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Parliamentary Joint Committee on Human Rights tables first report

On 22 August 2012 the Parliamentary Joint Committee on Human Rights (established by the *Human Rights (Parliamentary Scrutiny) Act 2011*) tabled its first report with its views on the compatibility of Bills with human rights.

In this Express Law we look at how the Committee has assessed Bills so far, especially regarding two commonly engaged human rights – the presumption of innocence and the right to privacy.

Key points for agencies

- The Committee is now closely examining Bills and disallowable legislative instruments for compatibility with human rights.
- In doing so, it will have regard to General Comments issued by UN treaty bodies as well as jurisprudence of the European Court of Human Rights and other countries. These, together with the Committee's reports, will be useful resources for those involved in policy making and legislative development.
- Where the Committee is concerned that a statement of compatibility does not accurately or fully reflect the human rights impact of a Bill or disallowable legislative instruments, it will seek clarification from the responsible Minister.

Committee functions

Since our last Express Law of 25 November 2011 on this topic, the Committee was established and its members appointed. It is chaired by Mr Harry Jenkins MP. The Committee has three functions:

- to examine Bills and legislative instruments coming before the Parliament for compatibility with 'human rights' (defined as the rights and freedoms recognised or declared by the 7 core international human rights instruments to which Australia is a party) and to report to Parliament on that issue
- to examine current Acts for compatibility with human rights and report to Parliament on that issue
- to inquire into any matter relating to human rights that is referred to the Committee by the Attorney-General and to report to Parliament on that matter.

First report

On 22 August 2012, the Committee tabled its first report (available [here](#)) with its views on the compatibility of 17 Bills with human rights as defined in the Act. The report concluded that 8 Bills engaged human rights and 5 did not. The Committee has sought clarification on the remaining 4 Bills.

The Committee's report provides guidance to agencies on interpreting on two commonly engaged human rights:

- the right to the presumption of innocence
- the right to freedom from arbitrary or unlawful interference with privacy.

Right to presumption of innocence

Article 14(2) of the International Covenant on Civil and Political Rights (ICCPR) protects the right of a person charged with a criminal offence 'to be presumed innocent until proven guilty according to law'. It will need to be considered in relation to:

- strict liability or 'no fault' offences

- strict liability or no-fault offences
- provisions imposing an evidential burden on the defendant in criminal proceedings ('reverse burden' provisions).

It will be necessary to assess, in the context of each Bill or legislative instrument, whether a strict liability offence or reverse onus provision is compatible with the right to the presumption of innocence. In doing so, the Committee has indicated that it will have reference to statements of the UN Human Rights Committee and other treaty bodies, analogous provisions in other jurisdictions as well as jurisprudence of the European Court of Human Rights.

That said, the Committee has indicated that it considers provisions that have been drafted in accordance with the Attorney-General's Department's *Guide to Framing Commonwealth Offences, Infringement Notices and Enforcement Powers* (available [here](#)) are likely to be consistent with the presumption of innocence.

Freedom from interference with privacy

Article 17 of the ICCPR protects an individual's right to freedom from arbitrary or unlawful interference with privacy. It will need to be considered in the context of provisions that:

- concern the collection, handling or disclosure of information, particularly personal information
- give monitoring or surveillance powers, including the recording and collection of information, to agencies or officers
- provide exceptions or defences to secrecy provisions.

The Committee did not reach a concluded view on whether the Fisheries Legislation Amendment Bill (No. 1) 2012 providing for the introduction of electronic monitoring (e-monitoring) to some Australian boats engaged the right to privacy. The Committee has sought further information from the responsible Minister about relevant policies and legal requirements for the management of storage, handling and disposal of e-monitoring data.

What can AGS do to help?

The requirements of the Act encourage agencies to have regard to human rights considerations from the early stages of policy and legislative development. AGS has broad experience in and can provide specialist advice and assistance on human rights issues. In conjunction with the assistance

and advice being provided by the Office of International Law in the Attorney-General's Department, AGS can assist with understanding human rights obligations, analyses of Bills and instruments against these human rights obligations, and the preparation of statements of compatibility.

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