

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 Chapters 1 and 2.

Bills

Chapter 1: New and continuing matters

Bills introduced 24 June to 4 July 2024	22
Bills substantively commented on in report ²	1
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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Commission of Inquiry into Antisemitism at Australian Universities Bill 2024 (No. 2)

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.

Communications Legislation Amendment (Regional Broadcasting Continuity) Bill 2024

No comment

¹ This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 6 of 2024*; [2024] AUPJCHR 40.

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.

COVID-19 Response Commission of Inquiry Bill 2024

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.

Customs Amendment (Strengthening and Modernising Licensing and Other Measures) Bill 2024

No comment

Customs Licensing Charges Amendment Bill 2024

No comment

Digital ID Repeal Bill 2024

No comment

Fair Work (Registered Organisations) Amendment (Withdrawal from Amalgamation) Bill 2024

No comment

Future Made in Australia (Omnibus Amendments No. 1) Bill 2024

No comment

Future Made in Australia Bill 2024

No comment

Governor-General Amendment (Salary) Bill 2024

No comment

Interactive Gambling Amendment (Ban on Gambling Advertisements) Bill 2024

No comment

Migration Amendment (Strengthening Sponsorship and Nomination Processes) Bill 2024

No comment

National Housing and Homelessness Plan Bill 2024

No comment

National Housing and Homelessness Plan Bill 2024 (No. 2)

No comment

Tax Laws Amendment (Incentivising Food Donations to Charitable Organisations) Bill 2024

No comment

Taxation (Multinational—Global and Domestic Minimum Tax) Bill 2024

No comment

Taxation (Multinational—Global and Domestic Minimum Tax) Imposition Bill 2024

No comment

Telecommunications Amendment (SMS Sender ID Register) Bill 2024

No comment

Treasury Laws Amendment (Build to Rent) Bill 2024

No comment

Treasury Laws Amendment (Multinational—Global and Domestic Minimum Tax) (Consequential) Bill 2024

No comment

Truth and Justice Commission Bill 2024

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.

Veterans' Entitlements, Treatment and Support (Simplification and Harmonisation) Bill 2024

Advice to Parliament

Contempt offences

Rights to freedom of assembly and freedom of expression

The bill would provide that a person commits an offence if they engage in certain conduct with respect to the Veterans' Review Board (the Board), including if they insult another person in the exercise of that person's functions under the *Military Rehabilitation and Compensation Act 2004*; interrupt the proceedings of the Board; create, or take part in creating or continuing, a disturbance in or near a place where the Board is sitting; and engage in conduct that would constitute contempt of a court. These offences would be punishable

by six months imprisonment. Prohibiting a person from engaging in this type of conduct engages and may limit the rights to freedom of assembly and freedom of expression. These rights protect the right of people to peacefully assemble to collectively express their views, including by way of public protest, even where such expression may be regarded as deeply offensive or insulting (subject to specific limitations placed on these rights under international human rights law).

The committee considers that while the objective of promoting the effective operation of the Board is important, it is not clear that this objective is necessary and addresses an issue of public or social concern that is pressing and substantial enough to warrant limiting rights. The committee considers there to be a risk that the offences are framed so broadly that they may criminalise legitimate conduct that would otherwise be protected under international human rights law, and notes that there appears to be a less rights restrictive way to achieve the stated objective. The committee therefore considers that the measure risks disproportionately limiting the rights to freedom of expression and assembly. The committee has recommended amendments to the bill to assist with the proportionality of the measure.

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the Federal Register of Legislation between 21 May to 20 June 2024 ³	143
Legislative instruments substantively commented on in report ⁴	1

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response	1
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Australian Passports Amendment (2024 Measures No. 1) Determination 2024

This instrument amends the Australian Passports Determination 2015 to specify to whom, and the purposes for which, the minister may disclose certain kinds of information. In particular, the minister may disclose specified kinds of information relating to a person's Australian travel document, including a person's biometric and biographical information, to any person receiving the information on behalf of a requesting party for the purposes of participating in the Document Verification Service (DVS) or the Face Verification Service (FVS) to share or match information relating to the identity of a person. These verification services are 1:1 matching services that verify the identity of a person by comparing either biographical information (such as a name or date of birth) or face-matching service information (such as a facial image) contained in a specimen document against information contained in a government identification document (such as a passport).

