

## Advice only

1.142 The committee draws the following bills and instruments to the attention of the relevant minister or legislation proponent on an advice only basis. The committee does not require a response to these comments.

### **Appropriation Bill (No. 1) 2018-2019**

### **Appropriation Bill (No. 2) 2018-2019**

### **Appropriation (Parliamentary Departments) Bill (No. 1) 2018-2019**

### **Appropriation Bill (No. 5) 2017-2018**

### **Appropriation Bill (No. 6) 2017-2018**

<b>Purpose</b>	Seeks to appropriate money from the Consolidated Revenue for services
<b>Portfolio</b>	Finance
<b>Introduced</b>	House of Representatives, 8 May 2018
<b>Rights</b>	Multiple rights (see <b>Appendix 2</b> )
<b>Status</b>	Advice only

## **Background**

1.143 The committee has considered the human rights implications of appropriations bills in a number of previous reports,<sup>1</sup> and the bills have been the subject of correspondence with the Department of Finance.<sup>2</sup> During the 44<sup>th</sup> Parliament, the Minister for Finance invited the committee to meet with departmental officials about this issue.<sup>3</sup>

- 
- 1 See, Parliamentary Joint Committee on Human Rights, *Third report of 2013* (13 March 2013) p. 65; *Seventh report of 2013* (5 June 2013) p. 21; *Third report of the 44th Parliament* (4 March 2014) p. 3; *Eighth report of the 44th Parliament* (24 June 2014) p. 5 and p. 31; *Twentieth report of the 44th Parliament* (18 March 2015) p. 5; *Twenty-third report of the 44th Parliament* (18 June 2015) p. 13; *Thirty-fourth report of the 44th Parliament* (23 February 2016) p. 2; *Report 2 of 2017* (21 March 2017) p.44; *Report 5 of 2017* (14 June 2017) p. 42; *Report 3 of 2018* (27 March 2018) p. 97.
  - 2 Parliamentary Joint Committee on Human Rights, *Seventh report of 2013* (5 June 2013) p. 21; and *Eighth report of the 44th Parliament* (18 June 2014) p. 32.
  - 3 See, for example, Parliamentary Joint Committee on Human Rights, *Eighth Report of the 44th Parliament* (June 2014) pp. 5-7, 33.

## Potential engagement and limitation of human rights by appropriations Acts

1.144 As stated in the analysis of previous appropriations bills, proposed government expenditure to give effect to particular policies may engage and limit and/or promote a range of human rights. This includes rights under the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>4</sup>

1.145 The committee has previously noted that:

...the allocation of funds via appropriations bills is susceptible to a human rights assessment that is directed at broader questions of compatibility—namely, their impact on progressive realisation obligations and on vulnerable minorities or specific groups. In particular, the committee considers there may be specific appropriations bills or specific appropriations where there is an evident and substantial link to the carrying out of a policy or program under legislation that gives rise to human rights concerns.<sup>5</sup>

### *Compatibility of the bills with multiple rights*

1.146 As with previous appropriations bills, the current bills are accompanied by a brief statement of compatibility, which notes that the High Court has stated that, beyond authorising the withdrawal of money for broadly identified purposes, appropriations Acts 'do not create rights and nor do they, importantly, impose any duties'.<sup>6</sup> The statements of compatibility conclude that, as their legal effect is limited in this way, the bills do not engage, or otherwise affect, human rights.<sup>7</sup> The statements of compatibility also state that '[d]etailed information on the relevant appropriations...is contained in the portfolio [Budget] statements'.<sup>8</sup> No further assessment of the human rights compatibility of the bills is provided.

---

4 See, Parliamentary Joint Committee on Human Rights, *Third report of 2013* (13 March 2013); *Seventh report of 2013* (5 June 2013); *Third report of the 44th Parliament* (4 March 2014); and *Eighth Report of the 44th Parliament* (24 June 2014), *Report 5 of 2017* (14 June 2017) p. 42.

5 Parliamentary Joint Committee on Human Rights, *Twenty-third report of the 44th Parliament* (18 June 2015), p. 17.

6 Appropriation Bill (No. 1) 2018-2019: explanatory memorandum (EM), statement of compatibility (SOC), p. 3; Appropriation Bill (No. 2) 2018-2019: EM, SOC, p. 4; Appropriation (Parliamentary Departments) Bill (No. 1) 2018-2019: EM, SOC, p. 4; Appropriation Bill (No. 5) 2018-2019: EM, SOC, p. 4; Appropriation Bill (No. 6) 2018-2019: EM, SOC, p. 4.

