

Report snapshot³

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 Chapters 1 and 2.

Bills

Chapter 1: New and continuing matters

Bills introduced 14 May to 6 June 2024	23
Bills substantively commented on in report ⁴	1
Private members or senators' bills that may engage and limit human rights	1

Chapter 2: Concluded

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Appropriation Bills⁵

The committee reiterates its long-held view (set out most recently in [Report 8 of 2023](#)) that the appropriation of funds facilitates the taking of actions which may promote, or fail to fulfil, Australia's obligations under international human rights law, which is not recognised in the statements of compatibility accompanying these bills. The committee's expectation is that statements of compatibility accompanying appropriations bills should address the compatibility of measures which directly impact human rights. In particular, the committee expects that if 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.

³ This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 5 of 2024*; [2024] AUPJCHR 33.

⁴ 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.

⁵ Appropriation Bill (No. 1) 2024-2025; Appropriation Bill (No. 2) 2024-2025; Appropriation Bill (No. 5) 2023-2024; Appropriation Bill (No. 6) 2023-2024; Appropriation (Parliamentary Departments) Bill (No. 1) 2024-2025.

Capital Works (Build to Rent Misuse Tax) Bill 2024

No comment

Commission of Inquiry into Antisemitism at Australian Universities Bill 2024

The committee notes that this non-government bill is intended to prevent antisemitism from occurring at Australian universities, which may promote a number of human rights. The committee also notes that the bill appears to engage and may limit human rights to the extent that the bill applies the powers in the *Royal Commissions Act 1902*. The committee has previously recommended that a foundational assessment of the human rights compatibility of the Royal Commissions Act 1902 be conducted. 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.

Creative Australia Amendment (Implementation of Revive) Bill 2024

No comment

Criminal Code Amendment (Deepfake Sexual Material) Bill 2024

No comment

Defence Amendment (Parliamentary Joint Committee on Defence) Bill 2024

Seeking Information

Secrecy offences*Rights to privacy and freedom of expression*

This bill seeks to establish a Parliamentary Joint Committee on Defence (PJCD), responsible for reviewing, monitoring and reporting on the administration and operations of all Australian defence agencies. It establishes two secrecy offences prohibiting the disclosure of information and documents provided to the PJCD in confidence.

Prohibiting the disclosure of information, to the extent that it contains personal information, promotes the right to privacy. However, in restricting the disclosure of such information or documents this also limits the right to freedom of expression.

The committee considers further information is required to assess the compatibility of this measure with the right to freedom of expression, particularly as to why these offences do not contain additional safeguards as recommended by the recent review of secrecy provisions by the Attorney-General's Department. As such it is seeking further information from the Minister for Defence in relation to this.

Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024

The committee notes that this bill, in enabling the personal information of individuals to be collected as part of the assessment of education agents and of the register of education providers, engages and appears to limit the right to privacy. This was not identified in the statement of compatibility accompanying this bill. The committee has authorised its secretariat to notify departments where statements of compatibility appear to be inadequate. As such, the committee's secretariat has written to the department in relation to this matter. The committee otherwise makes no comment in relation to this bill.

Excise and Customs Legislation Amendment (Streamlining Administration) Bill 2024

No comment

Export Control Amendment (Ending Live Sheep Exports by Sea) Bill 2024

No comment

Health Insurance Legislation Amendment (Assignment of Medicare Benefits) Bill 2024

No comment

Keeping Cash Transactions in Australia Bill 2024

No comment

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

Advice to Parliament**Definition of NDIS support**

Rights of persons with disability; rights to an adequate standard of living, health and social security; and rights of the child

The measure would introduce a new definition of NDIS support, with most of the detail to be set out in future NDIS rules. To the extent that the measure would have the effect of reducing the type of supports that will be funded by the NDIS and thus available for participants, it would engage and may limit the rights of persons with disability as well as the rights to an adequate standard of living and health. Insofar as the NDIS may be considered a form of social security, the measure would also engage and may limit the right to social security. Additionally, to the extent that the measure applies to children, the rights of the child would be engaged and possibly limited.

