

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

WEDNESDAY 26 JUNE 2013

The Tenth Report of 2013 of the Parliamentary Joint Committee on Human Rights sets out the committee's consideration of 13 bills introduced into the Parliament from 17 to 20 June 2013, 140 legislative instruments registered with the Federal Register of Legislative Instruments (FRLI) between 18 May and 7 June 2013 and 42 responses from the Prime Minister, Ministers and private Members and Senators.

The committee considers that none of the bills considered appear to give rise to human rights concerns. Some of these bills do not engage human rights, some engage and promote rights and a number engage and limit rights, but are accompanied by statements of compatibility that set out an adequate justification for each of these limitations.

The committee notes that the Tax Laws Amendment (2013 Measures No. 3) Bill 2013 proposes a number of civil penalty provisions, however, the statement of compatibility does not assess whether these provisions are properly characterised as 'civil' or 'criminal' under human rights law. The committee will write to the Treasurer to draw his attention to the committee's recently issued interim Practice Note 2 that sets out the type of analysis it considers may be appropriate to

include in statements of compatibility accompanying bills that introduce or incorporate civil penalty regimes.

The committee has identified six instruments that do not appear to raise any human rights concerns but are accompanied by statements of compatibility, or SoCs, that do not fully meet the committee's expectations. The committee will write to the relevant Ministers in a purely advisory capacity. The committee has decided to seek further information from the relevant Ministers in relation to two further instruments before forming a view about their compatibility with human rights.

The committee has considered 42 responses to comments made in various previous reports. The committee has concluded its consideration of 16 bills and 15 instruments as the responses received relating to this legislation appears to have adequately addressed the committee's concerns or further information is unlikely to be elicited. The committee has made comments in relation to a further 14 responses and in some cases has recommended that a more detailed review of the human rights compatibility of the relevant legislative regime be undertaken.

On behalf of the committee, I would like to thank all Ministers, Members and Senators who have responded to the committee's requests for further information over the course of the 13 months since the committee tabled its first report in June 2012. For the most part these responses have been prompt and detailed and for the most

part have addressed the committee's concerns and the committee is grateful for the cooperation it has received.

The committee's Eleventh Report of 2013 sets out the committee's examination of the *Stronger Futures in the Northern Territory Act* and related legislation.

The consideration of this package of legislation has been formative for the committee. The bills were introduced into the Parliament on 23 November 2011, before the establishment of the committee. On 15 June 2012, while the bills were before the Senate, and before the committee had tabled its first report, the National Congress of Australia's First Peoples wrote to the committee asking it to examine the bills.

As this request came so early in the life of the committee, the committee took some time to determine how it would approach the examination of the complex issues and human rights principles involved. I would like to acknowledge the patience and goodwill extended to the committee by the National Congress.

As the bills were introduced prior to the requirement for a statement of compatibility, the committee's first step was to write to the Minister for Families, Housing, Community Services and Indigenous Affairs and seek her advice on the compatibility of the bills with human rights. The committee thanks the Minister for providing such a detailed and prompt response.

The committee decided not to hold public hearings or formally invite submissions as part of its examination of this legislation. The committee noted that the Senate Community Affairs Legislation Committee had already examined the legislation in detail and had received over four hundred submissions during that inquiry. After considering these submissions, the committee determined that this body of evidence provided it with a solid basis from which to carry out its examination of the human rights compatibility of the legislation.

It was in this way that the committee came to appreciate the value of working in a way that compliments the work of other parliamentary committees rather than slavishly adhering to preconceived notions of committee inquiry. The committee is satisfied that its approach in this regard is not only efficient, but respectful of the work of those other committees and of the time and resources of those stakeholders who engage with them.

The committee has approached its consideration of the human rights implications of the policies implemented through this package of legislation using the same analytical framework that it consistently applies to the assessment of limitations of rights in any bill or instrument that comes before it.

Throughout its consideration of the measures in this legislation, the committee has focussed on the same three key questions: firstly, are the measures aimed at achieving a legitimate objective; secondly, is

there a rational connection between the measures and that objective; and thirdly, are the measures proportionate to that objective.

The package of legislation implements a range of measures. However, the committee has focussed on three measures: the tackling alcohol abuse measures; the income management measure and the school attendance measure and has indicated that it considers that these measures require careful monitoring and has observed that the committee could usefully perform an ongoing oversight role in this regard. The committee has recommended that in the 44th Parliament the committee should undertake a 12 month-review to evaluate the latest evidence in order to test the continuing necessity of these measures.

This Report has not specifically addressed issues such as: the food security measures relating to the licensing regimes for food stores in certain areas; land reform measures and amendments relating to customary law issues. However, the committee considers that any future monitoring of the implementation of this legislation by this committee would take these issues into account.

