



PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S STATEMENT TO THE HOUSE OF REPRESENTATIVES

First Report of 2012

22 August 2012

In tabling the first report of the Parliamentary Joint Committee on Human Rights of 2012 I would like to take this opportunity to draw the attention of the House to the approach the committee has adopted in examining each of the bills referred to in this report. Members will recall that the committee is established under the *Human Rights (Parliamentary Scrutiny) Act 2011* to examine and report to parliament on the compatibility of bills and legislative instruments with Australia's human rights obligations under seven core human rights treaties specified in section 3 of the act.

The committee is able to examine existing legislation and conduct broad inquiries into matters relating to human rights as referred to it by the Attorney-General. Before discussing the committee's consideration of bills in this report, I would like to emphasise the significance that the committee attaches to the statement of compatibility.

As I said in my statement to the House on 20 June this year, the committee views statements of compatibility as a key element in the parliament's consideration of human rights in the legislative process. The requirement for each new bill and each legislative instrument to be accompanied by a statement of compatibility has the potential to significantly increase transparency and accountability in the development of policy and legislation. It is obviously a significant starting point for the committee's consideration of bills and instruments.

The committee considers that the preparation of a statement of compatibility should be the culmination of a process that commences early in the development of policy, and not as a 'tick-box' exercise at the end. In this way, a statement of compatibility can reasonably be expected to reflect in appropriate detail the assessment of human rights that took place during the development of the policy and the drafting of the legislation. The statement of compatibility should take the objective of the proposed legislation as its point of reference, identify the rights engaged, indicate the circumstances in which the legislation may promote or limit the rights engaged and set out the justification for any limitations, in an appropriate level of detail, together with any safeguards provided in the legislation or elsewhere.

I now turn to this first report of the committee. The committee has considered 17 bills introduced during the period 18 June to 29 June 2012. Having examined these bills, the committee has approached them in the following way. Five of the bills do not engage human rights; however, one of these bills was introduced with a statement of compatibility that does not accord with the committee's expectations. The committee therefore proposes to write to the relevant minister and provide advice that it hopes will assist in the preparation of statements of compatibility of a similar nature in the future.

The committee has identified a further four bills that were each introduced with a statement of compatibility claiming the bill does not engage human rights but for which the committee considers it requires further information before it is able to form its own view. In each case the committee proposes to write to the proponent of the bill and invite them to elaborate on the information provided in the statement of compatibility.

This leaves eight bills that engage human rights. The committee has formed the view that five of these are compatible with human rights and that it requires further information to assist in its consideration of the remaining three bills.

I would like to make it clear that it is not the committee's intention to name and shame anyone in this report. I want to emphasise that at this relatively early stage in the implementation of this process the committee is committed to working constructively with ministers, agencies and individual members and senators as they familiarise themselves with these requirements. In this context I draw your attention to a particular matter that the committee has considered in this report.

Two of the bills examined in this report contain strict liability and reverse burden offences. In each case, the statement of compatibility claims that these offences have been drafted in light of guidelines provided by the Criminal Justice Division of the Attorney-General's Department and are consistent with these guidelines. In considering this claim, the committee has not accepted at face value the inference that the guidelines themselves are fully consistent with human rights.

The committee has therefore examined the relevant part of the guidelines and is generally satisfied that strict liability and reverse-burden offences that are drafted in accordance with these guidelines are likely to be compatible with human rights. However, the committee will continue to consider such offences on a case-by-case basis.

The committee intends to adopt this approach in its consideration of all provisions that are said to be drafted in accordance with specific guidelines or drafting conventions. I therefore draw the attention of the House to the committee's consideration of the Commonwealth Government Securities Legislation Amendment (Retail Trading Bill) 2012 and the Maritime Legislation Amendment Bill 2012. I would like to emphasise that the committee considers that both of these bills are compatible with human rights.

In closing, I would like to take this opportunity to once again place on record my thanks to the deputy chair, the member for Hasluck, and other members of the committee for the constructive and collegial approach to the committee's work. I also indicate the committee's thanks to the very small secretariat that supports us under secretary Jeanette Radcliffe, and thank them for the efforts in this very early stage of establishing the committee. I say to you, Madam Deputy Speaker, that members and senators should be aware that there is great interest in the work of this committee, from a wide-ranging stakeholder base; that there is a lot of onus on us as members of the committee, as individual members and senators, of executive government, through ministers and the bureaucracy, to ensure that the intentions of the legislation for proper parliamentary scrutiny of human rights is put in place, is sustainable and is credible. I thank the House.