

20 October 2010

Committee Secretary

Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
AUSTRALIA

Dear Committee Secretary,

Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010

This is a submission to the Senate Committee's inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010 (the Bill). This submission supports the establishment of a Parliamentary Joint Committee on Human Rights (the Joint Committee). It comprises three sections, which address:

- the definition of 'human rights' in the Bill
- the Joint Committee's proposed composition, functions, and powers and proceedings
- practical challenges to the Joint Committee's effective functioning.

We were associated with the submission from the Human Rights Council of Australia to the Senate Committee's initial (June-August 2010) inquiry into the Bill. We endorse that submission. In this submission we draw on the recommendations in that submission and the recommendations in other excellent submissions to the earlier inquiry to present a consolidated list of recommended amendments to the Bill.

Yours sincerely,

Benjamin Lee

Chris Sidoti

1. The definition of ‘human rights’ in the Bill

Clause 3(1) of the Bill defines human rights as ‘the rights or freedoms recognised or declared by’ the:

- *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD)
- *International Covenant on Economic, Social and Cultural Rights* (ICESCR)
- *International Covenant on Civil and Political Rights* (ICCPR)
- *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT)
- *Convention on the Rights of the Child* (CRC); and
- *Convention on the Rights of Persons with Disabilities* (CRPD).

This clause is insufficient and should be amended to incorporate the following proposals.

1.1 Additional human rights instruments

Clause 3(1) should be expanded to provide for the inclusion of the optional protocols to the prescribed human rights treaties. At 20 October 2010, this would include the optional protocols to the ICCPR,¹ CEDAW,² and the CRC.³ This would be in consonance with the principle of *pacta sunt servanda* per Article 26 of the *Vienna Convention on the Law of Treaties* 1969,⁴ which provides that ‘[e]very treaty in force is binding upon the parties to

¹ *Optional Protocol to the International Covenant on Civil and Political Rights* <<http://www2.ohchr.org/english/law/ccpr-one.htm>> accessed 2 October 2010; *Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty* <<http://www2.ohchr.org/english/law/ccpr-death.htm>> accessed 2 October 2010.

² *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* <<http://www.un.org/womenwatch/daw/cedaw/protocol/>> accessed 2 October 2010.

³ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* <<http://www2.ohchr.org/english/law/crcsale.htm>> accessed 2 October 2010; *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* <<http://www2.ohchr.org/english/law/crc-conflict.htm>> accessed 2 October 2010.

⁴ <http://untreaty.un.org/ilc/texts/1_1.htm> accessed 5 September 2010. See University of Melbourne, ‘Submission in relation to the Human Rights (Parliamentary Scrutiny) Bill 2010’ (13 July 2010) at 3-4 <http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

it and must be performed by them in good faith'. The domestication of the content of these optional protocols is central to Australia's effective performance.

There is a strong argument to be made, having regard to Australia's particular circumstances, that the *Convention Relating to the Status of Refugees* should also be included within the definition of 'human rights'.⁵ Where the principle of *pacta sunt servanda* applies equally to the Refugee Convention, another compelling argument for its inclusion in clause 3(1) rests with the *purpose* of the Bill: ensuring the compatibility of domestic law with Australia's international obligations.⁶ The Human Rights Council of Australia (HRCA) – identifying refugees as a 'most vulnerable group of people'⁷ – argues that inclusion of the Convention within the ambit of Bill 'will ensure that Federal Parliament is kept properly informed when legislative measures ... may offend against the Convention [thus] help[ing] to ensure better public policy making in relation to refugees.'⁸

A comparable argument can be made for the inclusion of the *Declaration on the Rights of Indigenous Peoples* in clause 3(1). Where the Declaration is distinct from the instruments currently prescribed in clause 3(1) in that it is not legally binding on Australia, Indigenous Australians 'are among the most disadvantaged within the Australian community'.⁹ This submission supports the HRCA's argument that the Declaration's legal status 'should not preclude Parliament from being required to give consideration to whether rights expressed in the Declaration are being protected and promoted.'¹⁰ As the Australian Human Rights Commission (AHRC) adds, the Declaration's inclusion in

⁵ <<http://www2.ohchr.org/english/law/refugees.htm>> accessed 2 October 2010.

