

Submission

**Inquiry into the Human Rights (Parliamentary Scrutiny)
Bill 2010 and the Human Rights (Parliamentary Scrutiny)
(Consequential Provisions) Bill 2010**

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National Children's and Youth Law Centre

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- 2.1 The National Children's and Youth Law Centre ("NCYLC") is the only Australian national community legal centre for children and young people. NCYLC promotes the rights and interests of Australian children and young people through advocacy, information and education.
- 2.2 Since its inception in 1993, NCYLC has made over 180 public submissions on law and policy affecting children and young people and handled over 150,000 requests for information and advice. NCYLC seeks to increase children and young people's access to legal assistance and to improve the status of children and young people in Australia.

3 Introduction

- 3.1 NCYLC welcomes the opportunity to comment on the Human Rights (Parliamentary Scrutiny) Bill 2010 (**"the main Bill"**) and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010 (together, **"the Bills"**). NCYLC refers to its previous submission in relation to the main Bill, dated 5 July 2010.
- 3.2 NCYLC supports the introduction of the Bills and looks forward to greater community awareness and understanding of the value of engagement with human rights as a result of the passage of the Bills and the Parliamentary processes they will auspice.
- 3.3 In addressing this review (as it seeks to do with all its work), NCYLC has taken a child rights-based approach. This reflects the understanding that children are the holders of human rights – including not only basic survival and development rights and the special rights associated with protection from harm, but also rights of participation including the right to be consulted and heard on issues affecting them.¹

¹ United Nations Convention on the Rights of the Child (**"CROC"**), Article 6 and 12. This Convention has been almost universally ratified. The Australian Law Reform Commission notes: "Given the diversity of its States Parties and breadth of coverage, CROC is clear evidence of customary international norms regarding the rights and responsibilities of children. While CROC is not incorporated in its entirety into the domestic law of Australia, it is a strong statement of Australia's commitment to children's rights and their participation in legal processes." Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, Report No 84, *Seen and Heard: Priority for Children in the Legal Process*, Sydney, 1997, at [1.29]

- 3.4 This submission will principally focus on the anticipated powers and procedures of the Parliamentary Joint Committee on Human Rights (“**Committee**”) provided by the main Bill.

4 Committee Consultation

- 4.1 Section 6 of the main Bill provides: "All matters relating to the powers and proceedings of the Committee are to be determined by resolution of both houses of the Parliament." Section 7 limits the functions of the Committee to examining bills and Acts for compatibility with human rights, inquiring into any matter relating to human rights which is referred to it by the Attorney-General, and reporting to both Houses of the Parliament on these issues and matters. The Explanatory Memorandum provides that the Committee will be able to inquire more thoroughly into bills and legislative instruments including by calling for submissions, holding public hearings and examining witnesses, when it considers this appropriate.
- 4.2 NCYLC believes that effective public consultation is a crucial part of fulfilling the Committee's functions of inquiry into, and scrutiny of, Bills and Acts for compatibility with human rights. NCYLC recommends that the functions of the Committee under section 7 be expanded to include a broad statement to the following effect: “where appropriate, to consult with relevant bodies and members of the Australian public in order to perform its functions under this Act”.
- 4.3 Given the nature of the tasks of the Committee, it is important in NCYLC's view that the powers and proceedings of the Committee allow for effective consultation with the Australian community. Those who will benefit the most from careful scrutiny of the impact of legislation on human rights are likely to be those who are most vulnerable in our society. These people will often also be those with the least access to more formal mechanisms of communication with decision-makers. Depending on the particular legislation being considered, these will include children and young people, Indigenous people, people from newly arrived and culturally diverse communities, those involved

in the criminal justice system, the homeless, those in contact with the child protection system and those suffering from mental illness or with disability.

- 4.4 Consultation with such groups requires careful thought and planning. It requires consideration of alternative consultative mechanisms that are specifically designed to engage these groups. For example, obtaining the views of children cannot effectively and widely be achieved by a call for submissions or invitation to give evidence. Public hearings may also fail to encourage contributions by children and young people, who may be deterred or intimidated by the formality of the process, or who may simply not be aware of or engaged in the process.
- 4.5 The Committee should be encouraged to consider the support and resources necessary for community groups to facilitate alternative methods of consultation. Often the most valuable insights are held by service providers and community groups that themselves are not adequately resourced for advocacy. For children, there is growing expertise and access to community being developed by state and territory Children's Commissioners and Guardians.
- 4.6 However, often there are complex barriers that exist to sharing insight for children (age, awareness and understanding, communication skills) as well as the more familiar obstacles of particular disadvantage (poverty, disability, geography and language).
- 4.7 NCYLC would encourage the Committee to invest and support the development of best practice in consultative and participation mechanisms for all community groups –in particular, for children and young people.

5 Statements of compatibility

- 5.1 Sections 8(3) and 9(2) of the main Bill provides that the statement of compatibility prepared in respect of a bill or a legislative instrument must include an assessment of whether it is compatible with human rights. However, the content or scope of the assessment is not specified.

- 5.2 NCYLC supports the recommendations of the Human Rights Law Resource Centre² in relation to the features of a statement of compatibility. NCYLC further recommends that a statement of compatibility should not only explain whether and how a bill or Act limits human rights and whether these limits are reasonable, but also recommend options for amending the bill or Act to resolve any incompatibility. This would be a practical measure that would assist the assessment and scrutiny process.

6 Sharing insight with the international community

- 6.1 Effective consultation will support the Committee to perform its appointed functions in an influential and meaningful manner to support human rights awareness and protection. This will reduce the risk of what some commentators have suggested – that Parliament's legislative role is somehow to be abrogated to unelected courts or international bodies. Human rights are about the impact of laws and policies on our day-to-day lives. The challenge is to use the process offered by the main Bill to enhance our understanding of those experiences and hearing the voices of all those affected by the law. We should not fear testing our own understanding of human rights against the collected knowledge and experience of the international community.
- 6.2 NCYLC endorses the Human Rights Law Resource Centre's suggestion (at paragraph 23 of its submission dated 5 October 2010) that the Committee's powers be expanded to 'monitor and report on the implementation of the Concluding Observations, Recommendations and Views of UN treaty bodies and the Recommendations of the Special Procedures and the Universal Periodic Review of the UN Human Rights Council.' This recommendation is also made by Amnesty International in its submission dated 9 July 2010 at page 6 and NSW Disability Discrimination Legal Centre in its submission dated 2 July 2010 at page 3.

- 6.3 This is important for ensuring that the Australian Parliament can engage with

² Phil Lynch, Executive Director of the Human Rights Law Resource Centre, 'Parliamentary scrutiny of human rights to be strengthened with new Bill', 3 June 2010, available at: <http://www.hrlrc.org.au/content/topics/national-human-rights-consultation/parliamentary-scrutiny-of-human-rights-to-be-strengthened-with-new-bill/>

the expertise and observations of the international human rights community. This will build Australia's reputation as a leader in supporting the promotion and protection of human rights in the international community.

7 Referral for investigation from Attorney-General

- 7.1 Section 7 of the main Bill provides that one of the functions of the Committee is "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".
- 7.2 NCYLC supports the recommendations of other submissions³ that the source of referral for investigations⁴ should be broadened to include the Committee's power to initiate its own investigations in addition to that of either House of Parliament. This will further the effectiveness of the Committee and reduce the risk that it be narrow or limited in its focus.

³ Human Rights Law Resource Centre, Amnesty International NSW Disability Discrimination Legal Centre and Liberty Victoria.

⁴ Section 7(c) of the main Bill provides for a referral from the Attorney-General to the Committee to undertake investigations