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Human Rights Under the Microscope: Reflections on Parliamentary Scrutiny

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HUMAN RIGHTS UNDER THE MICROSCOPE: REFLECTIONS ON PARLIAMENTARY SCRUTINY

THE HUMAN RIGHTS (PARLIAMENTARY SCRUTINY) ACT 2011 AND THE WORK OF THE PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS: BRIGHT LIGHT, BUT WHAT IMPACT?

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A. INTRODUCTION

1. Objective

- To provide an overview of the mandate and work of the Parliamentary Joint Committee on Human Rights (PJCHR)
- To identify the possible relevance of the output of the PJCHR in advocacy (including litigation) and identify possible ways in which the PJCHR might offer a forum for advocacy in relation to draft legislation or existing statutes
- To offer a preliminary assessment of the PJCHR's contribution

2. Parliamentary Joint Committee on Human Rights (PJCHR) – what might it offer?

- Potential – part of a political process, not a curial intervention – nature and goal of such an intervention may be different from litigation
- Primary focus is to bring human rights scrutiny to a particular stage of the legislative process, but also to have a washback effect or to bring about cultural and bureaucratic change
- But also offers an opportunity for review of existing enactments and their implementation
- Like any other advocacy intervention, generally needs to be part of an overall strategy with intervention at different points of pressure
- Opportunities are relatively modest and somewhat dependent on the luck of timing, but may be another point of intervention in an overall advocacy strategy in relation to specific legislation or proposed legislation

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3. Possible advocacy goals relating to the PJCHR

- To stop the enactment of proposed legislation or to improve its content (or to have delegated legislation disallowed)
- To generate scrutiny around existing legislation and its implementation
- To hold the government accountable by ensuring appropriate justification is presented for limitations of rights
- To draw on supportive output of the PJCHR in litigation or other strategies
- To support international monitoring of the implementation of relevant human rights standards

B. PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS: MANDATE AND ACTIVITIES

1. Mandate and functions of the [PJCHR](#) (see attached extracts from the *Human Rights (Parliamentary Scrutiny) Act 2011*)

- Part of the *Australian Human Rights Framework* (government rejected the other prime plank of the Brennan Committee Report, that of a statutory bill of rights); two major elements – certification by Executive of human rights compatibility of bills and disallowable instruments, and a parliamentary committee on human rights.
- Established in March 2012 by resolutions of the House of Representatives (1 March 2012) and the Senate (13 March 2012)
- *Composition*: ten members: three MHRs nominated by government, two MHRs nominated by non-government members, two government-nominated Senators, two Opposition-nominated Senators, one minority or independent-nominated Senator. Chaired by government member; deputy chair to be non-government member.
- *Substantive scope of the committee's mandate*: the seven principal UN human rights treaties to which Australia is party (ICERD, ICESCR, ICCPR, CEDAW, CAT, CRC, and CRPD)¹ – a distinctive mandate insofar as Australian legislative scrutiny committees (including those with a human rights mandate) are concerned.
- *Functions*: review of bills, legislative instruments and acts; and any matters referred to it by the Attorney-General – institutes a requirement that statements of compatibility be provided with every bill and disallowable instrument.

¹ For the full list of treaties, see the definition of 'human rights' in section 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*, at p 11.

- *Relationship to other legislative scrutiny committees:* the PJCHR sits alongside the Senate Standing Committee for the Scrutiny of Bills and the Senate Standing Committee on Regulations and Ordinances. However, its joint membership and its mandate make its work different in significant respects from the two Senate scrutiny committees.

2. Operation of the PJCHR

- *Meetings:* during the weeks in which both Houses of Parliament are sitting
- *Reports:* considers and adopts reports on bills and subordinate legislation, report tabled in Parliament in the same week as it is adopted, accompanied by a tabling statement by the chair of the committee. On only one occasion has a report been tabled outside a sitting week (14 November 2014)
- *Secretariat:* supports the committee in a manner similar to the support provided to other scrutiny committees; forms part of the legislative scrutiny unit; includes internal legal advisers, complemented by the external legal adviser.

