

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 in Chapter 1.

Bills

Chapter 1: New and continuing matters

Bills introduced 18 March to 27 March 2024	24
Bills commented on in report ²	2
Private members or senators' bills that may engage and limit human rights	2

Chapter 2: Concluded

Bills committee has concluded its examination of following receipt of ministerial response	0
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Australian Postal Corporation and Other Legislation Amendment Bill 2024

No comment

Competition and Consumer Amendment (Divestiture Powers) Bill 2024

No comment

Counter-Terrorism Legislation Amendment (Declared Areas) Bill 2024

Advice to Parliament

Extension of declared area offence provisions

Rights to equality and non-discrimination; fair trial; freedom of movement; liberty; life; and security of person

This bill seeks to extend the operation of the declared area offence provisions in the *Criminal Code Act 1995* for a further three years, until 7 September 2027. The declared area offence criminalises entering or remaining in an area declared by the Minister for Foreign

¹ This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 3 of 2024*; [2024] AUPJCHR 14.

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.

Affairs, unless the person can raise evidence to demonstrate it is for one of a limited set of legitimate purposes.

The committee considers that the measure pursues the important objective of protecting Australia's national security interests and deterring Australians from travelling to dangerous conflict areas. The committee notes that it has previously scrutinised the human rights compatibility of the provisions and found that while the provisions likely pursue a legitimate objective, there were questions whether the provisions were necessary and proportionate, and therefore were likely to be incompatible with multiple human rights. The committee notes that these same human rights concerns apply with respect to this measure.

Noting the limited use of the provisions, that there are no current declarations in place, that the national terrorism threat level has been downgraded, that there are alternative counter-terrorism measures available, and that the provisions do not contain sufficient safeguards or flexibility to ensure that the limitation on rights is proportionate, the committee considers that it has not been demonstrated that the extension of these provisions is compatible with a range of rights, and draws these concerns to the attention of the Attorney-General and the Parliament.

Crimes and Online Safety Legislation Amendment (Combatting Online Notoriety) Bill 2024

The committee notes that this non-government bill appears to engage 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.

Crimes and Other Legislation Amendment (Omnibus No. 1) Bill 2024

The committee has deferred consideration of this bill.

Criminal Code Amendment (Protecting Commonwealth Frontline Workers) Bill 2024

No comment

Customs Tariff Amendment (Tobacco) Bill 2024

No comment

Electoral Legislation Amendment (Fair and Transparent Elections) Bill 2024

No comment

Electoral Legislation Amendment (Fair and Transparent Elections) Bill 2024 (No. 2)

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.

Excise Tariff Amendment (Tobacco) Bill 2024

No comment

Health Legislation Amendment (Removal of Requirement for a Collaborative Arrangement) Bill 2024

No comment

Illegal Logging Prohibition Amendment (Strengthening Measures to Prevent Illegal Timber Trade) Bill 2024

No comment

Migration Amendment (Removal and Other Measures) Bill 2024

Advice to Parliament

Removal pathway directions*Multiple rights*

This bill seeks to amend the *Migration Act 1958* to require certain non-citizens to cooperate with efforts to remove them from Australia in accordance with enforceable removal pathway directions, non-compliance with which would carry a mandatory minimum sentence of one year imprisonment. The committee considers that mandatory minimum criminal penalties for non-compliance with such a direction are incompatible with the rights to liberty and to a fair trial, as mandatory sentencing removes judicial discretion to take into account all of the relevant circumstances of a particular case and may lead to the imposition of disproportionate or unduly harsh sentences of imprisonment (the appropriateness of which cannot be reviewed by a higher court).

Depending on what a removal pathway direction required a person to do (or not do), it may also engage and limit the right to privacy and freedom of assembly, association and expression. Such directions may have flow on effects which may limit other rights, including the right to protection of the family and rights of the child. There may also be a risk that some individual cases may engage the absolute prohibition against non-refoulement. As currently drafted, the committee considers there is some risk that a direction may breach these rights, depending on the nature of the direction in the individual circumstances. The committee has recommended amendments to the bill to alleviate some of these concerns and otherwise draws its human rights concerns to the attention of the minister and the Parliament.

Designation of removal concern countries*Protection of the family, equality and non-discrimination*

The bill seeks to empower the minister to declare a country to be a 'removal concern country', meaning that all visa applications from all nationals of that country would be barred (subject to some exceptions). The committee considers that this may have significant

impacts on people in many countries, however notes that the mandate of this committee is to consider whether legislation is compatible with Australia's international human rights obligations, which apply mainly in relation to people already in Australia. The committee considers that there may be limited circumstances in which a person in Australia has dependent adult family members outside Australia who may be prevented from travelling to Australia as a result of this bar, meaning that the measure may limit the right to protection of the family. Further, this measure would likely have a disproportionate impact on persons in Australia of the same nationality as that of a removal concern country, and so would engage and limit the right to equality and non-discrimination. The committee considers that it is not clear that the measure includes sufficient safeguards such that it would constitute a proportionate limit on the right. The committee has recommended amendments to the bill to alleviate some of these concerns and otherwise draws its human rights concerns to the attention of the minister and the Parliament.

