

## Omnibus Repeal Day (Autumn 2014) Bill 2014

*Portfolio: Prime Minister*

*Introduced: House of Representatives, 19 March 2014*

### Summary of committee concerns

1.27 The committee seeks further information on the compatibility of the bill with human rights.

### Overview

1.28 The explanatory memorandum for the Omnibus Repeal Day (Autumn 2014) Bill 2014 states that it is introduced as part of a whole-of-government initiative to amend or repeal legislation across ten portfolios. The explanatory memorandum notes that the bill includes measures intended to reduce the regulatory burden for business, individuals and the community sector, such as measures to:

- streamline reporting and information provision requirements for telecommunications providers under the *Competition and Consumer Act 2010*;
- remove the certification requirement under the *Aged Care Act 1997* that replicates state, territory and local government building regulations; and
- exempt low-volume importers from the licensing requirements of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.<sup>1</sup>

1.29 The bill also seeks to repeal redundant and spent Acts and provisions in Commonwealth Acts. For example, the bill would repeal the following Acts:

- the *Construction Industry Reform and Development Act 1992*, which established two bodies to promote and facilitate reform of the construction industry; one of these bodies was abolished in 1995 and there are no current members on the other; and
- the *Commonwealth and State Housing Agreement (Service Personnel) Act 1990*, which provided for the transfer of property between the Commonwealth and individual States following the creation of the Defence Housing Authority in 1988 and is now spent.

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1 Explanatory memorandum, p 1.

1.30 The explanatory memorandum notes that, in conjunction with the Statute Law Revision Bill (No. 1) 2014 and the Amending Acts 1901 to 1969 Repeal Bill 2014, the bill would repeal over 1000 Commonwealth Acts.

## **Compatibility with human rights**

### ***Statement of compatibility***

1.31 The statement of compatibility for the bill identifies the following rights as engaged by the bill:

- the right to water,<sup>2</sup> via the repeal of section 255AA of the *Water Act 2007* (the Water Act); and
- the right to an adequate standard of living,<sup>3</sup> via the repeal of a number of housing assistance funding framework Acts (now replaced by agreements made under the *Federal Financial Relations Act 2009*); and
- the right to an adequate standard of living and the right to health,<sup>4</sup> via the repeal of certification requirements under the *Aged Care Act 1997*, relating to building, equipment and residential care service standards.

1.32 The statement of compatibility assesses these measures as not resulting in any limitation of the rights engaged, and concludes that the bill is therefore compatible with human rights.

### ***Committee view on compatibility***

#### ***Right to water - repeal of section 255AA of the Water Act 2007***

1.33 The statement of compatibility notes that the UN Committee on Economic, Social and Cultural Rights has interpreted the right to an adequate standard of living and the right to health as including a human right to water, which encompasses an entitlement to 'sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses'.<sup>5</sup>

1.6 The committee notes that the right to water may be subject to such limitations 'as are determined by law only in so far as this may be compatible with the nature of ... [that right] and solely for the purpose of promoting the general welfare in a democratic society'. Where a measure may limit a right, the committee's

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2 Articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

3 Article 11 of the ICESCR.

4 Articles 11 and 12 of the ICESCR.

5 Statement of compatibility, p 2.

assessment of the measure's compatibility with human rights is based on 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.

1.34 The statement of compatibility notes that the Water Act engages the right to water through providing the framework for access to sufficient, safe, acceptable and physically accessible water, and particularly through provisions relating to critical human water needs and water quality.<sup>6</sup> The statement of compatibility identifies the following as key relevant elements of the framework:

- water resource plan requirements under the Basin Plan which regulate types of interception that may have a significant impact on water resources within the Murray-Darling Basin; and
- the establishment of the Independent Expert Scientific Committee (IESC) and the inclusion of water resources as a matter of national environmental significance (under the *Environment Protection and Biodiversity Conservation Act 1999* to ensure that actions likely to have significant impacts on water resources are referred, studied and considered under the EPBC Act regime.<sup>7</sup>

1.35 The bill seeks to repeal section 255AA of the Water Act, which relates to 'mitigation of unintended diversions'. Section 255AA provides:

Prior to licences being granted for subsidence mining operations on floodplains that have underlying groundwater systems forming part of the Murray- Darling system inflows, an independent expert study must be undertaken to determine the impacts of the proposed mining operations on the connectivity of groundwater systems, surface water and groundwater flows and water quality.

1.36 The statement of compatibility states that the repeal of section 255AA will 'not affect the overall framework of the [Water] Act'.

1.37 However, the committee notes that, to the extent that the removal of the requirement for independent expert study of the impacts of proposed mining operations may increase the risk of unintended diversions or adverse impacts in relation to groundwater systems, surface water and groundwater flows and water quality, the proposed measure may result in a limitation to the right to water.

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6 Statement of compatibility, p 2.

7 Statement of compatibility, p 2.

**1.38 The committee intends to write to the Parliamentary Secretary to the Prime Minister to seek clarification as to whether the proposed repeal of section 255AA of the Water Act may limit the right to water and, if so:**

- **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.**

*Right to an adequate standard of living and the right to health - removal of Aged Care Act 1997 certification requirements*

1.39 As noted above, the bill seeks to repeal certification requirements under the *Aged Care Act 1997* (Aged Care Act), relating to building, equipment and residential care service standards. The statement of compatibility states:

Certification requirements are being repealed because the requirements replicate, in part, the building regulations administered by State and Territory authorities. Insofar as certification takes into account the standard of the residential care being provided by the service, this requirement replicates the monitoring of the service's compliance with the Accreditation Standards by the Australian Aged Care Quality Agency, which will not be affected by the repeal of the certification requirements.<sup>8</sup>

1.40 The committee notes that the proposed repeal of the Aged Care Act certification standards is due to their 'in-part' replication of State and Territory building regulations. However, the explanatory memorandum and statement of compatibility provide no information on what certification standards are not replicated in those regulations, and which, if removed, may result in a reduction in the coverage or quality of residential care service standards.

**1.41 The committee intends to write to the Parliamentary Secretary to the Prime Minister to seek his advice as to which of the Aged Care Act standards are not replicated in current State and Territory building regulations, and the compatibility of the repeal of any such standards with the right to an adequate standard of living and the right to work.**

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8 Statement of compatibility, p 3.