3. Overview of the work

- See PJCHR, [Annual Report 2012-2013](#), December 2013, for an overview of methods of work and the types of human rights issues the committee has raised in its comments on bills up to the end of 2013 (the patterns of work have been largely the same in 2014). More generally, see the committee's website:

http://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights)

and for discussion of various aspects of the PJCHR's work, see the *Human Rights Scrutiny* blog:

<https://hrscrutiny.wordpress.com/about-the-pjchr/>

- *Workload flow* is influenced by the number and timing of Parliamentary sittings, and the nature of the legislative activity (most bills are introduced with little or no notice, which may limit the time available for analysis)
- *Volume:* about 20-25 bills a week have been introduced during most sitting weeks; the flow of legislative instruments is constant and is much higher. By the end of 2013, the committee had considered nearly 300 bills and 2,000 legislative instruments. During 2014 the committee examined 250 bills and 1717 instruments (of which it found 213 and 1707 respectively to be compatible with human rights²).

² Chair's Tabling Statement for PJCHR, *17th Report of the 44th Parliament*, 2 December 2014, p 3.

- *Thematic examinations:* The PJCHR has undertaken three thematic inquiries relating to particular bills or packages of bills: the social security legislation (Newstart allowance),³ the Stronger Futures legislation,⁴ and the offshore migration legislation.⁵ These inquiries followed significant public interest in the legislation; the committee held hearings into the social security legislation and migration legislation and received a number of public submissions. The committee is currently conducting a follow up to its *Stronger Futures* report.
- *Output:*
 - 18 reports in the 43rd Parliament (up to 30 June 2013) and 17 reports in the 44th Parliament (as of 11 December 2014)
 - Two *Guidance Notes* (December 2014) one on drafting statements of compatibility (*Guidance Note 1*) and one on civil penalties and criminal charges under human rights law (*Guidance Note 2*). These revise and update two earlier *Practice Notes* on the same subjects.
- *Relationship with other Parliamentary committees* – the other scrutiny committees and other standing committees: the PJCHR has sought to work collaboratively with other committees, providing material to them (for example, the ASADA legislation and the media reform package) and drawing on their findings and recommendations (and submissions to them) where appropriate.

4. General approach, substantive analysis and engagement with government

- The first chair of the PJCHR set out the committee’s approach to its scrutiny in his tabling statements: a continuing educative role for both government and for members of Parliament to engage explicitly and rigour with human rights norms. This approach has continued under the current chair: –
 - It is reflected in the nature of the dialogue with Ministers – seeking to improve the quality of statements of compatibility to ensure that they address substantively and in detail the relevant human rights and clearly articulate the basis on which any limitation on the enjoyment of rights is justified, the evidence on which such an assessment is based and whether other less restrictive alternatives were considered.
 - Correspondence from Ministers published in the reports; analysing and engaging with Ministerial responses is a significant part of the

³ Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, Reports 4/2012 and 5/2013.

⁴ *Stronger Futures in the Northern Territory Act 2012 and related legislation*, Report 11/2013.

⁵ *Migration Legislation Amendment (Regional Processing and Other Measures) Act 2012 and related legislation*, Report 9/2013.

workload, as the committee nearly always considers the Ministerial responses before finalising its views on particular legislation.

- Committee's approach to its work is evolving as the public service and Ministers become more skilled in the preparation of detailed and responsive statements of compatibility

5. The PJCHR's analytical framework

- The committee has sought to apply a consistent and principled approach to all bills introduced into the Parliament. It thus examines government bills, opposition bills and other private members' bills using the same standards.
- The normative standards applied are those in the relevant treaties. While some rights (such as the right to be free from torture) are absolute, most of the rights in the UN human rights treaties expressly or impliedly permit limitations provided the restrictions are provided by law, pursue a legitimate objective in a reasonable and proportionate manner, and provide adequate safeguards against the abuse of powers or encroachment on the right in question.
- The PJCHR has indicated in its *Guidance Note 1* (and previously in its *Practice Note 1*) that it expects statements of compatibility to adopt this approach in analysing any limitations proposed in a bill.
- For its consideration of the human rights compatibility of bills (and delegated legislation) the PJCHR takes as its starting point the bill (or regulation) and the statement of compatibility provided (along with the explanatory memorandum).
- In a significant number of cases the PJCHR has concluded that the statement of compatibility is not satisfactory and/or that the information provided does not appear to be sufficient to discharge the government's burden of demonstrating that any limitation is reasonable and proportionate. The committee will normally seek further information from the Minister before making its final assessment on compatibility.
- *The form of the PJCHR's conclusions:* These vary:

The committee may consider a bill 'compatible with human rights' (previously it also concluded that a bill 'did not appear to give rise to human rights concerns').