In [Reports 11](#) and [12 of 2023](#), the committee commented on the *Identity Verification Services Bill 2023* and the *Identity Verification Services (Consequential Amendments) Bill 2023* (now Acts), which established a federal legislative framework to support the operation of these identity verification services. The committee considered that while these bills pursued legitimate objectives, the identity verification facilities and services may not represent a proportionate limit on the right to privacy.

- 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, 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.
- ⁴ 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.

While there are important safeguards accompanying the services, they rely on safeguards contained in other legislation, including state and territory legislation. The committee noted that without a comprehensive review of the broader legislative framework governing the identity verification facilities and services, it was not possible to conclude whether the safeguards contained in this other legislation were sufficient to protect the right to privacy for the purposes of international human rights law. The committee also considered that if an impermissible limit on the right to privacy did occur, it was not clear that an individual would have access to an effective remedy with respect to any such violation, as access to a remedy depends on the individual being notified of the breach. With respect to the right to equality and non-discrimination, the committee noted that it was not clear whether there were sufficient safeguards to mitigate the risk of data verification errors that may disproportionately impact certain groups (on the basis of racial identity) and lead to discriminatory decisions. The committee recommended that a comprehensive government review of all legislation governing the identity verification facilities and services would assist with proportionality.

Insofar as this instrument provides a legal basis for the minister to disclose personal information, including biometric information, for the purposes of participating in the DVS and FVS, these same human rights concerns apply. The committee therefore draws to the attention of the Parliament and the Attorney-General its previous comments in [Reports 11](#) and [12 of 2023](#) and reiterates its previous recommendation that a comprehensive governmental review of all legislation governing the identity verification facilities and services would assist with proportionality.

Identity Verification Services Rules 2024

This instrument prescribes various matters for the purposes of the *Identity Verification Services Act 2023* (IVS Act), which, along with the *Identity Verification Services (Consequential Amendments) Act 2023*, established a federal legislative framework to support the operation of identity verification services. The IVS Act requires that all entities accessing identity verification services must be a party to a participation agreement, which in themselves contain several safeguards with respect to the right to privacy. Under section 9 of the IVS Act, parties to a participation agreement must be subject to privacy legislation or agree to comply with the Australian Privacy Principles (APPs), or otherwise be a government authority prescribed by the rules. This instrument prescribes the Australian Security Intelligence Organisation and Australian Secret Intelligence Service for the purposes of this section, the effect being that these intelligence agencies can be a party to a participation agreement and therefore access identity verification services despite not being subject to privacy legislation or agreeing to comply with the APPs.

The committee considered the Identity Verification Services Bill 2023 and the Identity Verification Services (Consequential Amendments) Bill 2023 (now Acts) in [Reports 11](#) and [12 of 2023](#). With respect to the limitation on the right to privacy, the committee noted that participation agreements were a key safeguard, particularly the requirement that parties must be subject to and comply with privacy legislation. By not subjecting intelligence agencies to this requirement, this instrument weakens the overall value of this safeguard. The committee previously concluded that there was a risk that the identity verification facilities and services impermissibly limited the right to privacy and that it was unclear whether there would be an effective remedy with respect to any such violation, as access to a remedy depends on the individual being notified of the breach. The committee notes that additional privacy safeguards were legislated for in the Senate. The committee retains its broader human rights concerns with respect to the identity verification facilities and services and draws these concerns to the attention of the Parliament and the Attorney-General in the context of this instrument.

Migration (Code of Behaviour for Public Interest Criterion 4022) Instrument (LIN 24/031) 2024

*Advice to Parliament***Code of behaviour***Multiple rights*

This legislative instrument specifies an enforceable code of behaviour which applies to some applicants for the Subclass 050 (Bridging (General)) Visa (BVE), for the purposes of Public Interest Criterion 4022. This applies to unauthorised maritime arrivals to Australia. Requiring certain BVE holders to sign an enforceable code of behaviour, and subsequently enforcing the code (which may result in visa cancellation and subsequent immigration detention or reduction in social security benefits) engages and may limit numerous rights.

The committee notes that this measure replaces the previous such legislative instrument (made in 2013), and will operate for 12 months pending further consultation and review. The committee notes the minister's advice that the code is intended to draw a visa holder's attention to the types of behaviours which could cause them to fail the existing character cancellation framework in the Migration Act 1958. However, the committee notes the minister's advice that the code has not been used to cancel a person's visa since it was introduced in 2010, and that any such enforcement action would be taken under other existing enforcement measures in the migration legislative framework in practice. The committee also notes the minister's advice that, while no person has had financial payments reduced because of their visa being cancelled pursuant to this measure, they are unable to advise whether a person's financial payment may have been otherwise reduced for a breach of the code. The committee considers that, as it is not clear when a person may be regarded as breaching the code, how a reduction in financial assistance would be calculated and whether an affected person would still be able to meet their basic needs, there is a risk that such enforcement activity would constitute an impermissible limit on the rights to social security or an adequate standard of living.

