



NATIONAL HUMAN RIGHTS CONSULTATION

ACCI SUBMISSION

June 2009



LEADING AUSTRALIAN BUSINESS





ACCI – LEADING AUSTRALIAN BUSINESS

ACCI has been the peak council of Australian business associations for 105 years and traces its heritage back to Australia’s first chamber of commerce in 1826.

Our motto is “Leading Australian Business.”

We are also the ongoing amalgamation of the nation’s leading federal business organisations - Australian Chamber of Commerce, the Associated Chamber of Manufactures of Australia, the Australian Council of Employers Federations and the Confederation of Australian Industry.

Membership of ACCI is made up of the State and Territory Chambers of Commerce and Industry together with the major national industry associations.

Through our membership, ACCI represents over 350,000 businesses nationwide, including over 280,000 enterprises employing less than 20 people, over 55,000 enterprises employing between 20-100 people and the top 100 companies.

Our employer network employs over 4 million people which makes ACCI the largest and most representative business organisation in Australia.

Our Activities

ACCI takes a leading role in representing the views of Australian business to Government.

Our objective is to ensure that the voice of Australian businesses is heard, whether they are one of the top 100 Australian companies or a small sole trader.

Our specific activities include:

- Representation and advocacy to Governments, parliaments, tribunals and policy makers both domestically and internationally.

- Business representation on a range of statutory and business boards, committees and other fora.
- Representing business in national and international fora including the Australian Fair Pay Commission, Australian Industrial Relations Commission, Australian Safety and Compensation Council, International Labour Organisation, International Organisation of Employers, International Chamber of Commerce, the Business and Industry Advisory Committee to the Organisation for Economic Co-operation and Development, the Confederation of Asia-Pacific Chambers of Commerce and Industry and the Confederation of Asia-Pacific Employers.
- Research and policy development on issues concerning Australian business.
- The publication of leading business surveys and other information products.
- Providing forums for collective discussion amongst businesses on matters of law and policy affecting commerce and industry.

Publications

A range of publications are available from ACCI, with details of our activities and policies including:

- The *ACCI Policy Review*; a analysis of major policy issues affecting the Australian economy and business.
- Issue papers commenting on business' views of contemporary policy issues.
- *Policies of the Australian Chamber of Commerce and Industry* – the annual bound compendium of ACCI's policy platforms.
- The *Westpac-ACCI Survey of Industrial Trends* - the longest, continuous running private sector survey in Australia. A leading barometer of economic activity and the most important survey of manufacturing industry in Australia.

- The *ACCI Survey of Investor Confidence* – which gives an analysis of the direction of investment by business in Australia.
- The *Commonwealth-ACCI Business Expectations Survey* - which aggregates individual surveys by ACCI member organisations and covers firms of all sizes in all States and Territories.
- The *ACCI Small Business Survey* – which is a survey of small business derived from the *Business Expectations Survey* data.
- Workplace relations reports and discussion papers, including the ACCI *Modern Workplace: Modern Future 2002-2010 Policy Blueprint* and *Functioning Federalism and the Case for a National Workplace Relations System*.
- Occupational health and safety guides and updates, including the *National OHS Strategy* and the *Modern Workplace: Safer Workplace Policy Blueprint*.
- Trade reports and discussion papers including the *Riding the Chinese Dragon: Opportunities and Challenges for Australia and the World Position Paper*.
- Education and training reports and discussion papers.
- The ACCI *Annual Report* providing a summary of major activities and achievements for the previous year.
- The ACCI *Taxation Reform Blueprint: A Strategy for the Australian Taxation System 2004–2014*.
- The ACCI *Manufacturing Sector Position Paper: The Future of Australia's Manufacturing Sector: A Blueprint for Success*.

Most of this information, as well as ACCI media releases, parliamentary submissions and reports, is available on our website – www.acci.asn.au.



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INTRODUCTION

1. ACCI welcomes the opportunity to provide a written submission to the National Human Rights Consultation Committee (the Committee), on behalf of the Australian business community.
2. It is important that the Committee considers human rights issues within the context of how any regulatory intervention or changes to existing frameworks may affect the business community who will be affected by such proposals.
3. Whilst the business community is an integral part of the community and does place a high regard on upholding and enhancing human rights issues within Australia and overseas, any criticism of policy proposals in this inquiry should not be seen as a signal that the business community does not support initiatives or developments in this area. It is often in matters of detail and policy execution where business would predominantly have some concerns, and those would probably be focused on any unintended consequences for a firm's operational or legal capacities.
4. ACCI has assumed, based on the Committee's terms of reference, background paper and publicly available submissions, a central issue to be traversed is whether Australia should adopt a regulatory human rights based instrument, such as a bill of rights or statutory charter of rights, and the extent to which those instruments should govern the affairs of Governments, public officials and private sectors.¹
5. In addition to that major policy debate, there also appears to be a number of related issues to be considered by this Committee, including:
 - a. Whether bodies, such as the Australian Human Rights Commission (AHRC), should be given enhanced powers or capacities to investigate and prosecute breaches of human rights;
 - b. Whether Parliament and its committees should scrutinise human rights issues and the extent of such inquiry;
 - c. Whether Australian courts or tribunals should have regard to human rights issues by reference to domestic human rights based instruments (ie. a charter) and international jurisprudence (ie. laws, cases, judgments etc.).
6. Whilst the background paper does not suggest a formal process of reply submissions, ACCI submits that it is important that business will be afforded an opportunity to provide an opportunity for further input on any

¹ This submission will refer to a bill of rights, charter of human rights or any other regulatory proposal interchangeably. Whilst there are fundamental constitutional, legal and practical issues depending on what form of instrument may be proposed, business is more concerned with the substance, rather than the form, of any regulatory proposal.

proposals, particularly where this has the potential to increase the regulatory burden on Australian businesses, or proposals that may have unintended consequences.

7. ACCI's participation in this inquiry is without prejudice to the views of ACCI or its members' further consideration of these matters.

ACCI'S ROLE IN INTERNATIONAL AFFAIRS

8. ACCI is well placed to make a constructive and considered contribution to this debate on human rights, through its extensive experience in international affairs, particularly with respect to international labour standards.
9. ACCI also actively represents employers on the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee (BIAC) to the Organisation for Economic Co-operation and Development (OECD), the Confederation of Asia-Pacific Chambers of Commerce and Industry (CACCI), and the Confederation of Asia-Pacific Employers (CAPE).
10. This well-developed and long standing international representation experience is important, given that the current debate on human rights appears to focus on human rights based international instruments (in the form of various conventions, treaties, protocols and declarations) and how they may or may not be adequately addressed in domestic laws and practice.
11. ACCI strongly supports the principles underpinning human rights based legislation and international instruments, many of which Australia is a signatory party. Whilst ACCI will develop this key business' expectation further in this submission, ACCI believes that only Parliament should implement international obligations into domestic law and practice according to Australia's specific circumstances. The alternative should be consideration of constitutional amendments by way of a national referendum (whilst notoriously difficult) which will ultimately reflect the will of the Australian people.

