

Report snapshot¹

In this report the committee has examined the following bill 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 substantively commented on in report ²	0
Private members or senators' bills that may engage and limit human rights	0

Chapter 2: Concluded

Bills committee has concluded its examination of following receipt of ministerial response	1
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Defence Amendment (Parliamentary Joint Committee on Defence) Bill 2024

Advice to Parliament

Secrecy offences

Right to privacy and freedom of expression

The bill sought to establish a Parliamentary Joint Committee on Defence, and establish two secrecy offences prohibiting the disclosure of information and documents provided to that committee in confidence. The committee sought a response from the minister in relation to the bill in [Report 5 of 2024](#). On 4 July 2024, the third reading of the bill was negatived in the Senate and the bill consequently did not proceed. On 13 August 2024, the committee received a short response from the minister stating that should the government choose to reintroduce the bill, the department would take the committee's concerns into consideration and provide a detailed response to the committee through the formal processes.

The committee has concluded that, without the further information requested, the committee is unable to conclude as to the

¹ This section can be cited as Parliamentary Joint Committee on Human Rights, Report snapshot, *Report 7 of 2024*; [2024] AUPJCHR 47.

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.

permissibility of the proposed limitation on the right to freedom of expression. It has recommended that in the event a similar bill is introduced in future, the minister have regard to the committee's analysis in the development of such a bill.

Legislative instruments

Chapter 1: New and continuing matters

Legislative instruments registered on the [Federal Register of Legislation](#) between 21 June to 5 July 2024³ 151

Legislative instruments substantively commented on in report⁴ 5

Chapter 2: Concluded

Legislative instruments committee has concluded its examination of following receipt of ministerial response 0

International Organisations (Privileges and Immunities) (Declaration of Organisation for Joint Armament Co-operation) Regulations 2024

Advice to Parliament

Extending privileges and immunities

Right to a fair hearing (access to courts and tribunals); right to an effective remedy and prohibition against torture and inhuman treatment

The regulation declares the Organisation for Joint Armament Co-operation (OCCAR) to be an international organisation under the *International Organisations (Privileges and Immunities) Act 1963*, and confers privileges and immunities to specified categories of OCCAR personnel and representatives of countries other than Australia. By extending immunities, including an immunity from personal arrest or detention and from suit and other legal processes, the regulation engages and limits the right of access to courts and tribunals as well as engages the right to an effective remedy and

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.

potentially Australia's obligations to investigate and prosecute or extradite persons alleged to have committed torture.

While it would appear that Australia has a treaty obligation under the OCCAR Convention to grant certain immunities to OCCAR, the Convention establishes a *duty* to waive any relevant immunity in certain circumstances, whereas the regulation provides that a competent authority 'may' waive the privilege or immunity. This discretion means that privileges and immunities could, as a matter of law, be maintained in circumstances where that would be outside the scope of the OCCAR Convention, and so may be incompatible with the right to access the courts and the right to an effective remedy.

The granting of personal immunity to the OCCAR Director, and immunity from arrest or detention to representatives attending OCCAR conferences, would appear to preclude Australian courts exercising jurisdiction over persons alleged to have committed torture or other serious human rights abuses. In circumstances where personal immunity has been granted, it would appear that the ability to investigate, prosecute or extradite a person for torture would rely on OCCAR granting a waiver. Leaving this matter to the discretion of OCCAR would not appear to be consistent with Australia's obligations under the Convention Against Torture. As such, there is a risk that privileges and immunities may be granted in circumstances which are incompatible with Australia's obligations under the Convention.

The committee reiterates its previous recommendation that the human rights compatibility of the *International Organisation (Privileges and Immunities) Act 1963* may be assisted were the Act amended to ensure that any immunities do not override Australia's obligations in relation to the prohibition against torture or other cruel, inhuman or degrading treatment or punishment, and recommends that the statement of compatibility be updated to provide an assessment of the compatibility of the regulation with the right to access the court and Australia's obligations under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Migration (Daily Maintenance Amount for Persons in Detention) Determination (LIN 24/017) 2024

This legislative instrument increases the daily amount from \$490.69 to \$538.79 that persons convicted of people smuggling and illegal foreign fishing offences are liable to repay the Commonwealth for the cost of their immigration detention between 1 July 2024 and 30 June 2026.

