

SPEECH

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Questioner	Responder
Speaker Perrett, Graham, MP	Question No.

Mr PERRETT (Moreton) (16:27): On behalf of the Parliamentary Joint Committee on Human Rights, I present the committee's report entitled *Human rights scrutiny: report 1 of 2020*.

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

Mr PERRETT: by leave—I rise as deputy chair to speak to the tabling of the Parliamentary Joint Committee on Human Rights scrutiny report 1 of 2020. This report was tabled in the Senate on Wednesday last week, and the chair incorrectly stated at the time that there was no dissenting report. I inform the House of Representatives that scrutiny report 1 of 2020 does contain a dissenting report.

This report contains a technical examination of legislation with Australia's obligations under human rights law, as required under the committee's statutory mandate. It sets out the committee's consideration of 79 bills introduced into the parliament between 14 October and 5 December 2019, one bill, previously deferred, and legislative instruments registered on the Federal Register of Legislation between 20 September and 3 December 2019. In this report, the committee seeks further information in relation to 11 bills and four instruments from the relevant ministers.

The process of requesting information from the legislation proponent reflects the committee's role in establishing and maintaining a dialogue regarding the human rights implications of legislative measures, which contributes to the broader respect for and recognition of human rights in Australia. The committee has made concluding remarks in relation to four bills and one instrument; however, half of the committee, comprising all members from the Australian Labor Party and the Greens, have issued a dissenting report in relation to the committee's conclusion with regard to three of these bills, as I will outline here.

The Australian Citizenship Amendment (Citizenship Cessation) Bill 2019 seeks to provide the Minister for Home Affairs with the discretionary power to determine that a person ceases to be an Australian citizen in certain broad circumstances. As set out in the international human rights law advice contained in the concluding comments of the report, this engages and limits the rights to freedom of movement, liberty and the rights of the child and the protection of the family. While these rights may be subject to permissible limitations under international human rights law, the dissenting members considered it has not been demonstrated that the proposed measures are sufficiently certain that people would understand the circumstances under which the minister may restrict the exercise of their rights. The dissenting members, in considering international human rights law implications of such legislation, concluded that there is a significant risk that the bill could result in a person being denied their right to freedom of movement, including their right to enter, remain in or return to their own country. There is also a risk that the cessation of a person's citizenship, making them a noncitizen, could result in their being placed in mandatory immigration detention, which could result in an impermissible limitation on their right to liberty.

Further, the bill would allow the minister to cease the citizenship of a child as young as 10 or 14, with the best interests of the child only to be considered alongside a list of other considerations, and without any specific requirement that the minister consider the importance of protecting the right to family. The dissenting members considered there is a significant risk that the rights of the child and the protection of the family will not be adequately protected. The dissenting members considered that the cessation of citizenship, which could result in the loss of a right to remain in Australia, noting that any ex-citizen visa is highly likely to be cancelled on character grounds, risks resulting in such persons being subject to removal to countries where they may face persecution. As such, the dissenting members considered the measures may not be consistent with Australia's non-refoulement obligations and the right to an effective remedy. The dissenting members considered this risk may be reduced if proposed section 36E included a specific requirement that the minister must consider whether the person, if removed from Australia following loss of citizenship, would be at risk of persecution or other forms of serious harm, and independent merits review of this decision were available.

Half of the committee has also issued dissenting comments with regard to the committee's conclusions as to the human rights compatibility of the Social Security (Administration) Amendment (Income Management to Cashless Debit Card Transition) Bill 2019. This bill seeks to extend the date for existing cashless debit card trials and to establish the Northern Territory and Cape York areas as cashless debit card trial areas. The dissenting report states:

This bill engages and limits the rights to privacy, social security, and equality and non-discrimination. As set out in the international human rights legal advice contained in the concluding comments of the report, the measures associated with this bill significantly intrude into the freedom and autonomy of individuals to organise their private and family lives by making their own decisions about the way in which they use their social security payments. They also appear to have a disproportionate impact on First Nations People.

The report also states:

... the dissenting members consider it is unclear whether the proposed cashless welfare scheme expansion is rationally connected with (that is, effective to achieve) those objectives, noting the mixed results outlined in the trial evaluations completed to date.¹³ Additionally, the dissenting members consider it does not appear that the proposed measures are proportionate to the objectives sought to be achieved. In particular, there appears to be extremely limited capacity for flexibility to treat different cases differently ...

... ..

A human rights compliant approach requires that any such measures must be effective, subject to monitoring and review and genuinely tailored to the needs and wishes of the local community. The dissenting members consider the current approach, with its apparent lack of genuine consultation, amendments to the evaluation process and lack of legislative requirement to respect community wishes before amending the amount of restrictable income, falls short of this standard.

Finally, half of the committee has also made dissenting comments with regard to the committee's conclusions as to the human rights compatibility of the Social Services Legislation Amendment (Drug Testing Trial) Bill 2019, which seeks to establish a two-year trial of mandatory drug testing. Under this scheme, recipients who test positive would be subject to income management for two years and be subject to further random drug tests. Recipients who test positive to more than one test during the 24-month period may be required to complete certain treatment activities, and those who do not comply with their employment pathway plan, including drug treatment activities, would be subject to a participation payment compliance framework, which may involve suspending their welfare payments.

As set out in the International Human Rights Law Advice contained in the concluding comments of the report, these measures engage and limit a number of human rights, including the rights to privacy, social security, an adequate standard of living, and equality and nondiscrimination. The dissenting members considered that it has not been demonstrated that the measures are a proportionate means of achieving the stated objectives. The dissenting members note that the government has not explained how individuals who have their payments suspended will be able to meet their basic needs for food and housing, which raises questions as to whether this measure would comply with the obligation to provide an adequate standard of living.

It also appears that the process to remove income quarantining where it is not necessary or appropriate is limited, as is the availability of independent review. It is also not clear that other, less rights-restrictive methods have been trialled to improve a jobseeker's capacity to find employment, participate in education or training, and receive medical treatment. Consequently, the dissenting members consider that there is significant risk that the measures proposed by the bill would unjustifiably limit the rights to privacy, social security, an adequate standard of living, and equality and nondiscrimination.

We consider it regrettable that it has become necessary to prepare another dissenting report for this previously well-functioning committee. As members no doubt know, the mandate of this important committee is to examine all bills and legislative instruments that come before either house of the parliament for compatibility with Australia's human rights obligations under the seven international human rights treaties ratified by Australia and to report to both houses of the parliament on that issue.

As members of this committee we must never lose sight of the committee's important mandate. This committee does not exist to be partisan, and it does not exist to rubberstamp government policy, irrespective of the political party occupying the treasury bench. The legislation scrutinised in this report deserves to be properly considered by this committee through a human rights framework. The work of the Human Rights Committee is closely followed by similar committees internationally and by the judiciary. It would be a horrible reflection on the members of this committee if, in the 46th Parliament, the Human Rights Committee became politicised. I encourage my fellow members, the government and all those who care about human rights to examine the committee's full report, and I commend the committee's report No. 1 of 2020 to the House.