International Labour Organisation (ILO)

12. Australia was a founding member of the ILO in 1919. ACCI Chief Executive, Mr Peter Anderson, is an elected member of the International Labour Organisation's (ILO) Governing Body, representing Australia and Asia-Pacific employers in the world forum. Therefore, ACCI plays an active and longstanding international role in promoting and supporting the development of workable human rights based principles. Mr Anderson also sits on the ILO's Committee on Freedom of Association.
13. The ILO is composed of three bodies: the International Labour Conference, which is the supreme organ; the Governing Body, which is the executive body; and the International Labour Office, which is its

permanent secretariat based in Geneva. The Conference is the annual assembly and the body that adopts international labour standards. Each member State is represented at the Conference by four delegates with the right to vote; two of them represent the government, one the employers and one the workers.

14. ACCI has gained invaluable experience and standing in the tri-partite formation of international instruments, as well as the subsequent ratification and implementation into domestic law and practice. ACCI has participated in the formation, debate and ratification of many important international instruments, as well as experience in adjudicating various nation based matters in specialised ILO committees. ACCI is therefore recognised as the most representative organisation of employers in Australia by both the ILO and the International Organisation of Employers (IOE), to which ACCI is affiliated.
15. This experience is invaluable in assessing how international instruments reflect multiple objectives, and how they are implemented into individual jurisdictions in different ways. ACCI continues this work domestically as a member of the National Workplace Relations Consultative Committee (NWRCC), which considers work of the ILO's various bodies.
16. Attached to this submission is an address to plenary sitting of the ILO General Assembly International Labour Conference by Mr Anderson, titled *'The Economic and Social Values of ACCI and Australian Employers'*. This address provides this Committee with further background and information on ACCI's important international role in international law making.

International Organisation of Employers (IOE)

17. ACCI similarly represents Australian (and Asia-Pacific) employers internationally on the International Organisation of Employers (IOE) based in Geneva and has gained insights into the manner by which human rights based rights and remedies function in our international colleagues' states.

International Labour Affairs Committee (ILAC)

18. ACCI also makes a vital contribution to the implementation of international obligations into Australian domestic law, as a member of the International Labour Affairs Committee (ILAC). ILAC is an important sub-committee of the tripartite National Workplace Relations Consultative Committee (NWRCC) which considers labour conventions.
19. In accordance with Article 19 of the Constitution of the ILO, member states are required to submit the texts of new instruments to the 'competent authority' and subsequently to report to the ILO on action proposed to be taken in respect of the new instruments. In Australia, the competent authority is the Parliament of the Commonwealth of Australia. ACCI has provided input on behalf of Australian employers on conventions that the

Government considers appropriate to apply by way of legislation or practice, cognisant as to the effect of such laws on the practical day-to-day operations of a business.

Attorney-General Consultations with ACCI

20. The Commonwealth, via the Attorney-General's Department, does consult with ACCI on changes and amendments to domestic legislation that relates to conventions, treaties or instruments which Australia is a party.
21. ACCI has also been involved on numerous Government roundtables to discuss important human rights issues, such as human trafficking, and slavery and sexual servitude.

How Business is Affected

22. It appears that many submissions to this inquiry have called for reforms to ensure that Government actions, as opposed to private business' actions, which may infringe an individual's human right(s), are more accountable. Whilst this appears to be the most appropriate focus, this consultation process is very important to private enterprises, as an outcome in the form of further regulation, may have important implications for Australian business and industry.
23. An important voice in this debate is not only from individuals, activist and pro-'human rights' groups, but also business and industry which will ultimately be affected by any proposals, either directly or indirectly.
24. Business is affected by the decisions of Government and public officials on a day-to-day basis. Any regulatory requirement on decision makers has implications for business (whether they are non-profit, large corporations or sole proprietors):
 - a. Any proposals to require public officials to discharge their duties in accordance with human rights principles, will impact upon administrative decisions that affect a businesses operations (ie. applications for permits, licences, internal or external administrative review of decisions).
 - b. Any proposals that introduce direct obligations on private sector firms to act in accordance with human rights principles will have a more profound and significant impact. For example, this may render practices and conduct to be unlawful where it is inconsistent with human rights principles or legislation. Firms that contract with the Government and or provide services on behalf of the Government will also be directly impacted.
 - c. Similarly, proposals that require or allow courts and tribunals to take into account international law or jurisprudence, or require consistency in decision making to human rights norms, will have a direct and significant impact. For example, whilst Parliament may

have passed legislation, expressing its underlying policy intent in the explanatory materials and second reading speeches, a court may turn to foreign decisions or judgments which are not relevant to the matter at hand. Parties will undoubtedly use foreign decisions and interpretations to re-interpret the original meaning and policy intent of domestic legislation, with a litigant (who may not be the Government) defending the original meaning in court proceedings. This will effectively override Parliament's original intention, and ultimately, its sovereignty.

Overriding Principle

25. An important overriding principle is that any proposal must balance the "human rights" of individuals with other policy objectives. Such rights must not be absolute, but must have necessary and reasonable limitations and boundaries. All regulation which seeks to implement certain policy objectives must be weighed, balanced and measured, regardless of its subject matter.

THIS SUBMISSION

26. This written submission does not canvass all of the issues associated with human rights. However, we do set out a number of important principles, and caveats for proposals that this Committee may consider.

SUMMARY OF ACCI POSITION

27. Whilst there are a number of policy options in the Committee's background paper, ACCI has nonetheless formed preliminary views on the application of human rights issues to the private sector. We have focused on the arguments agitated for and against various regulatory measures and how any proposals may affect the legal or operational interests of business.
28. The following principles are without prejudice to ACCI and its members' further consideration of these matters.

ACCI's Position on Various Proposals

1. Business considers that the preferred and most effective manner to deal with human rights concerns is via existing mechanisms, particularly by Parliament passing legislation to address specific and targeted concerns. Therefore, ACCI questions whether the case has been made out for the adoption of a bill or charter of 'human rights' which acts as a supervening instrument that would interact with existing laws.
2. Business is concerned about any possible unintended consequences that new regulation may have in their commercial, service and employment and general operational capacities.