This report, like the committee's Ninth Report of 2013 on its examination of the Migration legislation, exemplifies the merit of the committee's work.

Like the Ninth Report, this Eleventh Report is a consensus report and reflects a careful and principled response to the human rights issues raised by this legislation.

I do not propose to paraphrase the report's findings. On previous occasions I have exhorted Members to read the committee's reports in their entirety. To cherry-pick the committee's conclusions is to fail to appreciate the sober and considered way in which the committee has approached its task.

This is the last tabling statement I will make on behalf of this committee and I would like to take this opportunity to thank all those who have served on the committee since it was established in March 2012. The original members of the committee were the member for Hasluck, who has been the deputy chair—a finer deputy chair I could not have asked for in this very considerable and awesome task.

The other members of the original committee were Senator Sean Edwards, Senator Gary Humphries, the member for Fremantle, Senator Ursula Stephens, the member for Wannan, Senator Matt Thistlethwaite, the member for Wills and Senator Penny Wright.

With the member for Fremantle, the member for Wills and Senator Thistlethwaite, we sent them on to greatness and they became parliamentary secretaries. Along the way, we have had some new members join us: Senator Anne Ruston, Senator Dean Smith, the member for Moreton and the member for Makin. I thank all of those members for the way in which they have taken a very collegiate view of our work. This is going to be a very important continuing committee of this parliament. It fits well into the human rights framework that was put in place by the government. And I pay tribute

to the member for Barton, who I may have overlooked by mistake in my valedictory. Robert should be very pleased with his work on the human rights framework. It was part of the response to the Brennan committee and it was decided that we would legislate for this committee, and it is really a great credit to a member of executive government and to the executive government that we have this parliamentary scrutiny. In addition, I place on record my thanks to Nicola Roxon because she was the one that tapped me on the shoulder and asked me whether I would take on this task. The favourite word of the committee is 'awesome'. I did not actually realise how awesome the task was going to be. It was a learning curve for me, but it has really made my last year and a bit really worthwhile in this place and I thank her for that opportunity.

All this work would not have happened if we did not have a dedicated secretariat. Before I go on to making comments about the secretariat, can I say that this secretariat exemplifies the best of parliamentary secretariats throughout the parliament. In saying that, I note that all secretariats have a high standard. Now the importance of making this statement is, of course, that this is a secretariat coming out of the Senate. I have moved a long way. I am now a champion of the fact that it is one parliament, two houses, or two houses, one parliament. I apologise but I have not focus-grouped whether it should be one way or the other. But the thing is that, whilst we have two houses, we are doing the work of the one parliament and, whilst we have the rivalries across Members Hall of the two chambers, it is important to

understand that we are two parts of one whole and it is the one whole that for me is the most important.

So I thank the people that have worked for the committee in the last 13 to 14 months. First of all, I would like to thank Lauren McDougall, 'Doogs', who did see the light—my having said this about the two houses—and has come across to the House secretariat system and is with the Joint Foreign Affairs, Defence and Trade Grouping. She was really a terrific help because she was there when there were only two people working for us. We then have Glenn Ryall, who is a senior research officer. Glenn is doing postgraduate studies at the ANU and I wish him well with those continuing studies and thank him. Anita Coles, a principal research officer, came out of Senate administration and she has knowledge of their scrutiny of bills. She has played a considerable role in the committee's work. Renuka Thilagaratnam has had a long association with the committee because she was in AG's when we were undergoing the training that Attorney-General's gave throughout the Public Service. Renuka really knows her stuff but, importantly, she has actually adapted to parliamentary life and the importance of taking a parliamentary view. I really thank her for her ability to do that, to actually know the way in which we would like to construct our work. The committee appointed an external legal adviser and we were lucky enough to get Professor Andrew Byrnes on board. He had been one of the stakeholders before coming on as the external legal adviser. I hope that he has not been too traumatised by adjusting to the parliamentary environment when has been doing his

work for the committee. He has such a vast knowledge of human rights law and its application and he has been of great assistance. Finally, I come to Jeanette Radcliffe, who is the secretary. Fortunately for me, while I knew few Senate bureaucrats I knew Jeanette because she had been the delegation secretary on IPU assemblies, so that was a good start. She has done an—again our favourite word—awesome job in building this committee from a greenfields site to be so successful a committee and I hope that the hard work that she has put in is rewarded so that in the 44th Parliament this committee continues to be one of the important committees of the parliament. So to all those people—the members and the secretariat— I thank them for the dedicated and principled way in which they have all approached their job. It simply has been awe-inspiring.

The DEPUTY SPEAKER (Ms Grierson): Thank you, member for Scullin, and I think it is fair to say that the parliament very much appreciates the work and achievements of the newly formed, but long needed, committee, and that we take pride in its dedication.