

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

CHAIR'S TABLING STATEMENT

TUESDAY 15 July 2014

I rise to speak to the tabling of the Parliamentary Joint Committee on Human Rights' Ninth Report of the 44th Parliament.

The committee considered 21 bills. Of these 21 bills, 17 do not require further scrutiny as they do not appear to give rise to human rights concerns. The committee has decided to further defer its consideration of one additional bill which was introduced previously.

The committee has identified eight bills that it considers require further examination and for which it will seek further information. This includes four bills which the committee had deferred consideration of in previous reports.

Of the bills considered, those which are scheduled for debate during the sitting week commencing 14 July 2014 include:

- Fair Work (Registered Organisations) Amendment Bill 2014;
- Family Assistance Legislation Amendment (Child Care Measures) (No. 2) Bill 2014; and
- Social Security Legislation Amendment (Stronger Penalties for Serious Failures) Bill 2014.

The report outlines the committee's assessment of the compatibility of these bills with human rights, and I encourage my fellow Senators to

look to the committee's report to inform your deliberations on the merits of this proposed legislation.

As this is the committee's first report to the new Senate, which came into effect on 1 July 2014, I think it is timely to provide an overview of the committee's purpose and the key processes by which it performs its work.

The main function of the committee is to examine bills and legislative instruments that come before the Parliament for compatibility with human rights, as defined by seven core international human rights conventions to which Australia is a party. In simple terms, those conventions define a range of civil and political rights, as well as rights collectively described as economic, social and cultural rights.

To understand the way in which the committee undertakes its examination of legislation, it is critical to note that, aside from absolute rights such as the right not to be subject to torture, human rights may be generally subject to what are termed 'permissible limitations' under international human rights law. Accordingly, the committee's analytical framework focuses on, first, identifying if a proposed measure might have the effect of limiting the enjoyment of a specific right and, second, whether any such limitations may be regarded as permissible or justified.

In order to show that a limitation of a right is permissible, the limitation must, first, pursue a *legitimate objective*, understood as

being a pressing or substantial concern that is capable of justifying a proposed limitation of human rights. Guidance on the preparation of statements of compatibility state that the existence of a legitimate objective must be identified clearly with supporting reasons and, generally, empirical data to demonstrate that the objective is legitimate.

Second, there must be a *rational connection* between the measure and its objective.

Third, the limitation must be a *proportionate* way of achieving the objective being sought.

The committee applies this analysis impartially to all legislation which it examines and it is important to recognise that, in the tradition of legislative scrutiny committees, the committee undertakes a technical analysis that leaves aside the particular policy merits of the legislation being considered.

The committee's assessments are fundamentally based on the statement of compatibility which must generally accompany each piece of legislation that the committee examines. An aim of Australia's human rights framework is to ensure that human rights are considered throughout the entire policy development and implementation process. Statements of compatibility should therefore, ideally, reflect essentially the same approach as the committee takes

to identifying, assessing and determining whether legislation is compatible with human rights.

However, while the quality of statements of compatibility has continued to improve since the committee was established, there remains scope for improvement.

As in all the committee's reports, there are a number of examples in this report where the committee has sought further information due to the inadequacy or incompleteness of the assessment contained in the statement of compatibility. However, I will draw Senators' attention to one bill in this report which is a good demonstration of the committee's approach.

The Business Services Wage Assessment Tool Payment Scheme Bill 2014 responds to a Federal Court's decision which found the application of the Business Services Wage Assessment Tool to be discriminatory. The tool was used to determine the wages of employees with an intellectual disability, and it was held that including an assessment of a person's competency, as opposed to just their productivity, had a discriminatory effect on those persons. The bill establishes a payment scheme for those persons.

As noted in the report, the committee has raised concerns about the operation of the scheme from the perspective of the right to an effective remedy, the right to just and favourable conditions of work and the right to equality and non-discrimination, including the right of

persons with disabilities to be recognised as persons before the law and to the equal enjoyment of legal capacity.

The committee has sought the advice of the Minister as to whether the proposed scheme is compatible with these rights, noting that the statement of compatibility did not adequately identify and assess how potential limitations on rights would be reasonable, necessary and proportionate in each case.

I encourage Senators to consult the report for the full discussion of the bill.

Finally, the committee has considered 15 responses regarding matters raised in relation to bills and legislative instruments in previous reports and the committee's remarks on these matters.

With these comments, I commend the committee's Ninth Report of the 44th Parliament to the Senate.