⁶ McClelland, R. MP., 'Human Rights (Parliamentary Scrutiny) Bill 2010 Second Reading Speech' (30 September 2010) <[http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/page/Speeches_2010_30September2010-Secondreadingspeech-HumanRights\(ParliamentaryScrutiny\)Bill2010](http://www.attorneygeneral.gov.au/www/ministers/mcclelland.nsf/page/Speeches_2010_30September2010-Secondreadingspeech-HumanRights(ParliamentaryScrutiny)Bill2010)> accessed 5 October 2010.

⁷ The Human Rights Council of Australia (HRCA), 'Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010' (14 July 2010) at 3 <http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

⁸ Ibid.

⁹ Ibid at 2.

¹⁰ Ibid. This proposal was also supported in Australians for Native Title and Reconciliation's (ANTaR) July 2010 submission to the Senate Committee.

clause 3(1) would ‘provide a comprehensive guide to assist in protecting the rights of Indigenous peoples’.¹¹

1.2 Consistency with the Australian Human Rights Commission Act 1986

As the AHRC argues, there should be ‘consistency between the definition of human rights for the purposes of the Joint Committee and for the purposes of the [AHRC’s] mandate under the *Australian Human Rights Commission Act 1986*’.¹² The *Australian Human Rights Commission Act*¹³ empowers the AHRC to ‘investigate complaints and to report to Parliament on breaches on human rights’ in relation to ILO Convention 111 concerning *Discrimination in Respect of Employment and Occupation*¹⁴ and the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*.¹⁵ Accordingly, clause 3(1) should be expanded to include the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*, with consideration given to the inclusion of ILO Convention 111. In turn, the definition of ‘human rights’ in the *Australian Human Rights Commission Act* should be expanded to include ICESCR, CAT, and the *Declaration on the Rights of Indigenous Peoples*.¹⁶

1.3 Customary international law

Clause 3(1) should also be expanded to include ‘rights and freedoms recognised by customary international law’.¹⁷ Importantly, ‘customary international law’ should not be

¹¹ The Australian Human Rights Commission (AHRC), ‘Australian Human Rights Commission Submission to the Senate Legal and Constitutional Affairs Committee’ (7 July 2010) at para. 16 <http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

¹² Ibid at para. 13.

¹³ <http://www.austlii.edu.au/au/legis/cth/consol_act/ahrca1986373/> accessed 2 October 2010.

¹⁴ <<http://www.ilo.org/ilolex/cgi-lex/convde.pl?C111>> accessed 2 October 2010.

¹⁵ <<http://www2.ohchr.org/english/law/religion.htm>> accessed 2 October 2010.

¹⁶ See Castan Centre for Human Rights Law, ‘Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010: Submission to the Senate Legal and Constitutional Affairs Committee’, Monash University (9 July 2010) at para. 4

<http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

¹⁷ Human Rights Law Resource Centre (HRLRC), ‘Submission to the Senate Legal and Constitutional Affairs Committee: Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010 (June 2010) at para. 13 <http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

narrowly construed. It should extend beyond human rights norms to include peremptory provisions in international criminal law and international humanitarian law.¹⁸ This would be consistent with Australia's international obligations and consonant with domestic legislation.¹⁹

1.4 Provision for future amendment of the definition of human rights

Clause 3(2) of the Bill states that 'reference to the rights and freedoms recognised or declared by an international instrument is to be read as a reference to the rights and freedoms *recognised or declared by the instruments as it applies to Australia* [emphasis added]'. A new sub-clause should be added to clause 3 (potentially constituting clause 3(3)) that provides for the future inclusion in clause 3(1) of: (a) articles of treaties against which Australia removes its reservation;²⁰ and (b) additional human rights treaties to which Australia becomes party.²¹

1.5 Interpretive provision

An interpretive provision should be added as a new sub-clause to clause 3 (potentially constituting clause 3(4)). This, as the Human Rights Law Resource Centre (HRLRC) argues, should allow 'proper consideration [to] be given to international human rights law and judgments of domestic, foreign and international human rights courts, bodies and tribunals' in determining the scope and content of 'human rights'.²²

¹⁸ Including the protections afforded by the 1949 *Geneva Conventions* and *Additional Protocols I and II*, and genocide, crimes against humanity, and war crimes as defined by the *Rome Statute of the International Criminal Court*.

