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SUBMISSION TO SENATE STANDING COMMITTEE ON LEGAL AND CONSTITUTIONAL AFFAIRS

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

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Introduction

UnitingJustice Australia, the justice and advocacy unit of the Uniting Church in Australia National Assembly, welcomes this opportunity to make a submission to the Senate Legal and Constitutional Affairs Committee inquiry into the *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010*.

The Uniting Church in Australia believes that it has a responsibility to contribute to the building of societies in which all people are valued and respected. In the context of public policy and international affairs, this means participating the development of systems, processes and structures, such as the international human rights system and the protection of human rights domestically, that function to both protect and promote human dignity and peace, and hold all of us mutually accountable in this.

The Uniting Church's support for human rights and the upholding of the dignity of all people was fully articulated in its statement on human rights, *Dignity in Humanity: Recognising Christ in Every Person*[1], adopted by the National Assembly of the Church in 2006. As well as laying out the theological basis of our commitment to human rights, this statement expresses the Church's support for 'the human rights standards recognised by the United Nations', which express the birthright of all people to 'all that is necessary for a decent life and to the hope for a peaceful future.'

In *Dignity in Humanity*, the Church also urged

> the Australian Government to fulfil its responsibilities under the human rights covenants, conventions and treaties that Australia has ratified or signed

and pledged

> to assess current and future national public policy and practice against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable.

It is these promises which continue to drive the Church's involvement in the development of just and responsible government policy and practice in Australia. In this spirit, UnitingJustice Australia makes this submission to the Senate Legal and Constitutional Affairs Committee inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010.

General comments

We welcome the Federal Government's moves to act on the recommendations of the National Human Rights Consultation and its commitment to improving the role of the Parliament in identifying and preventing human rights violations from occurring in Australia. While we are disappointed with the decision not to act on the National Human Rights Consultation's recommendation for a federal Human Rights Act, we welcome the development of Australia's Human Rights Framework, and the introduction of this legislation which constitutes part of the Framework.

UnitingJustice Australia strongly supports the passage of these bills. In recent years the Uniting Church has expressed concern about many instances where the increasing power of the executive to rush legislation through Parliament has lead to drastically inadequate timeframes for Parliamentary debate and for Parliamentary inquiries to conduct appropriate

1 This statement is available at http://www.unitingjustice.org.au/images/pdfs/resources/UJA-booklets/dignityhumanity_web.pdf

review[2], and we believe these Bills will assist greatly in rectifying this problem.

We are particularly pleased to see that the definition of 'human rights' used in the Bills includes the seven core human rights treaties to which Australia is party, including the International Covenant on Economic, Social and Cultural Rights. As stated in the Uniting Church in Australia National Assembly submission to the National Human Rights Consultation, which called for the comprehensive protection of rights contained in the ICESCR,

> These rights are fundamental and essential for people to live a dignified life and for the building of an inclusive society. Some of the most widespread human rights violations in Australia are those which infringe economic, social or cultural rights, including the continued socio-economic disadvantage experienced by Indigenous Australians and the prevalence of homelessness in our community.
> …
> The exercise of civil and political rights is made very difficult without the enjoyment of social, economic and cultural rights. For example, it is often very difficult for people experiencing homelessness to exercise their right to vote. This relationship is recognised at the international level in, for instance, the Vienna Declaration which states that all human rights are universal, indivisible and interdependent and interrelated.

The comments offered in this submission outline proposed changes to the *Human Rights (Parliamentary Scrutiny) Bill 2010* ('the Bill') which we believe will strengthen the Bill's purpose – to 'improve parliamentary scrutiny of new laws for consistency with Australia's human rights obligations and to encourage early and ongoing consideration of human rights issues in policy and legislative development'[3], as stated by the federal Attorney-General in the Bill's second reading speech.

The Parliamentary Joint Committee on Human Rights

The establishment of the Parliamentary Joint Committee on Human Rights has the potential to greatly improve the parliamentary scrutiny of Australia's laws and federal government policy and practice.

We believe that both Houses of Parliament should have the ability of refer human rights issues to the Committee for inquiry, rather than this power resting solely with the Attorney-General, as is currently outlined in Section 7 of the Bill. This would, in our view, improve the effectiveness and comprehensiveness of the Committee's activities by ensuring that its thematic inquiries are not determined by the party in government.