The committee has considered the measure as originally drafted and as amended. While the committee considers that the measure pursues a legitimate objective, depending on how the NDIS rules are drafted, there is a risk that the measure may not be sufficiently flexible to ensure that any limitation on rights is proportionate in

each case. As part of its usual scrutiny process, the committee will scrutinise any future NDIS rules and related legislative instruments for their compatibility with human rights.

The committee considers the proportionality of this measure may be assisted were such future NDIS rules to contain sufficient flexibility such that where a support is either not declared to be an NDIS support or is declared to not be an NDIS support, the National Disability Insurance Agency (NDIA) may nevertheless exercise discretion to approve the provision of that support through the NDIS if the participant has demonstrated a need for the support as a result of their disability. The committee otherwise draws these human rights concerns to the attention of the Minister for the National Disability Insurance Scheme and the Parliament.

Requests for information

Right to privacy

The measure seeks to expand the circumstances in which the Chief Executive Officer (CEO) of the NDIA may request information and reports from a participant, including for the purposes of deciding whether or not to revoke a participant's status and assessing whether or not a participant meets the access requirements for the NDIS. The CEO may request that the participant provide information that is reasonably necessary for the purpose of making the particular decision and undergo an assessment or medical examination and provide the report to the CEO. By allowing the CEO to request information and reports from a participant, including sensitive medical information, the measure engages and may limit the right to privacy.

The committee considers that the measure pursues a legitimate objective and is rationally connected to that objective. Based on the information provided by the minister, the committee considers that the circumstances in which the right to privacy is likely to be limited are sufficiently circumscribed. The committee considers that the measure is accompanied by sufficient safeguards to ensure that the limitation on the right to privacy is proportionate.

The committee considers that its concerns have therefore been addressed. The committee recommends that the statement of compatibility be updated to reflect the information provided by the Minister for the National Disability Insurance Scheme and otherwise makes no further comment in relation to this measure.

Working out total funding amounts for NDIS participants

Rights of persons with disability; rights to an adequate standard of living, health and social security; and rights of the child

The measures seek to require the minister to have regard to the financial sustainability of the NDIS in determining matters relating to working out total funding amounts and assessing participants' need for supports. To the extent that this results in fewer supports being approved and funded for participants and has an adverse impact on

participants' independence and quality of life, the measures would engage and may limit the rights of persons with disability, the rights to an adequate standard of living, health and social security as well as the rights of the child (if the measures applied to children).

While ensuring the financial sustainability of the NDIS is an important policy aim, given the high threshold that must be met to justify retrogressive measures under international human rights law, the committee considers that it is not clear whether this stated objective would, in itself, be considered legitimate for the purposes of international law. The committee considers that there remains a risk that the measures may be retrogressive in practice and there do not appear to be sufficient safeguards accompanying the measures to mitigate this risk. The committee therefore considers that it has not been demonstrated that the proposed limitations on rights would be proportionate in all cases. Further, the committee notes that under international human rights law, where children are involved, the best interests of the child must be a primary consideration. As the best interests of the child are not required to be considered, the committee considers that the measures do not appear to be compatible with this right.

The committee considers the proportionality of the measures may be assisted were guidance prepared in consultation with, and co-designed by, people with disability, to assist the minister in exercising this power; and the best interests of the child included as a primary matter that the minister must have regard to in making a determination. The committee has also recommended that the statement of compatibility be updated and otherwise draws these concerns to the attention of the Minister for the National Disability Insurance Scheme and the Parliament.

National Health Amendment (Supporting Patient Access to Cheaper Medicines and Other Measures) Bill 2024

No comment

Nature Positive (Environment Information Australia) Bill 2024

No comment

Nature Positive (Environment Protection Australia) Bill 2024

Nature Positive (Environment Law Amendments and Transitional Provisions) Bill 2024

These bills seek to establish the new statutory Commonwealth entity, known as Environment Protection Australia (EPA), and confer on the CEO of the EPA various functions and powers, including those that exist under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and a range of other federal environmental laws. Some of these existing functions and powers engage and may limit a number of human rights. For instance, the bills would establish a framework for the use and disclosure of information, including personal information, which would engage and limit the right to privacy.

