



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

PROOF

COMMITTEES

Human Rights Committee

Report

SPEECH

Wednesday, 9 February 2022

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

<p>Date Wednesday, 9 February 2022</p> <p>Page 78</p> <p>Questioner</p> <p>Speaker Perrett, Graham Douglas MP</p>	<p>Source House</p> <p>Proof Yes</p> <p>Responder</p> <p>Question No.</p>
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Mr PERRETT (Moreton) (16:54): On behalf of the Parliamentary Joint Committee on Human Rights, I present the committee's report entitled *Human rights scrutiny report: report 1 of 2022*.

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

Mr PERRETT: by leave—Unfortunately, the chair of the committee is not able to table this. I'm tabling this on the member for Mallee's behalf, and I wish her well. This report considers two pieces of legislation. The National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Bill 2021 is given preliminary consideration. The committee has not yet formed a concluded view in relation to this bill. Further information is required to assess the human rights implications, and the committee has asked the minister to provide such advice to assist the committee's consideration.

The second piece of legislation considered by the committee is the Aged Care and Other Legislation Amendment (Royal Commission Response No. 2) Bill 2021. The bill makes numerous amendments to implement eight measures in response to recommendations of the Royal Commission into Aged Care Quality and Safety. One of the amendments to this bill allows the Quality of Care Principles to make provision for persons or bodies to give informed consent to the use of a restrictive practice on a person in aged care if the care recipient lacks capacity to give consent—a topic that was investigated and was big in the media. The report notes:

... enabling consent to be given in relation to the use of a restrictive practice on behalf of a person who is deemed to lack capacity to give consent engages and limits the rights of persons with disabilities, including the right to equal recognition before the law and the right to consent to medical treatment.

Article 12 of the Convention on the Rights of Persons with Disabilities makes it clear that the right to equal recognition before the law includes the right to enjoy legal capacity on an equal basis with others in all aspects of life and in all measures that relate to the exercise of legal capacity. There should be appropriate and effective safeguards to prevent abuse. There can be no derogation from article 12. As the report says:

This means 'there are no permissible circumstances under international human rights law in which this right may be limited'.

Denying legal capacity to care recipients who are deemed to lack capacity by enabling a substitute decision-maker to consent to the use of a restrictive practice would deprive these care recipients of their right to give consent to medical treatment and health care. I note that restrictive practices may include chemical and physical restraints.

The report also notes that the right to legal capacity and equal recognition before the law is what we call a 'threshold right'. If this measure were to violate article 12, it is likely that it would impermissibly limit associated rights. The United Nations Committee on the Rights of Persons with Disabilities has stated:

The right to legal capacity is a threshold right, that is, it is required for the enjoyment of almost all other rights in the Convention, including the right to equality and non-discrimination. Articles 5 and 12 are fundamentally connected, because equality before the law must include the enjoyment of legal capacity by all persons with disabilities on an equal basis with others. Discrimination through denial of legal capacity may be present in different ways, including status-based, functional and outcome-based systems. Denial of decision-making on the basis of disability through any of these systems is discriminatory.

The international human rights legal advice to the committee concluded that the amendments do not appear to be compatible with a number of human rights, particularly the rights of persons with disabilities. The committee has drawn these human rights concerns to the attention of the minister and the parliament. I'd encourage all parliamentarians to read the committee's report on this bill. When a royal commission entitles its interim report *Neglect* and its final report *Care, Dignity and Respect*, it should be a flag to legislators that they are not doing a very

good job at protecting Australia's most vulnerable people. It should be a flag to legislators that any law to regulate aged care should be carefully considered to ensure that no harm is inflicted on the most vulnerable Australians. Aged care in Australia is a disgrace under the Morrison government. It is in such crisis that Australian Defence Force personnel have been sent in to support staff in aged care. I have grave concerns about the measures in this bill.