Reversing a protection finding

Protection of the family, health, freedom of movement

The bill seeks to empower the minister to reverse a protection finding in relation to a lawful non-citizen (that is, a person with a visa) who is on a removal pathway. The committee understands that without this amendment the Migration Act would not provide a means to revisit a protection finding while a removal pathway non-citizen is in the community on a visa. However, the committee notes that, as drafted, the bill would empower the minister to prescribe any further visa (including permanent visas) for the purposes of the removal directions power, meaning that any visa class would, as a matter of law, be liable to the reversal of a protection finding pursuant to this measure, not just the NZYQ cohort. The possibility that a protection finding may be reversed in future may engage and limit the right to health in relation to affected persons, noting the uncertainty as to whether a protection finding may be reversed at any time in the future may have on a visa holder's mental health. The committee also considers that, if this power was used in relation to lawful non-citizens who have lived in Australia for an extended period, there would be an increased risk that the reversal of a protection finding (which resulted in that person's removal from Australia) would impermissibly limit the rights to protection of the family, a private life, and freedom of movement. In relation to the prohibition on non-refoulement, if a reversal of a protection finding (and subsequent removal of the person to the relevant country) did accurately and appropriately determine that the person was no longer at risk of persecution, and so no such risk arose as a matter of fact, it may also be compatible with Australia's obligations in relation to non-refoulement. However, the committee cautions that much will depend on the quality of the decision as to whether a person is owed protection obligations.

The committee has recommended amendments to the bill to alleviate some of these concerns and otherwise draws its human rights concerns to the attention of the minister and the Parliament.

National Cancer Screening Register Amendment Bill 2024

No comment

National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Bill 2024

The committee has deferred consideration of this bill.

Net Zero Economy Authority (Consequential Amendments) Bill 2024

No comment

Net Zero Economy Authority Bill 2024

No comment

New Vehicle Efficiency Standard (Consequential Amendments) Bill 2024

No comment

New Vehicle Efficiency Standard Bill 2024

No comment

Parliamentary Business Resources Legislation Amendment (Review Implementation and Other Measures) Bill 2024

No comment

Reducing Supermarket Dominance Bill 2024

No comment

Therapeutic Goods and Other Legislation Amendment (Vaping Reforms) Bill 2024

No comment

Treasury Laws Amendment (Delivering Better Financial Outcomes and Other Measures) Bill 2024

No comment

Treasury Laws Amendment (Financial Market Infrastructure and Other Measures) Bill 2024

No comment

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the Federal Register of Legislation between 17 February to 7 March 2024 ³	102
Legislative instruments commented on in report ⁴	2

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response	0
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Australian Immunisation Register Amendment (Reporting) Rules 2024

This instrument amends the *Australian Immunisation Register Rule 2015*, to introduce two reporting requirements for recognised vaccination providers. The committee has previously considered that requiring vaccination providers to provide personal information about individuals who receive vaccinations limits the right to privacy (see [Report 5 of 2023](#), pp. 71–76). The committee reiterates its concerns that the 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.

Migration (Critical Technology – Kinds of Technology) Specification (LIN 24/010) 2024 Migration (Designated Migration Law—Visa Condition 8208) Determination (LIN 24/009) 2024

Advice to Parliament

Restriction on visa holders relating to critical technologies

Rights to education, work, equality and non-discrimination, freedom of expression

These legislative instruments define 'critical technology' for the purposes of the Migration Regulations 1994, activating a framework by which to regulate the ability of specified visa holders to undertake

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.

study or research where there is an 'unreasonable risk of unwanted transfer of critical technology by the visa holder'. They also enable the use of computer programs in determining visa condition 8208, which requires student visa holders to obtain approval from the minister before undertaking a new critical technology-related course in the postgraduate research sector.

Allowing for visa cancellations for those in Australia, or requirements for certain visa holders to gain the minister's approval to change their course of study, engages and may limit several human rights including the rights to education, work, freedom of expression and equality and non-discrimination.

The committee considers that placing restrictions on visa holders relating to critical technology pursues an important objective, that of seeking to protect national security, public order, public health and safety, and Australia's international relations, by preventing the unwanted transfer of critical technology to malicious actors. The committee considers that there is an extant risk of unwanted transfers of critical technology, particularly in the higher education sector, and this measure as a whole seeks to address this pressing and substantial concern. When the committee considered the measures which established this framework in 2022, it considered that the measure may be a proportionate limit on the rights identified, if the detail of what constitutes a 'critical technology' was defined in a sufficiently clear and accessible manner. However, the detail of what constitutes a 'critical technology' remains somewhat unclear, and it raises some questions as to whether the measure is sufficiently circumscribed. In this regard, the committee considers that it is not clear whether the second instrument, in providing for computerised decision-making in certain circumstances (including whether the minister is satisfied that there is not an unreasonable risk of an unwanted transfer of critical technology), would make it more or less likely that people would be denied permission to study particular things. The committee considers that much will depend on how the measures operate in practice. The committee has recommended that statements of compatibility be prepared for these two instruments and otherwise draws its concerns to the attention of the minister and the Parliament.

Instruments imposing sanctions on individuals⁵

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.⁶ 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.

⁵ See Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) Amendment (No. 1) Instrument 2024 [[F2024L00206](#)]; Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) Amendment (No. 2) Instrument 2024 [[F2024L00261](#)]; Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Thematic Sanctions) Amendment (No. 2) Instrument 2024 [[F2024L00207](#)]; Charter of the United Nations (Listed Persons and Entities) Amendment (No. 2) Instrument 2024 [[F2024L00251](#)].

⁶ See, most recently, Parliamentary Joint Committee on Human Rights: [Report 2 of 2024](#) (20 March 2024) pp. 14–20 and [Report 15 of 2021](#) (8 December 2021), pp. 2–11; and [Report 1 of 2024](#) (7 February 2024) pp. and [Report 10 of 2021](#) (25 August 2021) pp. 117–128.