3. Business requires certainty in knowing their legal obligations at all times. The possibility of a supervening human rights framework which may create additional rights, obligations or responsibilities creates uncertainty.
4. Business would be concerned if new regulation would alter the application or interpretation of Australian domestic law contrary to the interests of business, or which would have the effect of creating new causes of action where none currently exists.
5. Business would not have an in-principle objection to proposals concerning parliamentary scrutiny of legislation. This is consistent with ACCI's primary belief that Parliament is best placed to consider and make laws with respect to human rights issues. It has the capacity through various committees and transparent processes to scrutinise legislation through a human rights prism, in addition to any other policy prisms that it considers appropriate.
6. Any new regulation should be restricted in its application to the administration of Government functions, excluding the private sector. There is therefore no need to address any 'opt-in' mechanisms for the private sector.
7. Business does not support proposals that require courts or tribunals to interpret domestic law by reference to a charter or international jurisprudence. This would effectively alter the original intention of Parliament and usurp the principle of Parliamentary sovereignty. Reference to international jurisprudence is already a feature of statutory interpretation.
8. Any proposals must exclude the employment relationship which is comprehensively regulated through existing areas of law by reference to international conventions.

CONTEXT OF CURRENT INQUIRY

29. The Government announced in December 2008 that it would establish a National Human Rights Consultation Committee (Committee) to:
 - ... provide an opportunity for all Australians to share their views on how human rights and responsibilities can be better recognised and protected.

INQUIRY TERMS OF REFERENCE

30. ACCI notes that the Committee will report to the Australian Government by 31 August 2009 on *"the issues raised and the options identified for the Government to consider to enhance the protection and promotion of human rights."*
31. ACCI notes the following terms of reference:
 - a. The Committee is to set out the advantages and disadvantages (including social and economic costs and benefits) and an assessment of the level of community support for each option it identifies.

- b. The options identified should preserve the sovereignty of the Parliament and not include a constitutionally entrenched bill of rights.
32. It is within the prism of the above terms of reference, that ACCI will address many of the key issues raised in this inquiry.
33. To reiterate, business would expect a further opportunity to provide comment on any proposals/options that this Committee would be making to Government.

KEY POLICY ISSUES

New Regulation and Threshold Issues

34. ACCI considers any new regulation must comply with best practice. Whilst human rights issues can be particularly controversial and elicit emotive reactions from the community, there is no reason why they should not be viewed within the same prism as proposals for any other regulatory intervention is considered.
35. Where proponents advocate for regulatory intervention (whether it is in the form of a charter, new Act or new provisions in existing legislation), they must establish and adequately address the following threshold issues:
 - a. Firstly, what are the human rights concerns that need to be addressed by further laws or regulation? Are these concerns systemic or extreme outlier examples? In what context did these breaches or ‘violations’ occur and what was their causative factor? Would regulatory intervention have stopped or prevented them from occurring?
 - b. Secondly, if there are deficiencies in Australia’s current framework, can Parliament legislate to ameliorate specific instances of human right abuses or violations, without the need for general supervening legislation such as a charter or a stand alone human rights Act?
 - c. Thirdly, what “human rights” need to be protected, how will each right be defined and who should be bound to comply with these principles (Government, individuals, corporations etc)? How will they be balanced against appropriate limitations, caveats and exceptions?
 - d. Fourthly, what impact would further regulation have on Government, the community and particularly, businesses’ interests? Does the benefit of further regulation outweigh any costs or negative impacts?

Examples of Human Rights Concerns

36. ACCI believes that those parties who agitate for regulatory intervention must bear the onus on proving the deficiency in our current legal and non-legal frameworks, and why specific intervention in the form proposed is warranted.
37. Based on submissions as well as general community sentiment on these issues, it appears that most human rights advocates cite specific examples of abuse in various areas of public life as justification for further regulation.
38. Most importantly, it appears that most examples of human rights ‘violations’ or concerns centre on Government actions as opposed to business conduct in the private sector.
39. For example, the Law Council of Australia’s submission calls for a human rights based instrument that binds Government decision makers only. In a recent media release (below), the LCA refers to an immigration officials handling of a recent case as an example of why a charter is required (and presumably, how such an instrument would have prevented the following from occurring).

Media Release

Power of Charter of Rights Exists in Prevention, Not Just Cure

Published: 27-May-09

The Law Council remains resolute in its support for the adoption of a federal Charter or Bill of Human Rights, despite recent claims that it would fail to deliver protection for victims of human rights violations.

The Council reaffirmed its support for a Charter of Rights after claims were made that such legislation would have done little to protect the rights of high-profile victims such as Cornelia Rau and Vivian Alvarez Solon.

Law Council President John Corcoran said, “The Charter of Rights we support could have prevented the mistakes made in these cases by requiring police and immigration officials to adhere to human rights standards when exercising their powers.”

“A Charter would include specific legal protection for the right to liberty and the right to be treated humanely while in detention. Moreover, the Charter of Rights supported by the Law Council is focused on prevention, not just cure,” Mr Corcoran said.

Mr Corcoran said under a Charter of Rights, laws that authorise immigration detention could not be passed without Parliamentary scrutiny of the potential impact these laws would have on human rights.

“Rather than having to wait for the government of the day to initiate an inquiry into an alleged violation of an individual’s human right, a Charter would draw attention to any laws, policies or government actions that are inconsistent with human rights standards at the time of their development or delivery,” Mr Corcoran said.

“As far as the Law Council is concerned, a Charter is more than just a remedy for an abuse of a human right – it serves as an important yardstick for evaluating both past and future government actions,” Mr Corcoran concluded.

40. Other advocates appear to cite similar examples involving Government action or inaction, as justification for a supervening charter of rights to be adopted. Some of the examples include issues covering:
- a. Refugee / immigration issues, including mandatory detention of asylum seekers.
 - b. Terrorism laws.
 - c. Indigenous issues.
 - d. Gender and equality issues, such as gay marriage and natal issues (ie. adoption, IVF, surrogacy laws).
 - e. Freedom of speech, including censorship and sedition laws.
 - f. Housing, including issues associated with homelessness.
 - g. Prisoners’ rights.
 - h. Access to health care and education.
41. The AHRC’s twelve separate facts sheets appear to focus on the above examples as to why a dedicated stand alone, Human Rights Act is needed.
42. The AHRC states in the fact sheet titled, “Ten common questions About a Human Rights Act for Australia”:
- Many of us can point to a situation where we, or somebody close to us, was treated unfairly by government authorities. However, most people don’t realise that these issues often involve human rights concerns. Some of the worst human rights breaches in Australia have happened to ordinary people.
43. Other groups who are pro-statutory human rights regulation provide similar examples to those of the LCA and AHRC. The following examples appear to be a common theme.

