

Submission by the
Commonwealth Ombudsman

**INQUIRY INTO
*HUMAN RIGHTS (PARLIAMENTARY
SCRUTINY) BILL 2010*
AND THE
*HUMAN RIGHTS (PARLIAMENTARY
SCRUTINY) (CONSEQUENTIAL
PROVISIONS) BILL 2010***

CONDUCTED BY THE SENATE
STANDING COMMITTEE ON LEGAL AND
CONSTITUTIONAL AFFAIRS

Submission by Mr Allan Asher
Commonwealth Ombudsman

November 2010

INTRODUCTION AND SUMMARY

On 30 September 2010, the Attorney-General tabled the *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010* in the House of Representatives. Through these Bills the Australian Government is seeking to implement the parliamentary scrutiny elements of *Australia's Human Rights Framework*, released in April 2010.

The Bills seek to establish a parliamentary Joint Committee for Human Rights, with the discrete purpose of examining and reporting to the Commonwealth Parliament on the compatibility of bills and legislative instruments with Australia's obligations under seven core human rights treaties. It is also proposed that matters may also be referred from the Attorney-General for inquiry by the Committee.

The Senate Standing Committee on Legal and Constitutional Affairs is conducting an inquiry into the Bills tabled by the Attorney-General, and the Commonwealth Ombudsman welcomes the opportunity to contribute to this inquiry.

BACKGROUND

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

In 2009-10 the Ombudsman received 37,468 approaches from members of the public seeking to make a complaint or an inquiry. Whilst the primary function of the Ombudsman remains to receive and investigate complaints about government agencies, over the years, the role has broadened to encompass the improvement of public administration. The independent examination of government administration through the investigation of individual complaints as well as broader, systemic issues, gives the Ombudsman a unique perspective on the workings of the APS.

In many ways, the functions and activities of the Commonwealth Ombudsman support and seek to protect the human rights of all Australians.

PARLIAMENTARY SCRUTINY OF HUMAN RIGHTS

Specific Comment on the Bills

The Ombudsman strongly supports the development of mechanisms which seek to examine, protect and report on the human rights of all Australians. In this regard, we are supportive of the proposed development of a structure for parliamentary scrutiny of human rights.

The Ombudsman has considered the submission already made to the Standing Committee by the Australian Human Rights Commission, and we are also very supportive of their proposal to extend the functions of the proposed Joint Committee, to include:

- Initiating and conducting inquiries into findings by United Nations treaty bodies and the United Nations Human Rights Council, which relate to Australia;
- The inclusion of International Labour Organisation Convention 111 concerning Discrimination in Respect of Employment and Occupation, within the definition of human rights in the Bills;
- The inclusion of the United Nations Declaration on the Elimination of Intolerance and Discrimination Based on religion and Belief, within the definition of human rights in the Bills; and
- The inclusion of The United National Declaration on the Rights of Indigenous Peoples, within the definition of human rights in the Bills.

On the basis of such a wide and diverse responsibility, we believe it would also be appropriate for the proposed Joint Committee to be able to initiate its own inquiries, relating to the protection of human rights within Australia, as well as having them referred by the Attorney-General.

Given the importance of the role of the proposed Joint Committee, it would also be appropriate for it to be required to report annually to each House of Parliament on its activities.

Mechanisms to Support Human Rights

An important component of the effective implementation of the Australian Government's agenda for human rights, is a consideration of the mechanisms which support that agenda, namely the Australian Public Service and the agencies which oversight it.

The Australian Government has highlighted, through Australia's Human Rights Framework, the importance of respect for human rights:

Respect for human rights underpins a stable and robust democracy. It ensures freedom of belief and expression. Protection of human rights contributes to a safer and more secure Australia.

In particular, the Framework draws attention to the critical position of the Australian Public Service in safeguarding, applying and promoting human rights:

The Australian Government believes in a strong and apolitical public service with a values-driven culture that retains public trust and puts people first. A greater focus on human rights is important to ensure service delivery is focused on the people receiving the services.

Indeed, the Framework goes further, detailing the Australian Government's expectations of the Australian Public Service and the law:

The Government expects public sector officials to act consistently with human rights. It believes this is an important obligation bearing on their conduct and professionalism.

The Government believes that it is important to ensure that Australia's domestic laws comply with our international human rights obligations. The Government supports a transparent and accountable legislative process. Increased parliamentary scrutiny of our laws against Australia's human rights obligations will enhance public confidence that Australia's laws reflect our human rights obligations.

The Government is required to comply with anti-discrimination legislation in relation to its administrative decisions.

While to a significant extent, the Australian Public Service can be considered to be a high quality public service, which largely seeks to meet the human rights principles articulated in the treaties referred to in the Bill, there have been some notable exceptions over the past five years. High profile inquiries into the treatment of various individuals by the immigration system, and of Dr Mohamed Haneef by various Australian Government agencies, as well as several investigations by this Office have brought into question how effectively human rights principles have been applied across the whole of the APS. This highlights that there remain some pockets of the Australian Public Service where further attention to human rights, integrity and equality is necessary.

There are a range of institutions across the Australian Public Service, with a strong focus on human rights, oversight and integrity. These institutions are collectively responsible for ensuring that the Australian Public Service delivers on the government's expectations of 'retaining the public trust and putting people first'. It would appear that the current proposals for parliamentary scrutiny have gaps, in that they have not considered the inclusion of a mechanism to hear from those agencies responsible for ensuring the protection of human rights.

In addition to the Australian Human Rights Commission, the following agencies are, at least in part, engaged in working to protect and promote human rights principles across the Australian Public Service:

- Commonwealth Ombudsman
- Australian Information Commissioner
- Inspector-General of Intelligence and Security
- Australian Public Service Commission
- Australian National Audit Office
- Australian Commission for Law Enforcement Integrity

Proposal to fill in the Gaps in the Jurisdiction of the proposed Joint Committee

Just as the Government has indicated its strong support for enshrining human rights principles in law and the manner in which the public service operates, so should those institutions which support and uphold human rights be subject to parliamentary scrutiny.

In order to provide transparent and effective assurance to the Commonwealth Parliament that human rights and integrity is being maintained across the Australian Public Service, we would recommend that the jurisdiction of the proposed Parliamentary Committee be extended to include a role in promoting integrity across the Australian Public Service, and an

oversight responsibility of those agencies whose purpose is to support and uphold human rights and integrity.

While there are many existing links between these agencies, and across the APS, there is no current avenue for issues of integrity to be raised at the parliamentary level, except in relation to the Australian Commission for Law Enforcement Integrity where a current parliamentary committee exists.

It is fundamentally important that a strong and ongoing dialogue be maintained between the Commonwealth Parliament and the watchdog agencies which are involved in the scrutiny of agencies and programs to ensure they are being delivered effectively, within the law, according to budget and with due regard to human rights. We believe that the current gaps in this area would be addressed by extending the jurisdiction of the proposed parliamentary committee to include those agencies which promote and protect human rights, as listed above.