The committee may conclude that a bill 'appears to be incompatible with human rights', 'is likely to be incompatible, or 'is not compatible' with human rights.

The committee has on occasion concluded that the proponent of the bill 'has not demonstrated' that the bill is compatible with human rights, generally because it is not persuaded that the case has been made out that the limitation is a reasonable and proportionate measure with adequate safeguards against abuse.

6. Parliamentarians and members of political parties

- A remarkable feature of the PJCHR's work has been the almost perfect record of consensus in its reports. The committee has, under both Labor and Coalition governments, found a number of high-priority pieces of legislation to be incompatible with human rights – without dissent.
- In some cases these bills may have been amended or dropped, but in a significant number of cases these bills have passed the Parliament, notwithstanding the conclusions of the PJCHR that they are, or are likely to be, incompatible with human rights. Often, they pass with some members of the PJCHR voting in support of the bills.
- The PJCHR has thus been an exemplar of the tension between the non-partisan and principled process of scrutiny by MPs and Senators in their role as Parliamentarians, and their duties and the pressures on them as members of political parties. See the comments by the current Chair of the PJCHR, Senator Dean Smith, when tabling the 16th Report of the committee on 28 November 2014 (p 1515 below)
- The committee's 16th and 17th reports of the 44th Parliament (25 November 2014 and 2 December 2014, respectively) saw for the first time dissenting reports on an issue of compatibility. Three members of the committee (all Coalition MPs) dissented from the committee's finding of incompatibility of one aspect of a regulation,⁶ and two of the three dissented on parts of a bill.⁷ At the same time the committee reached consensus on expressing concerns about compatibility of a number of other important and contentious bills (including counter-terrorism amendments, though these largely consisted of further requests for information from the Attorney-General).
- It is too early to tell whether these dissenting reports are an aberration or a precursor of a new trend in the way in which the committee operates.

7. Issues of human rights and international law interest

- The committee has made extensive use of international and comparative materials in elucidating the meaning of the treaties that fall within its

⁶ The *Migration Legislation Amendment (2014 Measures No 1) Regulation 2014*. See PJCHR, 16th report of the 44th Parliament, 28 November 2014, pp 29 and 61.

⁷ The *Social Services and Other Legislation Amendment (2014 Budget Measures No 1) Bill 2014*. See PJCHR, 17th report of the 44th Parliament, 2 December 2014, pp 11 and 15.

mandate – in particular the output of the UN human rights treaty bodies, the European Court of Human Rights, the decisions of the UK courts under the *Human Rights Act 1998* (UK), as well as referring to decisions of the Canadian, New Zealand, Hong Kong and US courts.

- The relevance of other international law instruments and other international law rules to the interpretation of the committee's treaty-based mandate has arisen – in particular the relevance of the Refugee Convention to the committee's mandate, as well as that of the Declaration on the Rights of Indigenous Peoples, and to other bodies of international law (for example, the law relating to State responsibility).

Among the significant international law and human rights issues that the committee has addressed are:

- The extraterritorial extent of Australia's obligations under relevant human rights treaties and the impact of other international law rules in relation to activities that occur outside Australia
- The relevance of other guarantees of human rights, in particular those existing under Australian constitutional law, legislative protections or common law protections
- Extensive engagement with economic, social and cultural rights issues
- Human rights scrutiny and appropriation bills
- Civil penalties provisions and proceedings as potentially involving the determination of a criminal charge or the imposition of a criminal penalty for the purposes of articles 14 and 15 of the ICCPR
- Adequacy of procedures for the human rights scrutiny of national cooperative schemes
- The understanding of the concept of discrimination and the meaning of 'special measures' under international law and Australian law
- Torture Convention obligations, privileges and immunities and Australian law – the *Pinochet* issue
- Compatibility of counter-terrorism legislation (including the foreign fighters legislation) with human rights
- Various aspects of changes to migration legislation in 2014 and their compatibility with human rights norms, refugee law obligations, and law of the sea.