Source: A Human Rights Act for Australia²

2. Why does Australia need a human rights act now? OR “If it ain’t broke why fix it?”

Critics of a human rights act often argue that our democratic government is well equipped to protect human rights and that Australia’s human rights record is exemplary.

² <<http://www.humanrightsact.com.au/2008/about-a-hr-act/>>

Unfortunately, this is not true. Over the past decade we have seen numerous examples where fairness, dignity, equality and tolerance have been flouted and where the governments and courts have not had adequate mechanisms to correct these injustices.

Some recent examples include:

- Children held in refugee detention centres
- Asylum seekers detained indefinitely
- Australians illegally detained or deported
- The introduction of 40 new anti-terrorism laws over a period of 5 years, which have stripped fundamental rights without adequate transparency and explanation
- Mandatory sentencing in the Northern Territory which had a severe and disproportionate impact on the Aboriginal people
- Undue censorship and sedition laws limiting our freedom of speech; and
- An acute lack of safety, health and adequate living conditions of Indigenous Australians.

The “system” has failed Australians in these examples. Only as a result of protracted pressure from outside the system, have some of these situations since been corrected. Left behind are deep scars on both the victims and our international human rights reputation. A human rights act would help to mitigate these types of injustices in the future.

44. ACCI is concerned that some advocates contend that the private sector should be bound by regulation, not just Government officials, which is why it is important this Committee consider the private sector’s views and its legitimate concerns.
45. Even if an instrument only applies to Government decision makers, there may be aspects that ultimately affect the private sector. The main concern would be any new positive statutory interpretation provisions, which would empower courts and tribunals to interpret existing laws within a human rights based prism, thereby potentially altering the original intent by Parliament and possibly what all stakeholders understood was the intention at the time. A charter may also affect businesses, particularly in contracting and tendering situations or when Government regulators make decisions affecting the interests of business (ie. licensing or regulatory decisions).
46. Given that many examples of human rights violations appear to involve Government decision makers, ACCI believes that the Committee should focus on ways to mitigate such instances occurring within that context. Mitigation does not necessarily take the form of increased or new regulation, but may include codes of conduct for public servants, increased community awareness in the form of education or separate inquiries for particular isolated or systemic cases.

AUSTRALIA'S HUMAN RIGHTS FRAMEWORK

Australia as a World Leader in Human Rights

47. It is important to appreciate that Australia is, contrary to some claims or impressions, a world leader in promoting and upholding human rights issues both domestically and abroad. Australian business also strives to maintain its reputation when it comes to human rights matters.
48. Whilst human rights breaches have occurred in the past and unfortunately will probably occur in the future, despite best efforts and tougher regulation, it must be stated upfront that Australia has often been pioneers in international treaty making which enhances and protects human rights, domestically and globally.
49. ACCI makes this point as it is relatively easy for interest groups to identify specific and unfortunate instances of human rights violations, and come to the conclusion that a lack of robust legal protection was the primary cause. Many examples of human rights “violations” do appear to have multiple causes (many involving some element of negligence or criminal conduct, whilst others can be attributable to a lack of Government attention and resources). The fact remains that regulation and new legal frameworks are no guarantee that these cases would not have occurred, nor will occur in the future.
50. However, it is important that the Committee appreciates the fact that Australia does currently have a sophisticated and well-developed process for addressing human rights issues.
51. Australia has implemented many international obligations into domestic law. These laws affect the legal obligations of business and employers, particularly in the areas of privacy, anti-discrimination, freedom of association, minimum employment conditions, and termination of employment laws. Many of these laws exist at the federal and State/Territory level, thereby providing complete and often overlapping coverage.
52. In the case of anti-discrimination remedies, individuals may have remedies under discrimination specific and non-specific federal legislation (ie. *Human Rights and Equal Opportunity Act*, *Sex Discrimination Act* and *Workplace Relations Act*), State legislation (ie. anti-discrimination legislation, health privacy laws etc.), as well as common law remedies.
53. Many of these federal regimes do rely upon international conventions to give effect to the domestic legislation. Indeed, there are many laws that have not been enacted by recourse to international instruments, but nonetheless serve to protect and enhance human rights.
54. Whilst the acceptance of a treaty or convention is undoubtedly an important signal to the international community, the fact that

constitutionally, Australia must implement broadly constructed instruments, according to Australia's cultural, socio-political and economic circumstances, is also a crucial safety-valve that protects the integrity of our Parliamentary sovereignty.

Constitutional Checks and Balances³

55. A fundamental principle of Australian law is that ratification (or accession) of an international instrument by the Executive Government does not automatically become part of domestic law. Parliament must give effect to international obligations through further legislative action.⁴ Despite assertions to the contrary, this is actually an important mechanism to ensure international laws are implemented as appropriate to domestic circumstances.
56. Section 61 of the Constitution, empowers the Executive to enter into treaties, rather than the Parliament. The Government retains discretion over the bargaining and negotiating framework of instruments, with the final decision as to whether to sign and ratify instruments taken at the Ministerial level and Cabinet.
57. Australia's constitutional system also ensures that checks and balances operate when Australia adopts and implements international instruments. The following is a summary of the extensive processes by which the Government considers and implements international law.
 - a. Parliament must examine all proposed treaty actions and in passing legislation to give effect to treaties.
 - b. Although the Constitution does not confer on the Parliament any formal role in treaty making, all treaties (except those the Government decided are urgent or sensitive) are tabled in both Houses of Parliament for at least 15 sitting days prior to binding treaty action being taken. A treaty is generally tabled after it has been signed for Australia, but before any treaty action is taken which would bind Australia under international law.
 - c. Treaties are tabled in the Parliament with a National Interest Analysis which notes the reasons why Australia should become a party to the treaty. Where relevant, this includes a discussion of the foreseeable economic, environmental, social and cultural effects of the treaty action; the obligations imposed by the treaty; its direct financial costs to Australia; how the treaty will be implemented domestically; what consultation has occurred in relation to the treaty action and whether the treaty provides for withdrawal or

³ The following information is based on (a) ACCI's practical involvement in these matters and (b) The Department of Foreign Affairs and Trade's publication, *Treaties and Treaty Making* <<http://www.dfat.gov.au/treaties/making/making2.html>>

⁴ *Kioa v West* (1985) 159 CLR 550.

denunciation. Tabled NIAs are included in the Australian Treaties Library.