¹⁹ Including the *International Criminal Court (Consequential Amendments) Act 2002* <http://www.austlii.edu.au/au/legis/cth/consol_act/iccaa2002543/> accessed 2 October 2010.

²⁰ Refer Law Council of Australia, 'Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010 (9 July 2010) at para. 37 <http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

²¹ Ibid. See also the HRCA, above n7 at 3; and Amnesty International, 'Submission to the Standing Committee on Legal and Constitutional Affairs: Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010 (9 July 2010) at 4 <http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

²² HRLRC, above n17 at 2.3.

1.6 Provision for the limitation of human rights

A limitations provision should also be added as a new sub-clause to clause 3 (potentially constituting clause 3(5)). This provision could mirror section 7(2) of the Victorian *Charter of Human Rights and Responsibilities* 2006,²³ which provides that:

(2) A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including-

- (a) the nature of the right; and*
- (b) the importance of the purpose of the limitation; and*
- (c) the nature and extent of the limitation; and*
- (d) the relationship between the limitation and its purpose; and*
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.*²⁴

As the Gilbert + Tobin Centre of Public Law argues, a limitations provision would ‘establish a principled framework ... for the balancing of competing rights, and for the compromises that sometimes need to be struck between human rights and other urgent interests’.²⁵

²³ <http://www.austlii.edu.au/au/legis/vic/consol_act/cohrara2006433/> accessed 2 October 2010.

²⁴ See Gilbert + Tobin Centre of Public Law, ‘Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010’ (8 July 2010) at 3 <http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

²⁵ Ibid at 4.

2. *Joint Committee on Human Rights*

2.1 *Composition of the Joint Committee*

Clause 5(1) of the Bill provides that the Joint Committee is to consist of 10 members; five members drawn from each House of Parliament. Given the breadth of the Joint Committee's functions (addressed below), the Committee should be increased from 10 members to 16 members. This would match the size of the Joint Standing Committee on Treaties (JSCOT). To preserve the balance proposed in the Bill, eight members of the Joint Committee should be drawn from each House.

2.2 *Functions of the Joint Committee*

Clause 7 of the Bill mandates the Joint Committee with:

- (a) Examining Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and reporting to both Houses of the Parliament on that issue
- (b) Examining Acts for compatibility with human rights, and reporting to both Houses of the Parliament on that issue; and
- (c) Inquiring into any matter relating to human rights which is referred to it by the Attorney-General, and reporting to both Houses of the Parliament on that matter.

(a) The examination of Bills, legislative instruments, and Acts for compatibility with human rights

An inconsistency arises with regard to the Joint Committee's proposed scrutiny roles in clauses 7(a) and 7(b). Where clause 7(a) requires the Committee to examine Bills and draft legislative instruments, clause 7(b) only requires the Joint Committee to scrutinise Acts for human rights compatibility, not existing legislative instruments.²⁶ Clause 7(b) should therefore be expanded to include the examination of legislative instruments.

²⁶ Refer Castan Centre for Human Rights Law, above n16 at para. 14.