C. THE PJCHR AND THE COMMUNITY

1. The Newstart allowance controversy

- Government proposal to shift single parents from single parent allowance to Newstart allowance - Social Security Legislation Amendment (Fair Incentives to Work) Bill 2012, Reports 4/2012 and 5/2013
- Representations made to the committee in relation to this bill by a number of civil society organisations concerned that it was unfair, unjustifiably infringed the right to social security under the ICESCR, and had a disproportionate impact on women
- Part of a broader campaign challenging the legislation by these and other groups
- Committee held hearings at which civil society groups and government representatives testified
- UN Special Rapporteur on Extreme Poverty and Human Rights and the UN Working Group on the Issue of Discrimination against Women in Law and Practice also got involved in the debate, their contributions both drawing on the PJCHR comments and being used by the PJCHR itself.
- Committee prepared an interim report expressing concerns and seeking further information and justification from government. In its second report on the subject, it concluded:

1.120 The committee considers that the government has not provided the necessary evidence to demonstrate that the total support package available to individuals who are subject to these measures is sufficient to satisfy minimum essential levels of social security as guaranteed in article 9 of the ICESCR and the minimum requirements of the right to an adequate standard of living in Australia as guaranteed in article 11 of the ICESCR. Nor has it indicated the basis on which it makes that assessment. In the absence of this information, the committee is unable to conclude that these measures are compatible with human rights.⁸

- Upshot – just words, or an impact?

2. *Stronger Futures intervention*

A number of indigenous groups made representations to the committee following the introduction of the *Stronger Futures in the Northern Territory Bill* requesting the committee to examine the legislation on the grounds that it was incompatible with the ICERD and other relevant treaties

⁸ Report 5/2013, p 38, para 1.120

A large number of submissions were made, and the committee sought further information from government which also responded in detail. The committee did not hold public hearings as part of its consideration of this legislation. It adopted its report in June 2013. This was highly critical of certain aspects of the legislation and the failure of the government to produce a compelling case to justify certain limitations on rights and indicated that it would keep the legislation under review.⁹ The committee is currently undertaking a review of the legislation in light of developments since its 2013 report.

3. Migration legislation relating to offshore processing of asylum-seeker claims

The committee held public hearings and received written and oral submission from a number of civil society organisations in its consideration of the migration offshore processing legislation. The report found that Australia's responsibility was engaged under international law in relation to many aspects of the detention of asylum-seekers on Nauru and in Papua New Guinea, that a number of aspects of the arrangements were incompatible with human rights, while others appeared to be incompatible, or had not been justified as reasonable limitations.

4. Other instances

As can be seen from committee reports, other groups have also raised issues directly with the committee in relation to specific legislation or issues, eg NGOs arguing that New Zealanders have been unfairly discriminated against in relation to access to the NDIS and other social welfare schemes; disability groups in relation to the upper age limit of 65 for access to the NDIS.

C. THE POSSIBLE RELEVANCE OF PJCHR REPORTS AND CONCLUSIONS TO ADVOCACY

1. Possible use of PJCHR materials in domestic litigation¹⁰

- when bill on which the committee has commented is subject of litigation after its enactment (though nature of the committee comments means

⁹ *Stronger Futures in the Northern Territory Act 2012 and related legislation*, Eleventh Report of 2013, June 2013

¹⁰ See in relation to the UK Parliament's Joint Committee on Human Rights, Murray Hunt, Hayley Hooper and Paul Yowell, *Parliaments and Human Rights: Redressing the democratic deficit* (2012), AHRC Public Policy Series No.5, chap 3, p 45

that may not always be helpful) – query whether proceedings of the committee formally qualify to be taken into account and are permitted to be considered (parliamentary privilege issues

- where a regulation is challenged as beyond power on ground that it is not authorised by the principal statute

2. Possible relevance to international monitoring procedures or litigation

- Use of committee comments to bolster advocacy in reporting procedures and Individual complaints before UN human rights treaty bodies

Reporting: For example, the UN Committee against Torture, in its 28 November 2014 *Concluding observations on the 4th and 5th reports of Australia* under the UN Torture Convention (28 November 2014) noted the PJCHR's establishment (para 5(b)) and expressed concern that the PJCHR's recommendations were not always followed and called on the government to implement the recommendations of the PJCHR. Importantly, many of the substantive issues that the PJCHR (and other bodies) had raised in relation issues such as migration legislation and the treatment of asylum-seekers were dealt with in substance by the Committee against Torture.