- d. Treaties which affect business or restrict competition are also required to be tabled with a Regulation Impact Statement (RIS).
- e. The Joint Standing Committee on Treaties (JSCOT) considers tabled treaties. The Committee can also consider any other question relating to a treaty or international instrument that is referred to it by either House of Parliament or a Minister. ACCI notes that there does not appear to be any limitation on the JSCOT inquiring into treaties and associated matters subsequent to Australia ratifying or acceding to a treaty.⁵
- f. The Government's decision on whether a treaty is in the national interest is based on information obtained during consultations with relevant stakeholders. ACCI has often been consulted on matters that affect domestic legislation and has provided advice on behalf of the business community on proposals that may have direct or indirect consequences on industry. Consultations by Government includes:
 - i. Commonwealth-State-Territory Standing Committee on Treaties (SCOT) which consists of representatives from the Premier's or Chief Minister's Departments in every State and Territory.
 - ii. NGO's, employer organisations, employee organisations, interest groups, and industry bodies.
- g. For legislation to be valid under the external affairs power, it must be reasonably considered to be appropriate and adapted to the implementation of a treaty.
- h. Once an in-principle decision has been taken to agree to a treaty, the Commonwealth Government considers whether:
 - i. specific implementing action is required;
 - ii. if so, whether existing legislation (Federal or State) is adequate; and
 - iii. if not, whether the treaty should be implemented by legislation at the Commonwealth or State/Territory level.
- i. The prior approval of the Federal Executive Council is also required for Australia to enter into a treaty. The Executive Council comprises the Governor-General and all serving Ministers and Parliamentary

⁵ Treaties—Proposed Powers And Proceedings Of Joint Standing Committee
<<http://www.aph.gov.au/house/committee/jsct/reports/resolution.pdf>>

Secretaries. A meeting of the Executive Council requires the presence of the Governor-General plus two Ministers and/or Parliamentary Secretaries. The Executive Council requires certain documentation be presented to it showing that the decision to accept the rights and responsibilities associated with a treaty has been approved by Cabinet or by the relevant Ministers.

- j. Sometimes a powerful force in treaty making and implementation is within the context of representative Government:

Perhaps the most important constraint upon the Commonwealth is the fact that treaty making processes in Australia operate within a democratic context. This includes, ultimately, the knowledge that action by the Commonwealth Government which was widely perceived as contrary to Australia's interests could result in its defeat at the next election.⁶

Existing Human Rights Protections

58. Following the above consideration of Australia's well-developed treaty making framework, it is important to appreciate how human rights are currently protected in Australia.
59. Of the existing rights and remedies available, and depending on the particular circumstances, human rights concerns can be brought into numerous forums for inquiry, report, or determination. An aggrieved individual (or their representatives) could:
- a. Make a complaint to the AHRC to investigate individual breaches under the HREOC Act or pursuant to various federal anti-discrimination legislation for which it has jurisdiction. Breaches of human rights by Government officials can also be made, with the AHRC having the power to make recommendations to remedy breaches.
 - b. Make a complaint to the Commonwealth Ombudsman (state equivalent) for action taken by Government agencies that amount to malfeasance. Public corruption matters can also be filed with various statutory authorities.
 - c. Make a complaint to various bodies, tribunals or agencies, that are empowered to investigate particular human rights issues, such as breaches of privacy, surveillance, professional's conduct (ie. complaints against lawyers, medical professionals etc).
 - d. Make a complaint to various industrial relations, Occupational Health & Safety tribunals, inspectorates and regulators to investigate breaches of freedom of association, discrimination in employment, unlawful terminations and OH&S concerns.

⁶ <http://www.dfat.gov.au/treaties/making/making3.html>

- e. Make a complaint to relevant police where matters involve allegations of criminal behaviour.
- f. Make a complaint to the United Nation's numerous committees (human rights committee, committee on the elimination of racial discrimination, committee against torture, committee on the elimination of discrimination against women, committee on the rights of the child).
- g. File proceedings in the relevant courts or tribunals pursuant to existing statutory and common law rights and remedies.

Other Avenues

60. Complaints can also be made to various domestic and international public interest organisations, unions, NGO's, and community legal centres to investigate matters and provide awareness through media and public advocacy.
61. Individuals and organisations often raise matters of public importance with their Members of Parliament, which then leads to further inquiry and possible reform.
62. Often, human rights violations that attract public scrutiny are addressed by way of appropriate and targeted regulatory and non-regulatory responses. ACCI supports targeted measures (not necessarily through new laws) to address specific examples of ostensible human rights violations.

Parliamentary Committees⁷

63. At the federal level, there are also robust opportunities for Parliamentary scrutiny of legislation which may affect individual's rights and liberties. These oversight mechanisms are often replicated at the State and Territory level also.
64. For example, under Standing Order 24, the Senate Scrutiny of Bills Committee considers and reports on legislation which:
 - a. trespass unduly on personal rights and liberties;
 - b. make rights, liberties or obligations unduly dependent upon insufficiently defined administrative powers;
 - c. make rights, liberties or obligations unduly dependent upon non-reviewable decisions;

⁷ ACCI notes that following an order of the Senate on 13 May 2009, the Senate's eight legislative and general purpose standing committees each now comprise a pair of committees: A Legislation Committee whose purpose is to deal with bills referred by the Senate, the Estimates process and oversee the performance of departments, including their annual reports, and a References Committee whose purpose is to deal with all other matters referred by the Senate.

- d. inappropriately delegate legislative powers; or
- e. insufficiently subject the exercise of legislative power to parliamentary scrutiny.

Senate Committees

- 65. Other relevant Senate Committees⁸ may scrutinise passage of new or proposed legislation which often involve various human rights matters.
- 66. In addition, select Committees may be established to inquire into specific legislation or issues, which may include cases of specific human right ‘violations’. Senate Estimates also provides an opportunity to determine actions by departmental agencies.

House Committees

- 67. Similarly, there are numerous select and standing House Committees⁹ that provide a platform for individuals and groups to advocate human rights issues, including a petitions Committee that provides a substantial public grievance mechanism on human rights issues and individual cases.
- 68. The Joint Standing Committee on Foreign Affairs, Defence and Trade often inquires into human rights and treaty issues.¹⁰ A contemporary example of a public debate on human rights was when the Human Rights Sub-Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade marked the 60th Anniversary of the Universal Declaration of Human Rights (UDHR) with a public forum held at Parliament House.
- 69. The ability for individuals or interest groups to advocate important human rights issues and concerns within our existing democratic cannot be understated. Some countries that appear to have strong human rights based laws, such as bills of rights, do not enjoy this luxury. The inquiry process which amplifies issues publically, as well as any written reports, in many instances, does lead to specific reform.
- 70. Furthermore, ACCI notes that the AHRC is already empowered to conduct inquiries own their own initiative or by Ministerial reference, regarding compliance with and implementation of civil and political human rights.