(b) Inquiry into matters relating to human rights referred by the Attorney-General

Clause 7(c) only empowers the Joint Committee to inquire into matters referred to it by the Attorney-General. This should be amended to empower the Committee to ‘monitor and report into any matter relating to human rights which is conferred to it by resolution of either House of Parliament’.²⁷ As the HRLRC argues, this change would ‘enhance the independence and effectiveness of the Committee and ensure that its capacity to conduct thematic inquiries is not solely determined by the Government of the day’.²⁸

In his 30 September 2010 Second Reading Speech, Attorney-General McClelland stated that he envisioned the Joint Committee ‘advanc[ing] the concept of participatory democracy by providing additional means for citizens to have input into the legislative process.’²⁹ In the interest of truly advancing the concept of participatory democracy, a new sub-clause should be added to clause 7 (potentially constituting clause 7(d)) that empowers the Joint Committee to initiate ‘own motion’ inquiries into any human rights matters which [it] believes are worthy of inquiry’.³⁰ This language could, as the University of Melbourne proposes,³¹ borrow from the terms of reference of the United Kingdom’s (UK) Parliamentary Joint Committee on Human Rights, thus empowering the Joint Committee to ‘consider and report on matters relating to human rights in Australia (but excluding consideration of individual cases)’.³² The University of Melbourne reports that this mandate has enabled the UK Joint Committee to ‘examine systematic and structural issues about the protection of human rights, and issues about the protection of human rights *in practice* that are not revealed by a single-minded focus on the terms of Bills and Acts.’³³

²⁷ Refer HRLRC, above n17 at para. 18.

²⁸ Ibid.

²⁹ McClelland, R. MP., above n6.

³⁰ Sydney Centre for International Law, ‘Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010’ (20 July 2010) at 1 <http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

³¹ University of Melbourne, above n4 at para. 29.

³² <<http://www.parliament.uk/business/committees/committees-archive/joint-committee-on-human-rights/jchrabout/>> accessed 2 October 2010.

³³ University of Melbourne, above n4 at para. 29.

2.2.1 Additional Joint Committee functions

(a) Scrutiny of executive action

The Bill limits the scope of the Joint Committee's scrutiny function to legislative action. The University of Melbourne argues that this inability to

assess compliance of executive action with rights standards, whether the executive acts pursuant to statute or in the exercise of inherent executive power ... is an odd omission, as experience shows that human rights problems often stem from executive rather than legislative action.³⁴

Accordingly, the Joint Committee should be empowered to scrutinise select aspects of executive action. First, a new sub-clause should be added to clause 7 (potentially constituting clause 7(e)), empowering the Joint Committee to monitor and report on the implementation of recommendations emanating from United Nations (UN) human rights mechanisms. This would include the concluding observations and recommendations of the human rights treaty bodies, and recommendations of the UN Human Rights Council's Special Procedures and Universal Periodic Review (UPR) mechanism.³⁵ It should also include the implementation of 'voluntary human rights pledges' made by the Australian Government, be it under the UPR or when presenting candidature for Human Rights Council membership.³⁶

Second, a new sub-clause should be added to clause 7 (potentially constituting clause 7(f)) which empowers the Joint Committee to inquire into and make recommendations with regard to treaty body decisions in individual complaint cases where Australia is found to have violated its international human rights obligations.³⁷ In the same way that JSCOT is charged with reviewing and reporting on all treaty actions proposed by the

³⁴ Id at para. 24.

³⁵ HRLRC, above n17 at para 21. Supported in the July 2010 submissions of the AHRC, Castan Centre, International Commission of Jurists (ICJ) Victoria, National Children's and Youth Law Centre, and New South Wales Disability Discrimination Centre.

³⁶ Per operative para. 8 of General Assembly resolution 60/251 'Human Rights Council' of 3 April 2006, States are encouraged to present voluntary pledges and commitments towards domestic human rights improvement when presenting their candidacy for Human Rights Council membership

<http://www2.ohchr.org/english/bodies/hrcouncil/docs/A.RES.60.251_En.pdf> accessed 2 October 2010. Similarly, States are also encouraged to present voluntary pledges in advance of their UPR examinations.

³⁷ Refer Castan Centre, above n16 at para. 17.