We also believe that the Committee's mandate should be expanded to include a role in monitoring and reporting on the implementation of the Recommendations and Concluding Observations made by the various UN treaty bodies on Australia's compliance with the human rights treaties to which we are party.

The Committee should not only consider the Statements of Compatibility provided with Bills, but also be provided with the necessary legal and technical human rights assistance, and adequate time frames, to conduct its own scrutiny of proposed legislation.

Statements of Compatibility

The introduction of a requirement that Statements of Compatibility be provided alongside the explanatory memorandums for proposed legislation is a welcome step forward in increasing the role of the Parliament in identifying potential human rights issues, and improving the human rights knowledge of our politicians.

2 These concerns have been presented, for example, in submissions to the Senate Legal and Constitutional Affairs Committee's inquiries into the provisions of the Anti-Terrorism (No. 2) Bill 2005 and into the Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007, available: http://www.unitingjustice.org.au/images/pdfs/issues/human-rights/submissions/anti-terrorismsub_uca1105.pdf, and http://www.unitingjustice.org.au/images/pdfs/issues/human-rights/submissions/censorshiplegsub__uja0707.pdf respectively

3 The Hon Robert McClelland MP, Attorney-General, Human Rights (Parliamentary Scrutiny) Bill 2010 Second Reading Speech, 2 June 2010, http://parlinfo.aph.gov.au/parlInfo/genpdf/chamber/hansardr/2010-06-02/0009/hansard_frag.pdf;fileType=application%2Fpdf, accessed 1 July 2010

The requirement of a Statement of Compatibility should be accompanied by specific and detailed guidelines on the required nature of this statement, including that

- human rights and the preparation of the statement be considered from the beginning of the policy development process;
- any restrictions on human rights caused in the proposed legislation be clearly outlined and limitations on rights be justified[4]; and
- the statements not be so technical as to reduce the ability of parliamentarians to use them.

Adequate training and access to human rights experts should be provided to Ministers so that Statements of Compatibility appropriately address the seven core human rights treaties as outlined in the Bill.

The experience with statements of compatibility in Victoria under the *Charter of Human Rights and Responsibilities*, as outlined by the Victorian Equal Opportunity and Human Rights Commission in its 2009 report[5] on the Charter's operation, provides a useful example of the workings of statements of compatibility and of parliamentary review committees (in Victoria's case, the Scrunity of Acts and Regulations Committee) in practice.

The *Making Progress* report states that:

> in general, the statements of compatibility accompanying Bills were rigorously prepared, with several reflecting noteworthy clarity of style and comprehensive human rights analysis.[6]

The report, however, also emphasises the importance of adequately addressing any limitations on rights in the statements of compatibility, including outlining their reasonability. The Commission also raised the need to give sufficient time to the Scrutiny of Acts and Regulations Committee to report on the compatibility of Bills before they are subjected to a vote in parliament.[7]

Conclusion

UnitingJustice Australia, the justice and advocacy unit of the Uniting Church in Australia National Assembly, welcomes the Australian Government's commitment to improving the role of the Parliament in identifying and preventing human rights violations from occurring in Australia.

We support the passage of the *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010* amd make the following additional recommendations regarding the proposed Parliamentary Joint Committee on Human Rights:

- the Committee be given an expanded mandate;
- the Committee be equipped with the necessary technical assistance and adequate time frames to undertake a rigorous human rights assessment of all proposed legislation;
- that both Houses of Parliament have the ability of refer human rights issues to the Committee for inquiry; and
- that specific and detailed guidelines be provided to assist parliamentarians in preparing Statements of Compatibilty.

4 The Canadian Charter of Right and Freedoms requires that any impairment of rights be for a pressing and substantial purpose, be proportionate and rationally connected to the purpose, and impair human rights as little as possible, and could provide a useful approach in relation to this Bill.

5 Victorian Equal Opportunity and Human Rights Commission (2010), Making Progress: The 2009 Report on the Operation of the Charter of Human Rights and Responsibilities, available: http://www.humanrightscommission.vic.gov.au/pdf/2009%20Charter%20Full%20Report.pdf

6 ibid., p.93

7 ibid., p.94