⁸ These include: Community Affairs, Economics, Employment, Workplace Relations and Education, Environment, Communications, Information Technology and the Arts, Finance and Public Administration, Foreign Affairs, Defence and Trade, Legal and Constitutional Affairs, Rural and Regional Affairs Transport

⁹ Including, the following Committees: Aboriginal and Torres Strait Islander Affairs; Climate Change, Water, Environment and the Arts; Communications; Economics; Education and Training; Employment and Workplace Relations; Family, Community, Housing and Youth; Health and Ageing; Industry, Science and Innovation; Infrastructure, Transport, Regional Development and Local Government; Legal and Constitutional Affairs

¹⁰ For example, a recent inquiry was conducted into *Human Rights Mechanisms and the Asia-Pacific*.

<http://www.aph.gov.au/house/committee/jfadt/asia_pacific_hr/index.htm>

Other Specific Forums

71. More specifically, ACCI notes that many inquiries have been conducted on various human rights based issues, including recent inquiries into discrimination, genetic information, paid parental leave, and privacy law.
72. ACCI, interest groups and individuals, have made submissions to those inquiries in the past. Australia does have multiple inquiry and research based bodies that are well-resourced to inquire into human rights based issues. Bodies that inquire into such matters include the AHRC¹¹, Australian Law Reform Commission (ALRC), State Law Reform Commissions, and other similar research based institutions.
73. Two recent examples include:
 - a. The Productivity Commission recently concluded inquiry into paid parental leave, which has led to the Government announcing a scheme to begin in 2011, as well as a recent review of *Disability Discrimination Act*, which has also led to legislative reform.
 - b. AHRC's inquiry into *National Inquiry into Discrimination Against People in Same-Sex Relationships: Financial and Work-Related Entitlements and Benefits* in 2006, that proved to be a catalyst for amendments to 84 separate Commonwealth laws.
74. ACCI participated in those inquiries and made submissions on behalf of the business community. It is expected that these inquiries have provided and will continue to provide in the future, a robust mechanism for reform in policy areas affecting human rights issues where interest groups and individuals will be able to input their concerns.
75. It should also be remembered that the Government is always at liberty to provide detailed or general terms of references to these inquiries if a contemporary issue emerges, just as it can conduct ad-hoc inquiries into matters.
76. There are also many mechanisms which address human rights issues, including Royal Commissions and ad-hoc Government initiated inquiries into specific issues (both at the federal and State/Territory level).
77. These forums have undoubtedly provided a benefit to those who wish to raise public awareness on particular matters, and do provide a vehicle for further specific policy reforms by Government. These inquiries also provide an opportunity for submissions and input by numerous stakeholders and interested parties and are a reflection of our healthy and robust democratic system.

Existing International Laws

78. ACCI notes that Australia has signed up to many, if not most, key human rights instruments including:
- a. The International Covenant on Civil and Political Rights (ICCPR).
 - b. Convention on the Rights of the Child (CRC).
 - c. Convention Against Torture (CAT).
 - d. The International Covenant on Economic, Social and Cultural Rights (ICESCR).
 - e. Convention on the Elimination of All Forms of Racial Discrimination (CERD).
 - f. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).
 - g. Convention on the Rights of Persons with Disabilities.
 - h. Slavery Convention of 1926
 - i. Supplementary Convention on Slavery
79. The Government is also required to submit periodic reports on the measures taken to give effect to their obligations under these treaties.
80. Whilst ratifying and acceding to a plethora of treaties should not be a goal in itself, it does send a clear message to the international community of its desire to implement broad based principles into specific laws and practices as appropriate.
81. It must be remembered that the Government also does not need to implement legislation every time it ratifies a convention, and this is important in the context of whether Australia requires an overriding bill or charter of rights, where existing law and practice may suffice:

Many treaties do not require new or prior legislation, as they can be implemented through executive action (for example, trade cooperation, defence logistics and procurement treaties). Other treaties, including a number of international human rights and industrial relations treaties, have been ratified on the basis of an assessment by the Commonwealth that existing Commonwealth or State/Territory legislation is sufficient to implement the provisions of the convention (in other words, we are already meeting domestically the terms of the convention and no further action is

necessary), or that the particular treaty obligations can be implemented progressively and without radical change to existing laws.¹²

82. ACCI's view is that Parliament should make the appropriate decisions to implement international instruments into domestic legislation. There should not be proposals which provide, in effect, a "back-door" way to inject international law concepts into domestic law, without specific Government and Parliamentary legislative action. For example, if there are concerns regarding equality, then consideration should be given to amending the *Sex Discrimination Act* instead of listing numerous broad based human rights principles in an instrument that is open to interpretation and could apply to other existing laws and in a manner that is not foreseeable.

International Comparisons

83. ACCI notes that many submissions which advocate further regulation, often point to international comparisons and conclude that Australia is only one of a handful of nations not to have some form of statutory or constitutionally entrenched bill of rights. This is usually argued without any other context:
- a. Firstly, many countries with statutory or constitutional bills of rights have undoubtedly questionable human rights records (ie. Zimbabwe and Iraq). In the context of a recent Productivity Commission's paid parental leave inquiry, it was often argued that countries such as Afghanistan had a paid parental leave scheme. What was not outlined was the fact that many women would not have the opportunity to work, let alone access paid parental leave.
 - b. Secondly, without identifying existing mechanisms and frameworks ignores the real issue as to whether there are sufficient and adequate laws to address human rights concerns. Australia may not have a constitutional or statutory bill of rights, but it does have legal and institutional remedies that are effective at addressing a range of human rights issues, often better than those that have detailed and prescriptive charters and bills.
 - c. Thirdly, many countries have unique and specific constitutional differences which must be further explained. For example, the United Kingdom does not have a written constitution, whereas the United States and Australia does. The United States does expressly recognise some human rights, whereas Australia's Constitution (for the most part) does not. When the United States ratifies a convention, they automatically become bound by those instruments. Australia's Parliament must give effect to international instruments by legislation. These issues do have important implications for how one country may protect and enhance human rights by adopting a range of legal and non-legal mechanisms.

¹² <http://www.dfat.gov.au/treaties/making/making3.html>

84. As stated above, Australia is a party to a range of international conventions, in addition to implementing laws that are not dealt with specifically in these treaties. To reiterate, the key message is that substance should prevail over form, which includes a detailed assessment of Australia's legal and non-legal human rights framework and whether regulation would prevent particular human rights breaches.