7 Bill No. 1, EM, SOC, p. 3; Bill No. 2, EM, SOC, p. 4; Parliamentary Departments, EM, SOC, p. 4; Bill No. 5, EM, SOC, p. 4; Bill No. 6 2018-2019: EM, SOC, p. 4.

8 Bill No. 1, EM, SOC, p. 3; Bill No. 2, EM, SOC, p. 4; Parliamentary Departments, EM, SOC, p. 4; Bill No. 5, EM, SOC, p. 4; Bill No. 6 2018-2019: EM, SOC, p. 4.

1.147 A full human rights analysis in respect of such statements of compatibility can be found in the committee's *Report 9 of 2016*.<sup>9</sup> Under international human rights law, Australia has obligations to respect, protect and fulfil human rights. These include specific obligations to progressively realise economic, social and cultural (ESC) rights using the maximum of resources available;<sup>10</sup> and a corresponding duty to refrain from taking retrogressive measures, or backwards steps, in relation to the realisation of these rights. This means that any reduction in allocated government funding for measures which realise socio-economic rights, such as specific health and education services, may be considered as retrogressive in respect of the attainment of ESC rights and, accordingly, must be justified for the purposes of international human rights law.

1.148 The cited view of the High Court that appropriations Acts do not create rights or duties as a matter of Australian law does not address the fact that appropriations may nevertheless engage human rights for the purposes of international law, as specific appropriations reducing expenditure may be regarded as retrogressive, or as limiting rights. The appropriation of funds facilitates the taking of actions which may affect both the progressive realisation of, and the failure to fulfil, Australia's obligations under the treaties listed in the *Human Rights (Parliamentary Scrutiny) Act 2011*.

1.149 As previously stated, while such bills present particular difficulties for human rights assessments because they generally include high-level appropriations for a wide range of outcomes and activities across many portfolios, the allocation of funds via appropriations bills is susceptible to a human rights assessment directed at broader questions of compatibility.<sup>11</sup>

### Committee comment

**1.150 The committee notes that, as with previous appropriations bills, the statements of compatibility for the current bills provide no assessment of their**

---

9 Parliamentary Joint Committee on Human Rights, *Report 9 of 2016* (22 November 2016) pp. 30-33.

10 See, UN Office of the High Commissioner for Human Rights, *Manual on Human Rights Monitoring*, <http://www.ohchr.org/Documents/Publications/Chapter20-48pp.pdf>; Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

11 There are a range of international resources to assist in the preparation of human rights compatibility assessments of budgets: See, for example, Diane Elson, *Budgeting for Women's Rights: Monitoring Government Budgets for Compliance with CEDAW*, (Unifem, 2006) <https://www.internationalbudget.org/wp-content/uploads/Budgeting-for-Women%E2%80%99s-Rights-Monitoring-Government-Budgets-for-Compliance-with-CEDAW.pdf>; UN Practitioners' Portal on Human Rights Approaches to Programming, *Budgeting Human Rights*, <http://hrbportal.org/archives/tools/budgeting-human-rights>; Rory O'Connell, Aoife Nolan, Colin Harvey, Mira Dutschke, Eoin Rooney, *Applying an International Human Rights Framework to State Budget Allocations: Rights and Resources* (Routledge, 2014).

compatibility with human rights on the basis that they do not engage or otherwise create or impact on human rights. However, while the committee acknowledges that appropriations bills present particular challenges in terms of human rights assessments, the appropriation of funds may engage and potentially limit or promote a range of human rights that fall under the committee's mandate.

1.151 Given the difficulty of conducting measure-level assessments of appropriations bills, the committee recommends that consideration be given to developing alternative templates for assessing their human rights compatibility, drawing upon existing domestic and international precedents. Relevant factors in such an approach could include consideration of:

- whether the bills are compatible with Australia's obligations of progressive realisation with respect to economic, social and cultural rights;
- whether any reductions in the allocation of funding are compatible with Australia's obligations not to unjustifiably take retrogressive or backward steps in the realisation of economic, social and cultural rights; and
- whether the allocations are compatible with the rights of vulnerable groups (such as children; women; Aboriginal and Torres Strait Islander Peoples; persons with disabilities; and ethnic minorities).

1.152 The committee would welcome the opportunity to engage further with the department on these and related matters concerning statements of compatibility for appropriations bills.

1.153 The committee recommends that departmental officials meet with the committee secretariat on behalf of the committee to develop workable approaches to statements of compatibility for appropriations bills and seeks the advice of the minister as to this course of action.