

SPEECH

Date Wednesday, 9 December 2020	Source Senate
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Questioner	Responder
Speaker Henderson, Sen Sarah	Question No.

Senator HENDERSON (Victoria) (18:36): I present *Human rights scrutiny report: report 15 of 2020* of the Parliamentary Joint Committee on Human Rights. I move:

That the Senate take note of the report.

I am pleased to table the Parliamentary Joint Committee on Human Rights' 15th scrutiny report of 2020. This report contains a technical examination of legislation's compatibility with Australia's obligations under international human rights law. I also wish to speak to the committee's 13th and 14th scrutiny reports of 2020, which were presented out of session on 13 and 26 November. Together, these three reports set out the committee's consideration of 48 new bills introduced into the parliament between October and 3 December 2020 and 324 legislative instruments registered on the Federal Register of Legislation between 21 September and 1 December 2020.

In these reports, the committee has made substantive comments with respect to 24 bills and legislative instruments, including legislation previously commented on. For example, in this 15th report the committee is seeking further information in relation to the Federal Court and Federal Circuit Court Amendment (Fees) Regulations 2020. This legislative instrument increases the application fee for migration litigants in the Federal Circuit Court from \$690 to \$3,300. While, significantly, the instrument also provides for the ability to seek full or partial waiver of this fee in cases of financial hardship, in order to form a concluded view on this matter the committee seeks further information to assess what implications this may have in relation to the right to access to justice.

In these reports the committee has also considered the Native Title Amendment (Infrastructure and Public Facilities) Bill 2020, which has now passed. This bill amends the Native Title Act 1993 to extend the operation of the future acts regime for another 10 years. This regime permits the construction of public housing and other infrastructure on Indigenous-held land. The future acts regime is an important measure which facilitates the timely provision of critical public housing and other public infrastructure for Indigenous communities when agreement cannot be reached with native title holders. As such, the committee considers that this bill promotes the right to an adequate standard of living, education and health. In addition, the committee considers that the amendments may also limit a number of other human rights, including the rights to self-determination, culture and equality, and non-discrimination. The committee notes that these rights may be subject to permissible limitations if that is shown to be reasonable, necessary and proportionate.

In this regard the committee notes in particular that the consultation process provided for in the future acts regime appears to lack several constituent elements of free, prior and informed consent for the purposes of international human rights law. As such, the committee makes several recommendations to assist with the proportionality of the measure, including requiring a consultation process which is guided by the principles contained in the United Nations Declaration on the Rights of Indigenous Peoples and the development of guidelines to inform decision-makers working in this area.

Lastly, I note that in *Report 13 of 2020* the committee concluded its consideration of the Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020. This bill seeks to establish an extended supervision order scheme for high-risk terrorist offenders who have completed their custodial sentence. It would enable a court to impose any conditions on a person which it was satisfied on the balance of probabilities were reasonably necessary, appropriate and adapted for the purposes of protecting the community from the unacceptable risk of a person committing a terrorism offence. The committee considers that such a scheme may protect the public from harmful acts and so promote the right to life and security of the person. In the context of high-risk terrorist offenders the committee recognises that the government has a critically important role to play in protecting the community from the catastrophic harm which could be caused by a large-scale terrorist attack in Australia. The committee also notes that, given the breadth of potential conditions which could be imposed

under an extended supervision order, the order also engages a number of other human rights. The committee notes that most human rights may be permissibly limited. The committee's report sets out a detailed analysis of the international human rights law implications of this bill, and, while acknowledging the need to adequately protect the community, draws these concerns to the attention of the parliament.

In closing, I note that the report I table today is the 15th and final scrutiny report of the Parliamentary Joint Committee on Human Rights for 2020. I'm very proud of the way in which this committee has continued its scrutiny work throughout the COVID-19 pandemic, including by regularly meeting remotely via teleconference and continuing to scrutinise the many legislative measures which have been introduced to address this unprecedented health crisis. I wish to thank my fellow committee members for their hard work over this period, particularly my deputy chair, Mr Perrett, together with Senators Dodson, Green, McLachlan and Thorpe and House members Mr Georganas, Mr Goodenough, Ms Hammond and Dr Webster, as well as former members Senators Chandler and McKim. I also wish to thank our external legal adviser, Associate Professor Jacqueline Mowbray; our committee secretary, Anita Coles; and all of the secretariat for their hard work during this very difficult year. As always, I encourage all parliamentarians to carefully consider the committee's analysis. With these comments, I commend the three reports to the chamber.