Dealing with “Gaps”

85. Elected Members of Parliament have numerous responsibilities. However, a core duty is to develop, debate, and implement policy. It could be also be argued that the Senate's core role is to scrutinise legislation that is presented to it from the House.
86. Therefore, ACCI submits that:
- a. The elected Government of the day is best placed to consider, after consultation with major stakeholders, human rights based policies, whether by amending existing law, legislating new law, or directing changes to public servants and officials that implement policy.
 - b. Parliament as a whole is best placed to address specific or systemic human rights concerns by amending existing legislation, introducing new legislation, holding inquiries or debating contemporary issues.
87. Notwithstanding the above two principles, ACCI does not consider there has been cogent evidence offered to support the introduction of regulation in the form of a supervening charter, bill of rights or Human Rights Act that would apply, *holus bolus*, to the entire breadth of existing law. With respect, this is akin to introducing a constitutional bill of rights (something which requires a referendum) via the back-door. In other words, and in accordance with this Committee's terms of reference, to do so would appear to breach Parliament's sovereignty as courts would be able to re-interpret existing law in a manner that may be contrary to the will and intention of Parliament.
88. In addition, ACCI submits that any regulatory intervention (whether in the form of a charter, or amendments to existing laws) should also accord to 'best practice', which means that laws:
- a. Should only be introduced once a thorough and extensive cost-benefit and regulatory impact analysis has been conducted. The policy rationale for implementing new law needs to set out why the current status quo is not adequate and how new regulation is the only policy response to remedy the situation.
 - b. Should only be introduced once the impact on business, as well as the community, is taken into account, including any increased costs in terms of compliance (operational, administrative and legal).

- c. Should be clear, targeted and not have any unintended consequences. Amorphous and general human rights principles should be specifically defined and appropriate limitations and caveats prescribed. There should not be room for wide interpretation by courts or tribunals. Explanatory materials should set out what is the policy intention behind each provision. Failure to set out laws in this manner will not assist in providing either certainty nor compliance for parties that are affected (directly or indirectly) by such laws.

Comment on Current Charters

89. Whilst Australia already has two human right instruments operating in the ACT and Victoria, they do not generally apply to the private sector, nor do they apply to federal laws. These instruments are relatively new and therefore there is limited feedback on how they have worked to date. Any arguments that there has not been “any problem to date” should be cautiously viewed by this Committee, as it does not indicate whether it is or is not an appropriate mechanism at the federal level.

Measures that Business Supports

90. Whilst ACCI considers existing regulatory structures are appropriate to deal with specific or general human rights issues, ACCI does strongly support non-regulatory measures, such as increased awareness and education, which in conjunction with domestic and international media attention, can also have a significant influence in public policy reform.

Education and Information Measures

91. In ACCI’s submission to a recent Senate Committee inquiry into the federal *Sex Discrimination Act*, ACCI stated that it supported greater educative and information measures, which is equally relevant to the considerations of this inquiry.

ROLE OF SOCIAL CHANGE / EDUCATION

Term of reference (g) directs the Committee to consider:

preventing discrimination, including by educative means;

ACCI would support a range of measures which address discrimination on a longer term basis using an educational/preventative approach. Recognising always a proper role for legislation, such an approach, we believe, offers the best chance of having a lasting and ongoing societal impact (noting of course, that what society accepts at one stage is not necessarily acceptable at a later stage).

In that regard, we commend to the Committee the HREOC publication ‘Sexual Harassment in the Workplace: A Code of Practice for Employers’ as an example of useful guidance material that assists employers in understanding their obligations under the SDA. This code was released in 2004 with input from industry and while it is not possible for any single piece of guidance material to overcome the inherent complexities of the legislation, this

guide explains the various obligations that employers have under the SDA to manage sexual harassment claims.

Whilst government agencies should continue their role in public education programmes, with some targeting of particular areas, programmes should also be developed at primary and secondary levels, to teach future employees, employers and corporate citizens the values and expectations society places in this area.

It could be argued that children are still developing their social norms and behaviours, and this could lead to better outcomes in the long-term, rather than short-term legislative fixes that may include, harsher penalties and complex laws imposed on business, particularly where adult wrongdoers are less likely to change their behaviour and conduct overnight.

ACCI would encourage and support various anti-discrimination agencies preparing material in conjunction with education departments to give effect to such proposals. It would be appropriate to involve industry in the design of such programmes to ensure their effectiveness.

92. Education measures designed to outline existing human rights based laws, as well as creating awareness of contemporary human rights issues, is something that would assist in promoting human rights expectations and conduct in the general community (not just on actions taken by Government).

Best Practice Guidelines / Codes

93. ACCI would also encourage consideration of other non-regulatory measures, such as the development of best practice guidelines or codes of conduct which could be developed in conjunction with key stakeholders.
94. Such material could outline in a practical manner ways of implementing human rights in different contexts. For example, public officials could use it as a check-list in addition to their existing legislative duties.

Implications on Employers

95. Despite our contention that an instrument, such as a charter, is not required and that it should only apply to Government decision makers, ACCI has considered the practical aspects of a charter to business, and particularly focused on businesses role as employer, as it is conceivable that many principles may affect the employment relationship.
96. Our preliminary analysis of the implications on regulation in the form of a charter or other legislative measures, is as follows:

Additional Obligations

97. A charter or principle-based instrument may create new or additional legal obligations on employers and create uncertainty.

98. For example, if courts or tribunals can refer to either a charter or international jurisprudence¹³ when deciding breaches of domestic statutory or common law industrial/employment laws (rights to association, rights to privacy, freedom from forced work etc), this may create liability where none currently exists.
99. For example, s.15 of the ACT Charter states “*everyone has the right to freedom of association*”. If that applied in a federal charter, would that then create uncertainty for employers, employees and unions’ obligations under existing industrial legislation that limits capacity to strike? Could the current limitations on strike pay and taking of lawful industrial action be undermined by interpreting those provisions under the *Workplace Relations Act 1996* (or soon to commence *Fair Work Act 2006*) by reference to not only charter principles, but international jurisprudence (ie. ILO’s Committee on the Application of Standards or the Committee on Freedom of Association?) What about if a court was to rely upon a foreign court/tribunal judgement that have decided such matters within a different socio-legal context?
100. Similarly, principles about “fair” or “decent” wages or conditions may create legal obligations on employers to pay above minimum standards, or indeed affect employees who are not covered by minimum standards.
101. A fundamental feature of our common law legal system and tradition is the doctrine of precedent. The introduction of new human rights or statutory interpretation principles will create uncertainty for judicial decision makers, their representatives and litigants.
- a. What weight will a foreign decision or judgment have in a particular matter?
 - b. Will this override or supplant binding and non-binding decisions within our legal hierarchy?
 - c. How can legal advisers provide advice on the law, if they are not certain what international jurisdiction will be invoked in future litigation? Will parties have to expend further time and cost on obtaining expert legal advice on why certain laws, judgements or cases do or do not apply or why they are or are not “relevant”?
102. It is easy on the one hand to create amorphous principles and duties that require conduct to be interpreted by reference to international “human rights” norms, but it is difficult on the other hand, to anticipate all the consequences of doing so and how litigants may use such principles in future legal proceedings.
103. For example, where a principle of “freedom of forced work” applies, could an employee claim this has been breached if they effectively had no

