

SPEECH

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Questioner		Responder	
Speaker	Perrett, Graham, MP	Question No.	

Mr PERRETT (Moreton) (17:34): On behalf of the Parliamentary Joint Committee on Human Rights, I present the committee's report entitled *Human rights scrutiny report: Report 15 of 2020*.

Report made a parliamentary paper in accordance with standing order 39(e).

Mr PERRETT: by leave—I am pleased to table the Parliamentary Joint Committee on Human Rights's 15th scrutiny report of 2020. This report contains a technical examination of legislation with regard to Australia's obligations under international human rights law. It sets out the committee's consideration of 19 bills introduced into the parliament between 30 November and 3 December 2020, and 99 legislative instruments registered under the Federal Register of Legislation between 11 November and 1 December 2020, which is obviously quite a lot. The committee has made substantive comments with respect to three bills and instruments, including legislation previously commented on, in this scrutiny report.

In this report the committee seeks 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 \$3,330. That's a 482 per cent increase. Obviously, reading between the lines, for those that understand Federal Circuit Court work, a 482 per cent hike is particularly going to be an issue for asylum seekers dealing with immigration matters. While the bill also provides for the ability to seek full or partial waiver of this fee in cases of financial hardship, the committee is seeking further information in order to assess what implications this may have in relation to the right to a fair hearing, which includes the right to access to justice. The cost of accessing courts is a key component of this right. The right of access to justice may be permissibly limited if it is shown to be reasonable, necessary and proportionate. Obviously, a 482 per cent hike doesn't quite tick all of those boxes. We look forward to the response from the minister. The statement of compatibility does not recognise that this measure may engage the right to a fair hearing. As such, the committee seeks clarification as to the definition of 'financial hardship', what guidance would be given to the court in establishing whether hardship exists, and the objective sought to be achieved by this measure.

In addition, in this report the committee makes concluding comments with respect to 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 without requiring the consent of native title holders and registered claimants. The committee considers that while the bill promotes the rights to an adequate standard of living, education and health through facilitating the timely provision of public housing and other public infrastructure, it may also limit a number of other human rights, including the rights to self-determination, culture, equality and non-discrimination. The legal advice to the committee is that this measure does not appear to constitute a proportionate limitation on the rights to equality and non-discrimination, self-determination and culture. 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. 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.

Finally, I note that this is the 15th and final scrutiny report of the Parliamentary Joint Committee on Human Rights for 2020. As I have previously noted, I have some concerns about this once bipartisan committee moving in some instances to dismiss expert international human rights legal advice, but I'm proud of the way in which this committee has continued its scrutiny work throughout the COVID-19 pandemic. This has included regularly meeting remotely via teleconference and continuing to scrutinise the many legislative measures which have been introduced to address this unprecedented health crisis. I encourage all parliamentarians to carefully consider the committee's analysis. With these comments, I commend this report to the chamber.