The committee refers to its previous comments regarding the risk that individuals held in detention for lengthy periods of time may be subject to a cost so severe as to amount to a criminal penalty for the purposes of international human rights law and may breach the prohibition against double punishment in [Report 3 of 2022](#) at pp. 27-30 and [Report 5 of 2022](#) at pp. 56-64.

Online Safety (Designated Internet Services—Class 1A and Class 1B Material) Industry Standard 2024**Online Safety (Relevant Electronic Services—Class 1A and Class 1B Material) Industry Standard 2024**

*Seeking Information***Regulation of certain online materials***Rights to freedom of expression and privacy*

These legislative instruments establish industry standards for ‘relevant electronic services’ and ‘designated internet services’, which include online chat services, SMS and MMS services, websites, apps and online storage services, with respect to class 1A materials (meaning child sexual exploitation material; pro-terror material; or ‘extreme crime and violence material’) and class 1B materials (meaning ‘crime and violence material’ or ‘drug-related material’). The standards impose various obligations on service providers in relation to risk assessments and online compliance measures. Depending on the type of service, providers may be required, for example, to implement appropriate systems, processes and technologies to detect, identify and remove certain class 1A material; deter and disrupt end-users from using the service to create, offer, solicit, access, distribute, or otherwise make available or store certain class 1A material; and respond to classes 1A and 1B materials on the service, such as by removing the material and terminating the provision of the service to the end-user.

The committee notes that requiring service providers to implement measures to reduce the risk that their services will be used to solicit, generate, access, distribute and store harmful material, likely promotes numerous human rights, including the rights of women and children to be free from sexual exploitation; the rights to life and security of the person; and the prohibition against inciting national, racial or religious hatred.

However, the committee also notes that the measures necessarily limit the rights to freedom of expression and privacy by regulating certain online material, including restricting access to, disrupting the dissemination of and removing the material.

In relation to child sexual exploitation material, material depicting sexual violence and pro-terror material that reaches the threshold of incitement to national, racial or religious hatred, the committee considers that to the extent that regulating these types of material limits the rights to freedom of expression and privacy, such limitations are likely permissible under international human rights law.

However, noting that the scope of materials captured by the measures is much broader, it is necessary to assess whether the regulation of these other types of material, such as crime and violence or drug-related material that offends against the standards of morality, decency and propriety, is reasonable, necessary and

proportionate. The committee considers that while the measures pursue legitimate objectives, questions arise as to whether the measures are rationally connected and proportionate to these objectives. The committee is therefore seeking further information from the Minister for Infrastructure with respect to these matters.

Tax Agent Services Amendment (Register Information) Regulations 2024

Seeking Information

Expansion of information on Tax Practitioner Board public register

Right to just and favourable conditions of work; work and privacy

This legislative instrument expands the scope of information to be included on the register maintained by the Tax Practitioner Board. The register is a publicly available database that includes the details of all currently registered, and in some cases formerly registered, tax practitioners (including individuals). It enables the Board to publish more detailed reasons for tax practitioner sanctions, including terminations, on the register; publish a wider range of information, decisions and outcomes on the register; and removes time limits on how long certain information appears on the register. This engages and limits the rights to work, just and favourable conditions of work, and privacy.

The committee is seeking further information from the minister in order to assess the compatibility of this legislative instrument with these rights.

Work Health and Safety Amendment (Penalties and Engineered Stone and Crystalline Silica Substances) Regulations 2024

Seeking Information

Disclosure of worker health monitoring reports

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

The regulations amend the Work Health and Safety Regulations 2011 to require an employer to provide health monitoring for all workers carrying out the processing of a crystalline silica substance that is high risk. A health monitoring report includes a range of personal information, including test results that indicate whether or not a worker has been exposed to a hazardous chemical or contracted a disease, injury or illness as a result of carrying out the work. Health monitoring reports must be shared with the regulator and relevant employers of the worker. While requiring health monitoring of workers (and providing for disclosure to the regulator and employers) would promote the rights to just and favourable conditions of work and the right to health, it also engages and limits the right to privacy.

The committee considers that further information is required to assess the proportionality of the measure with the right to privacy, and as such is seeking further information from the minister.