Government before action which binds Australia to the terms of the treaty is taken, the Joint Committee should review and report on treaty body decisions before the Government takes formal action in response. This function would inform and provide greater transparency and accountability to the process by which the Government arrives at its positions on treaty body decisions. It is also made important by the fact that Australian Governments have accepted only a handful of the decisions in cases where the treaty bodies have found a violation by Australia.³⁸

These proposed additional functions are complementary to the scrutiny and inquiry roles assigned to the Joint Committee; together, they would require both the legislature and the executive to have greater regard to Australia's human rights obligations when considering legislation and formulating policy. In the longer term, this 'institutionalisation' of human rights observance would work to reduce the need for individual recourse to UN human rights mechanisms.

(b) Review of the Joint Committee's functions

The Bill makes no provision for the review of the Joint Committee's functions. A new sub-clause should be added to clause 7 (potentially constituting clause 7(g)), which empowers the Joint Committee to conduct periodic reviews of the performance of its functions under the Act and to report to both Houses of Parliament.³⁹

2.3 Powers and proceedings of the Joint Committee

Clause 6 of the Bill provides that 'all matters relating to the powers and proceedings of the Committee are to be determined by resolution of both Houses of the Parliament'. While the determination of the Joint Committee's powers and proceedings are clearly beyond the remit of the Bill, some proposals are offered toward the preparation of the resolution.

³⁸ Refer Charlesworth, H., 'Human Rights: Australia versus the UN: Discussion Paper 22/6' RegNet, Australian National University, August 2006 <<http://democratic.audit.anu.edu.au>> accessed 2 October 2010. Refer also <<http://www.bayefsky.com/docs.php/area/jurisprudence/state/9>> accessed 2 October 2010.

³⁹ University of Melbourne, above n4 at paras. 33-34.

As the University of Melbourne argues, the Joint Committee should have the ‘full suite of powers normally conferred on Committees by resolution of the House’.⁴⁰ This includes the power to:

- send for persons and documents (summon witnesses and require the production of documents)
- move from place to place
- take evidence in public or private session
- meet and transact business notwithstanding any prorogation of the Parliament or dissolution of the House of Representatives; and
- appoint subcommittees.

The relationship of the Joint Committee with existing Senate Committees also requires Parliamentary attention in the preparation of the resolution. The University of Melbourne identifies the Senate’s Regulations and Ordinances Committee and Scrutiny of Bills Committee as two existing Committees that have roles that ‘substantially overlap’ with those proposed for the Joint Committee.⁴¹ This submission supports the International Commission of Jurists (ICJ) Victoria’s statement that the Joint Committee should be ‘given the highest possible standing in the hierarchy of Parliamentary Committees’.⁴²

⁴⁰ Id at para. 31.

⁴¹ Ibid at paras. 10-18.

⁴² The International Commission of Jurists –Victoria-, ‘Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010’ (15 July 2010) at 7
<http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

3. *Practical challenges*

A number of practical challenges confront the Joint Committee's effective performance of its functions. These include the projected volume of its work, the extent of its financial and personnel resources, the amount of time that it is given to complete its tasks, and the degree of human rights expertise resident in and available to the Committee. Accordingly, the following recommendations are made.

First, the Joint Committee should be strategic and targeted in its work. While required to screen all Bills for human rights compliance, the Committee should 'focus ... its inquiries and reports on those Bills which raise prima facie human rights concerns'.⁴³ Similarly, it should examine Acts 'with the greatest potential impact on human rights' first.⁴⁴ As proposed in section 2.3 of this submission, the Joint Committee should also have the power to appoint subcommittees. Accordingly, it may wish to consider dedicating a separate subcommittee to each of its main functions.⁴⁵

Second, the Joint Committee's secretariat should be adequately sized and resourced relative to the scale of its work. To ensure that this is the case, the Government should undertake a proper assessment and costing of the financial and personnel support that the Joint Committee will require. This projection should be reviewed against 'actuals' once the Committee is operational.

Third, the Joint Committee should be given sufficient time to 'conduct inquiries and produce reports so as to enable community engagement and actually inform parliamentary debate in a meaningful way'.⁴⁶ A corollary to this is raised by Amnesty International⁴⁷ and the University of Sydney,⁴⁸ which press that time must be allocated to

⁴³ HRLRC, above n17 at para 21.

⁴⁴ Castan Centre, above n16 at para. 14.

