

# PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

## CHAIR'S STATEMENT

**Thursday 31 March 2022**

I am pleased to present the Parliamentary Joint Committee on Human Rights' second scrutiny report of 2022, which was tabled out of session last Friday 25 March. As usual, this report contains a technical examination of legislation with Australia's obligations under international human rights law. In this report, the committee has considered 40 new bills and 372 new legislative instruments – and of these the committee has commented on 11 bills and 17 instruments. The committee has also concluded its consideration of two bills and one instrument previously reported on.

In particular, the committee is seeking further information in relation to the **Social Media (Anti-Trolling) Bill 2022**. This bill seeks to clarify who is responsible for defamatory material posted on social media. One way it seeks to do this is by introducing end-user information disclosure orders. These orders would require a social media service provider to disclose an anonymous poster's personal information so that defamation proceedings can be commenced. The committee notes the particular harm caused by defamatory material published on social media and the difficulty experienced by complainants in vindicating their reputation where the material is published anonymously. As such, by helping to resolve defamation complaints and

assisting potential complainants to seek an effective remedy for reputational damage, the committee considers this measure promotes the right to privacy, particularly the right of individuals to be free from attacks on their honour and reputation.

However, the committee notes that by establishing a framework to lift the anonymity of social media users and disclose their personal information without their consent, the measure also limits the rights to privacy and freedom of expression. The committee is seeking further information to assess the compatibility of this bill with these rights.

In this report the committee also considered the **Telecommunications (Interception and Access) Amendment (International Production Orders) Regulations 2022**. These regulations designate an agreement with the United States to allow Australian and US law enforcement and security agencies to request access to private telecommunications data held by providers in each respective country, for the purpose of investigating or prosecuting serious crimes. As the committee raised in relation to the legislation establishing this framework, this raises privacy concerns. But of particular concern is that designating this agreement would allow data held within Australia to be shared with the US government to investigate, and potentially prosecute, a person for an offence to which the death penalty may apply. This engages the right to life as Australia is required to take steps to ensure that it does not assist in the

investigation of crimes that may result in the imposition of the death penalty in another State. Under the agreement the US would only be required to get Australia's permission to use the data when using it as *evidence* in a prosecution – but it could use the information to discover leads and other evidence, which may ultimately lead to the death penalty, and this would not require Australia's permission. Therefore, the committee considers there is a significant risk that designating this agreement is incompatible with the right to life, and draws this to the Parliament's attention.

Finally, the committee has concluded its consideration of the **National Security Legislation Amendment (Comprehensive Review and Other Measures No. 1) Bill 2021**. This bill seeks to introduce several measures that would implement recommendations of the 2020 Comprehensive Review of the Legal Framework of the National Intelligence Community. While the committee considers the measures seek to achieve the important and legitimate objective of protecting national security, the committee considers there is a risk that some of these measures are not proportionate and may therefore not be compatible with multiple human rights. The committee has suggested some amendments that may assist with proportionality.

I encourage all parliamentarians to carefully consider the committee's analysis, and with these comments I commend this report to the Chamber.