

SPEECH

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Speaker	Perrett, Graham, MP	Question No.	

Mr PERRETT (Moreton) (16:25): On behalf of the Parliamentary Joint Committee on Human Rights, I present the committee's report entitled *Human rights scrutiny report 2 of 2020*.

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

Mr PERRETT: by leave—I am very pleased to speak to the tabling of the Parliamentary Joint Committee on Human Rights second scrutiny report of 2020.

This report contains a technical examination of legislation with Australia's obligations under international human rights law, as required under the committee's statutory mandate. It sets out the committee's consideration of five bills introduced into the parliament between 4 and 6 February 2020, and legislative instruments registered on the Federal Register of Legislation between 4 December 2019 and 8 January 2020.

As members know, the committee's mandate, as set out in the Human Rights (Parliamentary Scrutiny) Act 2011, is to examine legislation for compatibility with human rights: defined to mean the rights contained in the seven core international human rights treaties to which Australia is a party. In understanding how human rights are to be applied, the committee has regularly looked to the way in which UN human rights treaty bodies have interpreted the treaties, as well as to the interpretations by comparable regional, international and domestic human rights courts of other countries. While none of this is binding on how the committee carries out its scrutiny function, it can assist the committee in gaining a broader understanding of the content and application of human rights.

Where a provision in a bill or instrument appears to limit rights, the committee considers whether any limitation is reasonable, necessary and proportionate. To do so it asks three key questions:

whether the limitation is aimed at achieving a legitimate objective;

whether there is a rational connection between the limitation and that objective; and

whether the limitation is proportionate to that objective.

In undertaking its task, the committee has access to specialist human rights law advice, which guides the committee as to the application of these legal tests on a case-by-case basis. The committee's deliberations need to be underpinned by this legal advice, as having full consideration of well-established legal tests and precedents assists the committee to accurately identify the rights engaged by legislation and the permissibility under international law of any limitation on these rights. While we as parliamentarians are well equipped to consider debatable questions of whether a measure appears to be reasonable, necessary and proportionate, we do so based on this important legal advice. This is vital to ensure the legitimacy of the process of technical legislative scrutiny.

Where further information is required to determine these question, the committee writes to the relevant minister seeking clarification. In this report, the committee seeks further information in relation to one legislative instrument, the Aviation Transport Security Amendment (Security Controlled Airports) Regulations 2019. This instrument amends the way in which Australian airports, and aircraft, are categorised for security purposes. This would permit the use of advanced security screening measures, including body scanners, at domestic airports. This may engage the right to privacy, because body scanners produce an image of a person's body, and may reveal objects contained under clothing, or within a person's body. These measures may also engage and limit the right to freedom of movement, as a person who does not agree to undergo a body scan would be prevented from proceeding through the airport and boarding a flight for 24 hours. The committee is seeking further information as it is unclear how much detail of a person's body would be displayed to a security screening officer, including whether it would reflect a person's body weight; reveal a physical disability; or reveal the presence of personal

health equipment such as a pacemaker, colostomy bag, or prosthesis. The committee is also questioning whether alternative security screening processes are available where a person doesn't wish to submit to a body scan.

The committee has also made concluding remarks in relation to the Disability Discrimination Regulations 2019, which prescribe a number of state laws as being exempt from the requirements of the Disability Discrimination Act. This appeared to engage a number of human rights.

The Attorney-General has now provided this advice. The committee commends the work done by the Attorney-General in conducting consultation to consider whether each of these exemptions are necessary. However, the committee is concerned that it has not been demonstrated that the exemptions are, in each instance, a proportionate means of achieving the stated objectives. In particular, it is not clear that providing a blanket exemption from the Disability Discrimination Act is the least rights restrictive way of achieving the stated objectives, or that there are sufficient safeguards in place. The committee also considers that it has not been demonstrated that a person who has been discriminated against would always have access to an effective remedy in relation to that discrimination. The committee has drawn these human rights concerns to the attention of the Attorney-General.

With these comments, I commend the committee's *Report 2 of 2020* to the House.