In addition, the committee considers that it is not clear that the code satisfies the quality of law test (as many of the terms used are vague and it is unclear when a person may engage in conduct which would breach the code). The committee considers that, as no information has been provided to demonstrate that these BVE holders present a particular risk to community safety, it is not clear that the measure is directed towards a legitimate objective (being once which is pressing and substantial enough to warrant limiting rights). The committee considers that it is unclear why the code of behaviour is required to be enforceable if it has not been enforced in practice, and noting that it replicates other enforcement powers which are already available. The committee considers that this raises questions as to whether the code has been shown to be rationally connected (that is, capable of

achieving) the stated objective, or constitutes the least rights restrictive means by which to achieve its stated objective.

Consequently, the committee considers that there is a significant risk that the imposition of the code of behaviour, and corresponding enforcement action, may constitute an impermissible limit on multiple human rights. Further, the committee considers that there is a significant risk that the measure, which applies primarily to nationals of Sri Lanka and Iran in practice, constitutes an impermissible limit on the right to equality and non-discrimination. The committee has recommended that: in the event the minister enforces the code that they consider the committee's concerns, and human rights implications of the instrument; and the current review of the code give close consideration of its comments, and draws these concerns to the attention of the minister and the Parliament.

Online Safety (Basic Online Safety Expectations) Amendment Determination 2024

The *Online Safety Act 2021* empowers the minister to determine the basic online safety expectations for service providers (including social media services, designated internet services and relevant electronic services). The Online Safety (Basic Online Safety Expectations) Determination 2022 set out basic online safety expectations for these services. This legislative instrument amends that determination, imposing additional online safety expectations, and amending existing expectations, including the expectation that a service provider 'will take reasonable steps to ensure that technological or other measures are in effect to prevent access by children to class 2 material provided on the service' including by implementing age assurance mechanisms. While these expectations do not impose a legally enforceable duty on service providers, they may be required to report on their compliance.

The committee commented on the Online Safety (Basic Online Safety Expectations) Determination 2022 in [Report 2 of 2022](#). In particular, it considered that, while restricting children's access to material on the internet that may be harmful to them is likely to promote the rights of the child, implementing access control measures, which include a requirement to verify the age of the person accessing content on the internet is also likely to limit a number of rights, particularly the rights to privacy and freedom of expression. It considered that it was not clear that the Online Safety legislative framework (including the determination) constituted a proportionate limit on these human rights. The committee reiterates those comments in relation to this legislative instrument, and draws its concerns to the attention of the minister and the Parliament.

Telecommunications (Interception and Access) (Criminal Law-Enforcement Agency—ACT Integrity Commission) Declaration 2024

Advice to Parliament

Access to stored communications and telecommunications data by ACT Integrity Commission staff

Right to privacy

This instrument declares the ACT Integrity Commission (the Commission) to be a 'criminal law-enforcement agency' and each staff member of the Commission to be 'officers' for the purposes of the *Telecommunications (Interception and Access) Act 1979* (TIA Act). The effect of this declaration is that officers of the Commission can access (via a warrant) stored communications in respect of a person

(that is, the contents of communication sent via telecommunications systems, such as messages and emails) as well as telecommunications data (that is, information about a communication, such as the phone number and length of call). By authorising the Commission to access this data, the declaration engages and limits the right to privacy.

While accessing communications data to identify and investigate alleged corrupt conduct would likely constitute a legitimate objective, the committee considers that it has not been clearly established that there is a pressing and substantial concern that warrants the Commission having direct access to telecommunications data (rather than partnering with the police, who already have the power to access this information). The committee notes that the measure is broadly framed and not limited only to those officers that require access to the data, and that the safeguards accompanying the measure do not appear to be sufficient to ensure that any limitation on privacy is proportionate. The committee therefore considers that there is a significant risk that this declaration does not constitute a permissible limitation on the right to privacy, and recommends amending the declaration to specify only those staff members who require access to telecommunications data to be officers for the purposes of the TIA Act. The committee recommends that the statement of compatibility be updated having regard to its analysis and otherwise draws these concerns to the attention of the Attorney-General and the Parliament.