As the EPBC Act and other environmental legislation were introduced prior to the establishment of this committee, a foundational human rights assessment of this legislation has not been undertaken. The committee considers that such a foundational assessment is required in order to fully assess the compatibility of the legislation with human rights. However, as these bills do not amend the scope or content of existing functions and powers under these Acts, but rather confer the existing functions and powers on a different entity (namely the CEO of the EPA), the committee makes no further comment on these bills.

Payment Times Reporting Amendment Bill 2024

No comment

Social Services and Other Legislation Amendment (More Support in the Safety Net) Bill 2024

No comment

Treasury Laws Amendment (Extending the FBT Exemption for Plug-In Hybrid Electric Vehicles) Bill 2024

No comment

Treasury Laws Amendment (Responsible Buy Now Pay Later 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 5 May to 20 May 2024⁶ 45

Legislative instruments substantively commented on in report⁷ 0

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response 1

Defence (Non-foreign work restricted individual) Determination 2024

Defence (Non-relevant foreign country) Determination 2024

These legislative instruments specify classes of defence workers who are *not* subject to the prohibition in Part IXAA the *Defence Act 1903* on former defence workers performing certain work or training for a foreign country without a foreign work authorisation. They also designate four foreign countries in relation to which foreign work restrictions (and corresponding criminal offences) do not apply.

In [Report 11 of 2023](#), the committee considered that the restrictions in the *Defence Act 1903* on foreign work engage and limit the rights to work and privacy. It raised concerns that it was not clear whether these restrictions would constitute a proportionate limit on these rights, and stated that much would depend on exemptions set out by delegated legislation. The committee notes that these two legislative instruments appear to provide for numerous exemptions from the scheme for various workers, albeit subject to a range of time periods which must have elapsed since the worker ceased working for Defence. However, as there would be workers who are still subject to the blanket ban (unless they have a ministerial authorisation to undertake foreign work), and noting that only four countries are exempted from the scheme, the committee draws attention to its broader concerns in its previous report regarding the proportionality of the measure.

⁶ 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, use the advanced search function on the [Federal Register of Legislation](#), and select 'Collections' to be 'legislative instruments'; 'type' to be 'as made'; and date to be 'registered' and 'between' the date range listed above.

⁷ Unless otherwise indicated, 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.

Social Security (Remote Engagement Program Payment) Determination 2023

Advice to Parliament

This legislative instrument determined the arrangements for a remote engagement program, including the fee payable to participants. The committee had previously concluded its consideration of the human rights compatibility of this instrument and made a number of recommendations to improve compatibility.

The Minister for Indigenous Affairs has now advised that the remote engagement program trial will shortly end. The committee welcomes the minister's advice that she has asked the National Indigenous Australians Agency to consider the committee's findings when designing a new Remote Jobs and Economic Development Program and a new employment service for remote Australia.

Telecommunications (Interception and Access) (Enforcement Agency—NSW Department of Communities and Justice) Declaration 2024

This 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 *Telecommunications (Interception and Access) Act 1979* (TIA Act), meaning employees of Corrective Services NSW may access telecommunications data. The committee previously commented on an equivalent declaration in [Report 6 of 2023](#) and [Report 8 of 2023](#), concluding that it was not compatible with the right to privacy as the necessity of the power had not been established, noting that all other corrective services agencies access telecommunications data via the police, and the power was insufficiently defined, noting that as a matter of law thousands of employees could access the data. The committee previously recommended 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 TIA Act. As this instrument is essentially the same as the 2023 declaration and the committee's previous recommendation has not been implemented, the committee considers that the same human rights concerns apply and draws these concerns to the attention of the Attorney-General and the Parliament.

Instruments imposing sanctions on individuals⁸

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.⁹ 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.

⁸ See Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Iran) Amendment (No. 1) Instrument 2024 [[F2024L00540](#)]; Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Thematic Sanctions) Amendment (No. 3) Instrument 2024 [[F2024L00522](#)].

⁹ 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.