¹³ Noting that article 38 of the Statute of the International Court of Justice (1945) provides for a wide range of texts, judgments, and laws when deciding matters. This appears to be picked up by the ACT Charter.

- choice (because they needed the money or the job) but to work a particular roster or shift?
104. Would principles that create rights to “collectively bargain”, undermine existing laws on bargaining, including entering into lawful “individual flexibility arrangements” or common law agreements?
 105. Would rights to privacy lead to employers having limited ability to deal with employees in disciplinary, conduct or termination matters? Would they be prevented from being able to conduct drug and alcohol testing for OH&S purposes? Could an employee object to their email, internet, or movements recorded?
 106. Whilst the above may sound like unlikely unintended consequences, international experience indicates that many cases (criminal or civil) were decided contrary not only to community expectations, but to those who authored or progressed such instruments in the first place. All the best intentions by those who advocate pro-human rights regulation may not be able to anticipate nor comprehend the unintended consequences, until it reaches the doors of a court.

Statutory Interpretation

107. Business would be most concerned with proposals to create new statutory interpretation principles, which would require Government regulators, courts or tribunals to consider international jurisprudence, as this would affect private firms in a very direct and significant manner.
108. The fact that recourse may be had to these instruments, when Parliament has not expressly decided to incorporate these into domestic law, does in our submission usurp Parliament’s sovereignty. Interpreting existing laws consistent with international law may be contrary to the intention that Parliament had when it passed specific legislation. This creates uncertainty for those that must comply with the law as employers would not know with sufficient certainty whether their otherwise lawful conduct would be interpreted unlawful by a court or tribunal. Predictability for private sector businesses is vital and cannot be overemphasised.
109. Within the labour law context, the “law making” functions of labour conventions and recommendations are carried on by the International Labour Conference (ILC) and the Governing Body. The ILO’s Committee of Experts on Conventions and Recommendations, consisting of eminent jurists, and ILO’s Committee on Freedom of Association, does investigate country specific based issues, and publishes materials on these matters.
110. There are also many international treaty instruments (such as ILO and UN conventions) that are not ratified or fully implemented in domestic law.

111. Whilst international legal principles do currently have a role to play in statutory interpretation¹⁴, particularly where legislation seeks to give effect to international instruments, ACCI does not support regulation which provides or requires courts or tribunals to determine matters by reference to international jurisprudence (including laws, decisions, and judgments of courts, tribunals or quasi-judicial bodies).¹⁵ It is our view that this ultimately usurps Parliament's will, including the overriding principle that courts and tribunals who discharge their functions, do so in accordance with domestic laws and the intention of Parliament. If Parliament intends for the court to refer to international material, then that would be made clear in the legislation and explanatory materials for that particular piece of legislation.

Contracting with Government

112. ACCI notes that even if a charter primarily only applies to the Government (to the exclusion of the private sector), and decisions government officials make, this will undoubtedly impact upon private firms that contracting with or on behalf of the Government. ACCI does not make any submissions on this issue at this stage, but may do so depending on any proposals arising from this inquiry.

Other Proposals

113. ACCI has concerns over other proposals which are advocated in addition to, or in the alternative, to a charter. These appear to focus on additional regulation in one form or another. Whilst they appear benign and relatively innocuous, they would have a real effect on the private sector in their day-to-day legal and operational capacities.

Other Measures Not Supported

114. Based on the evidence and arguments put forward by other parties, ACCI does not, at this stage, support the following proposals which:
- a. Provide mechanisms for a court or tribunal to issue statements or declarations on whether legislation is or is not compliant with human rights principles.
 - b. Create new or additional statutory causes of action, based on breaches of human rights where it is alleged against private entities.
 - c. Generally require laws (statutory or common law) to be interpreted consistent with international jurisprudence or schedule of human rights principles.
 - d. Provide additional powers provided to Government regulators, such as coercive information powers or auditing requirements on private firms to ensure compliance with various human rights based laws.

¹⁴ *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273

¹⁵ I.e. Section 31 of the *Human Rights Act 2004* (ACT)

Parliamentary Oversight

115. Whilst ACCI believes current Parliamentary oversight mechanisms do afford a reasonable opportunity to consider human rights based issues, ACCI would support the inquiry considering mechanisms within the current Parliamentary framework. This may be achieved by reviewing current House and Senate Committees to ensure that they remain relevant and can adequately consider human rights based issues. ACCI would expect an opportunity to provide further input and feedback on the detail of such proposals to ensure that this does not have unintended consequences.

CONCLUSION

116. For the reasons articulated in this submission, ACCI considers that existing legal and non-legal mechanisms, allows many human rights issues to be investigated, debated and, if necessary, ameliorated by specific legislative action.

117. Therefore, ACCI does not consider that a supervening instrument, such as a charter, stand alone Act or bill of rights is required to provide for protection or enhancement of human rights at this stage. ACCI would strongly object to a charter or new regulation applying to the private sector, where most instances of human rights breaches and allegations have occurred by Government officials.

118. Regulation is not the only answer to addressing many human rights concerns, as many examples provided by pro-human rights advocates have multiple causes, which could be addressed by cultural, behaviour and attitudinal changes. Others appear to be the result of inadequate resources or attention to specific issues. Targeted responses should be preferable over general responses.

119. Notwithstanding, there are many areas of support by Australia business, in the form of enhanced education and information, best practice guidelines or codes of practice. In the rare case that there are concerns about business and industry conduct, these materials could be tailored to the private sector with appropriate industry input.

120. ACCI would welcome any further opportunity to provide input on any draft proposals or recommendations to ensure that the Committee takes into account Australian business and industry's legitimate interests, and ensures that any proposals are targeted, balanced, workable, and minimise any unintended consequences.

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