation Amendment (Restoring Trust) Bill 2023

The committee notes that this non-government 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 legislation proponent as to the human rights compatibility of the bill.

Higher Education Support Amendment (Response to the Australian Universities Accord Interim Report) Bill 2023

No comment

Housing Australia Future Fund Bill 2023 [No. 2]

No comment

International Organisations (Privileges and Immunities) Amendment Bill 2023

*Advice to
Parliament*

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 considers that the granting of immunities in circumstances where there is no clear international law obligation to do so does not appear to be compatible with the right to an effective remedy. In relation to the right to access the courts, the committee considers the compatibility of the measure would depend on the nature of the immunities granted and whether to do so was necessary and reasonable in all the circumstances. As such, the committee will carefully consider the compatibility of any future regulations made under the Act for compatibility with this right. The committee also considers there is a risk under the existing Act that the granting of privileges and immunities to individuals is not compatible with Australia's obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The bill, in making those existing privileges and immunities under the Act more widely available, increases the risk that they may be granted in circumstances which are incompatible with Australia's obligations under the Convention. The committee recommends a number of amendments to the Act to assist with the human rights

compatibility of this measure and otherwise draws its concerns to the attention of the Minister for Foreign Affairs and Trade and the Parliament.

Legalising Cannabis Bill 2023

No comment

Members of Parliament (Staff) Amendment Bill 2023

No comment

Migration Amendment (Strengthening Employer Compliance) Bill 2023

*Advice to
Parliament*

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 engages and promotes 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; however, based on the advice provided by the Minister for Home Affairs regarding the applicable safeguards and oversight mechanisms, the committee considers this to be a permissible and proportionate 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 considers the limitation seeks to achieve the legitimate objective of protecting temporary migrant workers from unscrupulous employers. However, the committee is concerned that, as currently drafted, the measure may not be sufficiently circumscribed and does not contain sufficient safeguards to sufficiently protect against an arbitrary interference with the right to privacy. The committee has suggested a number of amendments that

may assist with proportionality and draws this to the attention of the minister and the Parliament.

National Housing Supply and Affordability Council Bill 2023 [No. 2]

No comment

National Occupational Respiratory Disease Registry Bill 2023

*Advice to
Parliament*

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. The committee considers that, as drafted, the bill is not sufficiently constrained, nor is it accompanied by sufficient safeguards or independent review mechanisms such that it would constitute a proportionate limit on the right to privacy. The committee considers that the proportionality of the measure may be assisted by some amendments, which would not frustrate the overall purpose of the measure, to better protect the right to privacy of patients and draws this to the attention of the Minister for Health and Aged Care and the Parliament.

Parliamentary Workplace Support Service (Consequential Amendments and Transitional Provisions) Bill 2023

No comment

Parliamentary Workplace Support Service Bill 2023

No comment

Protecting the Spirit of Sea Country Bill 2023

No comment

Public Governance, Performance and Accountability Amendment (Vaccine Indemnity) Bill 2023

No comment

Social Security and Other Legislation Amendment (Miscellaneous Measures) Bill 2023

*Advice to
Parliament*

Specifying 'Indigenous persons' with respect to spending powers

Right to equality and non-discrimination

This bill seeks to specify 'Indigenous persons' as the particular race of persons for whom specific arrangements and grants can be made to assist persons to obtain and maintain paid work. This measure would engage the right to equality and non-discrimination as if laws are made on this basis it would involve differential treatment of Aboriginal and Torres Strait Islander peoples based on the protected attribute of race.

The committee notes that certain social security programs that may be funded could promote human rights, such as programs designed to reduce discrimination in employment practices. However, other social security programs that may be funded may limit human rights, such as those relating to the enforcement of mutual obligation requirements. In such cases, while the general objective of achieving substantive equality would constitute a legitimate objective, the committee is concerned that the measure is not accompanied by sufficient safeguards and there appear to be less rights restrictive alternatives available. As such, the committee considers there to be a risk that the differential treatment of Indigenous persons would not be based on reasonable and objective criteria such that it would constitute lawful discrimination under international human rights law.

The committee considers the proportionality of the measure may be assisted were the bill amended to restrict the funding of programs with respect to Indigenous persons to those that benefit, and do not discriminate against, Indigenous persons, and otherwise draws its concerns to the attention of the Minister for Employment and Workplace Relations and the Parliament.

Social Services and Other Legislation Amendment (Australia's Engagement in the Pacific) Bill 2023

No comment

Telecommunications (Interception and Access) Amendment Bill 2023

*Advice to
Parliament*

Communication, use and recording of foreign intelligence information

Rights to privacy, effective remedy, life and prohibition against torture or cruel, inhuman or degrading treatment or punishment

This bill (now Act) amended the *Telecommunications (Interception and Access) Act 1979* to remove the requirement that the Attorney-General specify the persons, manner and purposes for which foreign intelligence information may be communicated and permits the Director-General of Security and other persons to whom foreign intelligence information is communicated to communicate that information to 'another person' and use and make record of the information.

The committee considers that broadening the scope of information-sharing provisions with respect to foreign intelligence information may promote the rights to life and security of person. However, authorising the sharing, use and recording of foreign intelligence information also engages and limits the right to privacy. The committee considers it has not been demonstrated that this specific measure is necessary and addresses a pressing and substantial concern, or that it is sufficiently circumscribed or accompanied by sufficient safeguards. As such, the committee considers there is a risk that the measure may constitute an arbitrary limitation on the right to privacy, and affected persons may not have access to an effective remedy. Additionally, if information is communicated with foreign persons or agencies where there are substantial grounds for believing there is a real risk that disclosure of information to that person may expose a person to the death penalty or to torture or ill-treatment, the committee considers there is a risk the measure would not be compatible with Australia's obligations with respect to these rights.

The committee notes with significant concern from a scrutiny perspective that this bill passed both Houses of Parliament two sitting days after its introduction and, as a result, the committee was unable to scrutinise this legislation while it was before Parliament.

Treasury Laws Amendment (Housing Measures No. 1) Bill 2023 [No. 2]

No comment

Legislative instruments

Chapter 1: New and continuing matters

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Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response	1
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Migration (Granting of contributory parent visas, parent visas and other family visas in financial year 2022/2023) Instrument (LIN 23/016) 2023

Advice to Parliament

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.

The committee considers there will be many cases of family reunification where capping the number of visas will not limit the right to protection of the family and the rights of the child. However, the committee is concerned that no consideration can be given to these rights once a cap is set, as no further visas can be granted in that year. It is not clear that the measure seeks to achieve a

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](#).

⁴ 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.

legitimate objective, and as there is no flexibility to consider the individual merits of an application once the cap is reached, the committee considers there is a significant risk of the measure being incompatible with the right to protection of the family and the rights of the child. The committee recommends amendments to ensure the cap on the number of visas does not preclude flexibility to grant visas in individual cases, and draw this to the attention of the Minister for Immigration, Citizenship and Multicultural Affairs and the Parliament.