Individual complaints: One would expect that if an individual complaint goes to a UN human rights treaty body challenging a Commonwealth law that has been considered by the PJCHR, the positive or negative findings of the PJCHR might be relied on by parties to the dispute). As yet, there do not appear to be any cases in which this has occurred, though a number of the UN Human Rights Council special procedures have engaged with and used PJCHR findings, as have NGOs.

- Follow-up forum for concluding observations and individual complaints of human rights treaty bodies

Given that the mandate of the PJCHR is to consider compatibility of primary and secondary legislation with the UN human rights treaties, it seems appropriate that the PJCHR would consider concluding observations on Australia's reports under the 7 UN treaties, as well as decisions on individual cases brought against Australia under those treaties, at least as so far as they address Australia in which Commonwealth law and policies play a role.

D. CONCLUSION

- PJCHR has engaged in consistent, principled analysis that has led to an overall improvement in government articulation of the reasons for the adoption of many policies
- The PJCHR's adverse comments on legislation appear to have had only a marginal direct impact, but on some occasions they have contributed to a groundswell that has led to the amendment or abandonment of proposed legislation
- In other cases the PJCHR's clear findings of incompatibility (even when accompanied by boarder concern) have not been sufficient to change the minds of the executive on issues that are seen as being of fundamental (party) political importance.
- The future....?

Human Rights (Parliamentary Scrutiny) Act 2011 (extracts)

3 Definitions

(1) In this Act:

human rights means the rights and freedoms recognised or declared by the following international instruments:

- (a) the International Convention on the Elimination of all Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40);
- (b) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5);
- (c) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23);
- (d) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9);
- (e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment done at New York on 10 December 1984 ([1989] ATS 21);
- (f) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4);
- (g) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12).

Note: In 2011, the text of an international agreement in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

member means a member of the Committee.

rule-maker has the same meaning as in the *Legislative Instruments Act 2003*.

the Committee means the Parliamentary Joint Committee on Human Rights for the time being constituted under this Act.

- (2) In the definition of **human rights** in subsection (1), the reference to the rights and freedoms recognised or declared by an international instrument is to be read as a reference to the rights and freedoms recognised or declared by the instrument as it applies to Australia.

Part 2—Parliamentary Joint Committee on Human Rights

4 Parliamentary Joint Committee on Human Rights

As soon as practicable after the commencement of the first session of each Parliament, a joint committee of members of the Parliament, to be known as the Parliamentary Joint Committee on Human Rights, is to be appointed according to the practice of the Parliament.

5 Membership of the Committee

- (1) The Committee is to consist of 10 members:
 - (a) 5 members of the Senate appointed by the Senate; and
 - (b) 5 members of the House of Representatives appointed by that House.
- (2) A member of the Parliament is not eligible for appointment as a member of the Committee if he or she is:
 - (a) a Minister; or
 - (b) the President of the Senate; or
 - (c) the Speaker of the House of Representatives; or
 - (d) the Deputy-President and Chair of Committees of the Senate; or
 - (e) the Deputy Speaker of the House of Representatives.
- (3) A member ceases to hold office:
 - (a) when the House of Representatives expires by effluxion of time or is dissolved; or
 - (b) if he or she becomes the holder of an office specified in any of the paragraphs of subsection (2); or
 - (c) if he or she ceases to be a member of the House of the Parliament by which he or she was appointed; or
 - (d) if he or she resigns his or her office as provided by subsection (4) or (5).
- (4) A member appointed by the Senate may resign his or her office by writing signed by him or her and delivered to the President of the Senate.
- (5) A member appointed by the House of Representatives may resign his or her office by writing signed by him or her and delivered to the Speaker of that House.
- (6) Either House of the Parliament may appoint one of its members to fill a vacancy amongst the members of the Committee appointed by that House.

6 Powers and proceedings of the Committee

All matters relating to the powers and proceedings of the Committee are to be determined by resolution of both Houses of the Parliament.

7 Functions of the Committee

The Committee has the following functions:

- (a) to examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- (b) to examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;

- (c) to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.