⁴⁵ Four proposed subcommittees are: 1. Scrutiny of Bills and draft legislative instruments; 2. Scrutiny of Acts and legislative instruments; 3. Inquiries; and 4. Implementation of international human rights recommendations and assessment of the decisions of human rights treaty bodies in individual complaints cases.

⁴⁶ HRLRC, above n17 at para. 21.

⁴⁷ Amnesty International, above n21 at 4.

allow not only for thorough analysis of a Bill, but for the delivery of such analysis to Parliamentarians to inform the Bill's 'debate, redraft and passage'.⁴⁹

Fourth, human rights expertise is in issue. The Joint Committee's secretariat should be vested with 'requisite international human rights law experience and expertise', and the Joint Committee should have access to independent legal advice.⁵⁰ It should also have the power to appoint specialist advisors, including permanent independent experts,⁵¹ and provision should be made for the need to build the knowledge of Committee members on 'the scope and nature of human rights'.⁵²

⁴⁸ University of Sydney, 'Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010' (9 July 2010) at 7 <http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/submissions.htm> accessed 2 October 2010.

⁴⁹ Amnesty International, above n21 at 4.

⁵⁰ AHRC, above n11 at para. 22.

⁵¹ ICJ –Victoria-, 'Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010' above n42 at 8.

⁵² University of Sydney, above n48 at 6.

Annex: Recommendations

1. The definition of human rights in clause 3(1) of the Bill should be expanded to include:
 - Optional protocols to core human rights treaties to which Australia is party
 - the *Convention Relating to the Status of Refugees*
 - the *Declaration on the Rights of Indigenous Peoples*
 - the *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief*; and
 - customary international law

Consideration should also be given to the inclusion of ILO Convention 111 concerning *Discrimination in Respect of Employment and Occupation*.

2. A new sub-clause (potentially constituting clause 3(3)) should be added to the Bill to allow for future amendment of the definition of human rights in clause 3(1) to accommodate additional human rights treaties to which Australia becomes party and articles of treaties against which Australia removes reservations.
3. A new sub-clause (potentially constituting clause 3(4)) should be added to the Bill as an interpretive clause that requires the Joint Committee to have regard to 'international human rights law and judgments of domestic, foreign and international human rights courts, bodies and tribunals' in determining the scope and content of 'human rights'.
4. A new sub-clause (potentially constituting clause 3(5)) should be added to the Bill as a limitations clause. This clause could mirror section 7(2) of the Victorian *Charter of Human Rights and Responsibilities* 2006.
5. Clause 5 should be amended to expand the Joint Committee's membership from 10 to 16 members. Eight members should be drawn from each House of Parliament.

6. Clause 7(b) should be expanded to include the examination of legislative instruments as well as Acts.
7. Clause 7(c) should be expanded to empower the Joint Committee to ‘monitor and report into any matter relating to human rights which is conferred to it by resolution of either House of Parliament’.
8. A new sub-clause (potentially constituting clause 7(d)) should be added to the Bill empowering the Joint Committee to initiate ‘own motion’ inquiries into any human rights matters which it believes are worthy of inquiry. This language could borrow from the terms of reference of the UK Parliamentary Joint Committee on Human Rights.
9. A new sub-clause (potentially constituting clause 7(e)) should be added to the Bill to empower the Joint Committee to ‘monitor and report on the implementation of recommendations emanating from UN human rights mechanisms (including the human rights treaty bodies, the Special Procedures, and the UPR). It should also include the implementation of ‘voluntary human rights pledges’ made by the Government under the UPR or when presenting its candidature for Human Rights Council membership.
10. A new sub-clause (potentially constituting clause 7(f)) should be added to the Bill to empower the Joint Committee to inquire into and report on the decisions of treaty bodies in individual complaint cases where Australia is found to have violated its international human rights obligations.
11. A new sub-clause (potentially constituting clause 7(g)) should be added to the Bill to empower the Joint Committee to conduct periodic reviews of the performance of its functions under the Act and to report to both Houses of Parliament.