

# **PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS**

## **CHAIR'S TABLING STATEMENT**

**WEDNESDAY 19 JUNE 2013**

The Eighth Report of 2013 of the Parliamentary Joint Committee on Human Rights sets out the committee's consideration of 37 bills introduced in the House from 27 May to 6 June 2013.

The committee has identified 28 bills that do not 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. In addition, two private members' bills may engage rights and the committee leaves open the option of examining these bills further in the event that the bills proceed to further stages of debate.

Two bills were introduced without statements of compatibility and the committee will write to the proponents of those bills seeking clarification of this.

The committee will seek further information in relation to the remaining seven bills.

In this Eighth Report of 2013 the committee sets out its understanding of the human rights law position on civil penalties. Since commencing its work in August 2012, the committee has noted a number of bills containing civil penalty provisions and has sought clarification

regarding the consistency of these provisions with the guarantees relating to criminal proceedings contained in articles 14 and 15 of the International Covenant on Civil and Political Rights.

In this report, the committee has set out its comments on the civil penalty provisions in four bills, indicating the type of analysis that it considers may be appropriate to include in statements of compatibility accompanying bills that introduce or incorporate civil penalty regimes.

The committee thanks the Ministers concerned for their detailed responses to the committee's comments and for their forbearance while the committee gave detailed consideration to this issue. The committee has concluded that the civil penalty provisions in two of the bills are unlikely to be considered 'criminal'.

The remaining two bills contain civil penalty provisions that the committee considers may properly be characterised as 'criminal' in nature under international human rights law. As such, the committee has expressed concerns that where a person may be subject to a pecuniary penalty for a civil penalty contravention, in addition to punishment under a criminal offence for the same or substantially the same conduct, this may be inconsistent with the right not to be tried twice for the same offence as set out in article 14(7) of the ICCPR.

To assist those involved in policy development, drafting and human rights scrutiny of these types of provisions, the committee has developed an interim practice note setting out its understanding of the

human rights law position. Practice Note 2 forms Appendix 2 to the committee's report and is available on the committee's website.

The committee's Ninth Report of 2013 sets out the committee's examination of the *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012* and related legislation.

The committee initially wrote to the Minister for Immigration and Citizenship seeking information about the human rights compatibility of the Migration Legislation Amendment (Regional Processing and Other Measures) Bill 2012 on 22 August and 31 October 2012. The committee subsequently held two public hearings and accepted a number of submissions on this and related legislation.

Let me say at the outset that the committee does not underestimate the scale of the challenge facing the government. The committee is in no doubt that the risks faced by people seeking Australia's protection by irregular maritime travel are significant.

The committee recognises that under international law every State has the sovereign right to determine who may enter its territory. However, the exercise of this right is subject to any obligations the State accepts under international treaties, including human rights treaties, or by which it is bound under customary international law.

The committee acknowledges that the setting of immigration policies may involve judgements about the national interest and these national interest considerations may properly be taken into account in

determining whether any restrictions on human rights resulting from the implementation of immigration policy are justifiable.

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.

I draw the attention of Members to the analytical framework applied by the committee in its interpretation of the underlying human rights obligations and principles engaged by this legislation.

Throughout its consideration of the measures in this legislation, the committee has focussed on three key questions:

1. whether the measures are aimed at achieving a legitimate objective;
2. whether there is a rational connection between the measures and that objective; and
3. whether the measures are proportionate to that objective.

The committee considers that it is a legitimate and pressing objective for the government to explore all reasonable solutions to reduce the risks associated with irregular maritime travel. Nevertheless, in order to be justifiable under human rights law, such measures must be demonstrated to be rationally connected to the achievement of that objective and must be proportionate to that objective.

On the basis of the evidence before it, the committee considers that the regional processing measures as currently implemented by this legislation carry a significant risk of being incompatible with a range of human rights. To the extent that some of those rights may be limited, the committee considers that the reasonableness and proportionality of those limitations have not been clearly demonstrated.

In closing, I would like to emphasise that this consensus report reflects a careful and considered response to the human rights issues raised by this legislation. As such, I encourage honourable members to read the committee's comments on this legislation in their entirety. I emphasise the point: we ask that members read the committee's comments on this legislation in their entirety, that they do not cherry-pick, that they do not take it out of context. Not to look at the committee's report in its entirety diminishes the work of the committee.

I would take this opportunity to thank my committee colleagues for their principled and collegiate approach to the consideration of these complex and contentious issues. I commend them for their concerted efforts to set aside partisan positions in considering questions of human rights compatibility, in the consideration of this legislation, and consistently in the consideration of all legislation that comes before the committee.

I commend the committee's Eighth and Ninth Reports of 2013 to the House.