Part 3—Statements of compatibility

8 Statements of compatibility in relation to Bills

- (1) A member of Parliament who proposes to introduce a Bill for an Act into a House of the Parliament must cause a statement of compatibility to be prepared in respect of that Bill.
- (2) A member of Parliament who introduces a Bill for an Act into a House of the Parliament, or another member acting on his or her behalf, must cause the statement of compatibility prepared under subsection (1) to be presented to the House.
- (3) A statement of compatibility must include an assessment of whether the Bill is compatible with human rights.
- (4) A statement of compatibility prepared under subsection (1) is not binding on any court or tribunal.
- (5) A failure to comply with this section in relation to a Bill that becomes an Act does not affect the validity, operation or enforcement of the Act or any other provision of a law of the Commonwealth.

9 Statements of compatibility in relation to certain legislative instruments

- (1) The rule-maker in relation to a legislative instrument to which section 42 (disallowance) of the *Legislative Instruments Act 2003* applies must cause a statement of compatibility to be prepared in respect of that legislative instrument.

Note: The statement of compatibility must be included in the explanatory statement relating to the legislative instrument (see subsection 26(1A) of the *Legislative Instruments Act 2003*).
- (2) A statement of compatibility must include an assessment of whether the legislative instrument is compatible with human rights.
- (3) A statement of compatibility prepared under subsection (1) is not binding on any court or tribunal.
- (4) A failure to comply with this section in relation to a legislative instrument does not affect the validity, operation or enforcement of the instrument or any other provision of a law of the Commonwealth.

**EXTRACTS FROM THE TABLING SPEECH FOR THE PJCHR'S 16TH REPORT OF THE 44TH
PARLIAMENT BY THE CHAIR OF THE PJCHR, SENATOR DEAN SMITH¹¹**

28 NOVEMBER 2014

...

I would like to make some remarks to remind Senators of the context in which the committee's undertakes its task of assessing legislation for compatibility with human rights.

The Parliamentary Joint Committee on Human Rights, or PJC, is one of only three legislative scrutiny committees established or administered by the Senate.

It is sometimes forgotten that legislative scrutiny committees perform a unique and important institutional role in the Parliament, which is to undertake technical assessments of bills and legislation against scrutiny criteria or, in the case of the PJC, established human rights standards.

This unique function of scrutiny committees has always been reflected in the bipartisan spirit in which they operate. With this bipartisan approach, and with the support of well-respected external legal advisers, the scrutiny committees' reports have been trusted and credible sources of information since the establishment of the Parliament's first scrutiny committee, the Regulations and Ordinances Committee, in the 1930s.

Noting the many opportunities that exist for senators and members of parliament to engage in the robust party and political debates that are a familiar feature of our Parliament, the scrutiny committees therefore provide a balanced and objective source of information to educate and inform parliamentarians in their key role as legislators.

But, if scrutiny work is not to have the character of contest that we are all so familiar with in this chamber, what is the role of a scrutiny committee member, if not to prosecute the case on the merits of the policy?

The answer to that, I believe, is that the role of scrutiny committee members has been and is to ensure that scrutiny committee reports are legally and technically credible, as well as consistent with past practice, and this is naturally done at meetings through the testing and questioning of the issues and analysis provided in

¹¹

http://www.aph.gov.au/~media/Committees/Senate/committee/humanrights_ctte/reports/2014/16_44/Tabling%20Statement%20Word.docx

the committee's reports. Committee members also contribute to directing the tone and nature of the committees' dialogue with ministers, and to shaping the committees' actions in cases where legislation may offend a relevant scrutiny principle.

I would imagine that, over the course of time, literally hundreds of parliamentarians have served on the Parliament's scrutiny committees, and in that service have worked within the constraints of the scrutiny approach to serve this Parliament and its ethos of informed inquiry.

However, it is equally important to note that scrutiny committee members are not and have never been bound by the contents or conclusions of scrutiny committee reports and, like all parliamentarians, are free to otherwise engage in debates over the policy merits of legislation according to the dictates of party, conscience, belief, outlook or even prejudice as the case may be.

Scrutiny committee members may also legitimately apply the technical knowledge gleaned from their service as scrutiny committee members to prosecuting their arguments outside the technical scrutiny arena, and in this I have no doubt that involvement in the scrutiny dialogue hones senators technical knowledge of legislation, and enhances their capacity to prosecute their own views with reference to established and well-known principles, be they of the human rights or parliamentary variety....