

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

9 July 2010

NSW Young Lawyers
Human Rights Committee
Level 6, 170 Phillip Street
Sydney NSW 2000

Committee Secretary
Senate Legal and Constitutional Committee
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By Email

9 July 2010

Dear Committee Secretary,

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

The Human Rights Committee (HRC) of the NSW Young Lawyers is grateful for the invitation and opportunity to make a submission to the Committee's inquiry into the *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010*.

NSW Young Lawyers is made up of law students and legal practitioners who are in their first 5 years of practice or under the age of 36. The HRC is concerned with a range of human rights issues both in Australia and abroad and aims to raise awareness and provide education to the legal profession and the wider community on these issues.

The HRC welcomes the introduction of the National Human Rights Framework, the Australian Government's response to the National Human Rights Consultation. In particular, the HRC strongly supports the role and function of a Parliamentary Joint Committee on Human Rights and the introduction of Statements of Compatibility with all Bills, Acts and legislative instruments. The HRC also continues to strongly support the introduction of a Human Rights Act as recommended in the 2009 Report of the National Human Rights Consultation Committee.

Should you have any questions about this submission, please contact Carolina Soto.

Yours faithfully,

Carolina Soto
Chair, NSW Young Lawyers Human Rights Committee

The Human Rights (Parliamentary Scrutiny) Bill 2010 & the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010

1. The Attorney General introduced the *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010* into Parliament on 2 June 2010. These Bills give effect to some parts of Australia's Human Rights Framework announced on 21 April 2010. The Bills have been referred by the Senate to the Legal and Constitutional Affairs Legislation Committee for inquiry and report.
2. The HRC has read the submission made by the Human Rights Law Resource Centre and wholly endorses that submission. In addition to that, the HRC makes the following comments.

Human rights

3. Human rights are universal, inalienable, interdependent and indivisible. The HRC therefore strongly supports human rights being defined as “rights or freedoms” with reference to the seven core international human rights instruments to which Australia is a party, as outlined in s3 *Human Rights (Parliamentary Scrutiny) Bill 2010*.
4. Further to this, the HRC recommends that the definition of human rights include recognition of customary international human rights law and international human rights law jurisprudence.

Joint Parliamentary Committee on Human Rights (“the Committee”)

5. The HRC welcomes the bipartisan make up of the Committee.
6. The HRC welcomes the functions of the Parliamentary Joint Committee on Human Rights as outlined in s7(a) and (b).
7. However, with regard to s7(c), the HRC proposes that “inquir[ies] into any matter relating to human rights” should not be limited to being “referred to it by the Attorney-General”. To promote community engagement with human rights and accountability of government, the HRC recommends that such an inquiry should be made by resolution of either House of Parliament.

Statements of compatibility

8. The *Human Rights (Parliamentary Scrutiny) Bill 2010* (‘the Bill’) provides at ss 8 and 9 that a statement of compatibility must be prepared and presented to the House, in relation to each Bill or disallowable legislative instrument introduced.

9. Statements of compatibility are an important means of ‘establish[ing] a dialogue between the executive that is proposing the legislative action and the parliament that is considering the proposed action’¹ in regard to the impact of the proposed legislation on human rights. However, in order to be effective in establishing this dialogue, it is essential that the Bill include several elements in relation to which it is currently silent.
10. Firstly, in its current form, the Bill does not specify when the statement of compatibility must be prepared and presented to the House. The HRC suggests the compatibility of the proposed legislation or legislative instrument with human rights be considered before drafting even commences.
11. It is essential that the statement of compatibility is prepared in the early stages of the development of the proposed legislation or legislative instrument. The HRC recommends the statement of compatibility should be presented to the House at the same time as the explanatory memoranda. This would allow the Parliament sufficient opportunity to consider the impact of the proposed legislation or legislative instrument on human rights.
12. Secondly, in its current form the Bill requires that statements of compatibility ‘include an assessment of whether the Bill [or legislative instrument] is compatible with human rights’.² In addition to an ‘assessment’, it is critical that statements of compatibility also include reasoned, sound, evidence-based justifications in relation to any incompatibility with human rights. The inclusion of justifications in the statement of compatibility is an important demonstration and communication of the ‘human rights analysis...undertaken by the executive... when developing [the] legislation’.³

Human Rights Act

13. While outside the terms of reference of this inquiry, the HRC is disappointed that the Australian Government did not introduce a Human Rights Act as part of its Human Rights Framework.
14. The national Human Rights Consultation Committee Report noted that 87% of participants who discussed the issue of a Human Rights Act in their submissions called for its introduction.⁴ Colmar Brunton Social Research was also engaged to conduct phone surveys and focus group research.⁵ The majority of participants in this research advocated for a

¹ House of Representatives, *Human Rights (Parliamentary Scrutiny) Bill 2010 – Second Reading Speech* (2 June 2010), 4901.

² Sections 8(3) and 9(2) of the *Human Rights (Parliamentary Scrutiny) Bill 2010*.

³ Above, note 1.

⁴ *The National Human Rights Consultation Report, (NHRC Report)* September 2009 at 264.

⁵ *NHRC Report* at 12.

Human Rights Act.⁶ The NHRC Committee recommended introducing a Human Rights Act.⁷

15. The HRC continues to wholeheartedly support the introduction of a Human Rights Act. This would be consistent with Australia's international legal obligations to establish formal domestic mechanisms to give effect to the human rights agreements Australia has ratified.

Conclusion

16. In summary, the HRC strongly supports the introduction of a Joint Parliamentary Committee on Human Rights and Statements of Compatibility. The HRC also continues to advocate for the introduction of a federal Human Rights Act. The role of a Joint Parliamentary Committee on Human Rights is an important way of promoting and protecting human rights in Australia. However, it should be something in addition to the introduction of a federal Human Rights Act.

Authors:

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⁶ *NHRC Report*, at 72.

⁷ *NHRC Report* Recommendation 18 at xxxiv, 378,

