

Women's International League for Peace and Freedom

Ligue internationale des femmes pour la paix et la liberté

Liga Internacional de Mujeres por la Paz y la Libertad

Internationale Frauenliga für Frieden und Freiheit

**Consultative Status with United Nations ECOSOC, UNCTAD and
UNESCO**

Special Consultative Relations with FAO, ILO and UNICEF

International Headquarters Geneva Switzerland

Australian Section Office Adelaide

PO Box 345 Rundle Mall, Adelaide 5001

(08) 8390 3456



22 October 2010

The Chairperson
Senate Legal and Constitutional Affairs Committee
The Senate
Parliament House
CANBERRA ACT 2600.

Dear Chairperson,

Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010

The Australian Section of the Women's International League for Peace and Freedom (WILPF) is an international non-government organisation in consultative status with United Nations ECOSOC and UNESCO. The Women's International League for Peace and Freedom also has special consultative relations with the FAO, ILO and UNICEF. This submission is made on behalf of the Australian Section of our organisation. WILPF works for social and racial justice, human rights and an end to war as a means of dealing with human conflict.

WILPF welcomes the opportunity to make this submission.

Introduction

WILPF has always supported the need for human rights protection and is pleased that Australians showed leadership in formulating the *Universal Declaration of Human Rights* as an international framework defining many human rights. Since then, many countries have adopted their own national Bill or Charter of Rights to protect their citizens.

Australia, is alone in the Western world in not having their own Human Rights Bill. We were hopeful this would finally come to pass when the result of the 2009 National Human Rights Consultation Reports key findings were published stating :

(a) " Human rights matter deeply to Australians. They resonate with

Australian democratic values, the rule of law and our sense of a fair go”¹

- (b) “While Australia has strong democratic and legal institutions, they do not provide comprehensive or even adequate protection of human rights. The patchwork quilt of human rights protection is missing pieces and these “inadequacies are felt most keenly by the marginalised and the vulnerable”.²
- (c) “Human rights are not enjoyed fully or equally by all Australians, including people experiencing homelessness, people with mental illness, Aboriginal Australians, asylum seekers and people with disability. There is a strong view that “we could do better in guaranteeing fairness for all within Australia and in protecting the dignity of people who miss out”.³
- (d) “There is widespread support for “greater consideration of human rights...in the development of legislation and policy”.⁴

The Brennan Committee who drafted that Report recommended that Australia adopt a Human Rights Act because they accepted evidence that a Human Rights Act would “provide a resilient thread in the federal quilt of human rights protection”, would be both “useful and cost effective”, and would contribute to a culture with a greater awareness of, and respect for, human rights, both within government and throughout the community.⁵

The Rudd Government evaded their recommendation for a national Human Rights Act and instead put together their own Human Rights Framework which incorporated some of the desired features in the Brennan Report ie. scrutinising legislation to ensure compatibility with human rights, which has now been drafted in the above Bill which is the subject of this Senate Inquiry.

The Human Rights (Parliamentary Scrutiny) Bill 2010

This proposed Bill establishes a Joint Parliamentary Committee on Human Rights, to be comprised of five members of the House of Representatives and five Senators, with two primary functions:

- (a) to “examine” Bills, legislative instruments and existing Acts “for compatibility with human rights and to report to both Houses of Parliament on that issue”;⁶ and

¹ National Human Rights Consultation Committee, *Report of the National Human Rights Consultation Committee* (2009) 96.

² NHRC, *Report of the National Human Rights Consultation Committee* (2009) 127-8.

³ NHRC, *Report of the National Human Rights Consultation Committee* (2009) 343-344.

⁴ NHRC, *Report of the National Human Rights Consultation Committee* (2009) 174.

⁵ NHRC, *Report of the National Human Rights Consultation Committee* (2009) 275-77, 377

⁶ Human Rights (Parliamentary Scrutiny) Bill 2010, ss 7(a) and (b).

- (b) to “inquire into any matter relating to human rights which is referred to it

by the Attorney-General, and to report to both Houses of Parliament on that matter”.⁷

The Bill also introduces a requirement that each new Bill introduced to parliament be accompanied by a *Statement of Compatibility* which includes an “assessment of whether the Bill is compatible with human rights”.⁸ This requirement also extends to certain legislative instruments.⁹

For the purposes of both the Joint Committee and Statements of *Compatibility*, “human rights” means those human rights and fundamental freedoms contained in the seven core international human rights treaties to which Australia is party.¹⁰

Defining ‘Human Rights’

WILPF supports the recognition of *all* of the human rights and freedoms enshrined in *all* of the seven core international human rights treaties to which Australia is a party by having ratified them.

It follows, that Australia also has a legal obligation to take all necessary legal and administrative steps to respect, protect, promote and fulfill the rights therein. This is consistent with the establishment of effective legislative scrutiny processes to ensure that Australia’s domestic laws are not inconsistent with Australia’s international human rights obligations.

This should result in domestic Australian law aligning with international courts.

The role of the Joint Parliamentary Committee on Human Rights

This Bill establishes a Joint Parliamentary Committee on Human Rights with two primary functions under s 7:

- (a) to “examine” Bills, legislative instruments and existing Acts “for compatibility with human rights and to report to both Houses of Parliament on that issue”; and
- (b) to “inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of Parliament on that matter”.

⁷ Human Rights (Parliamentary Scrutiny) Bill 2010, ss 7(c).

⁸ Human Rights (Parliamentary Scrutiny) Bill 2010, s 8.

⁹ Human Rights (Parliamentary Scrutiny) Bill 2010, s 9.

¹⁰ Namely, the *International Covenant on Civil and Political Rights*, the *International Covenant on Economic, Social and Cultural Rights*, the *International Convention on the Elimination of all Forms of Racial Discrimination*, the *Convention on the Elimination of all Forms of Discrimination against Women*, the *Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment*, the *Convention on the Rights of the Child*, and the *Convention on the Rights of Persons with Disabilities*.

WILPF supports other more learned submissions that propose that the

Committee's role should be expanded to include the power "to inquire into any matter relating to human rights which is referred to it by resolution of either House of Parliament". This 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.

WILPF sees merit in the Committee having the power to take an active role in monitoring, overseeing and following up on the implementation, decisions and recommendations of international human rights mechanisms.

WILPF therefore supports expanding the Committee's role to include the power "to monitor and report on the implementation of the Concluding Observations, Recommendations and Views of UN treaty bodies and the Recommendations of the Special Procedures and the Universal Periodic Review of the UN Human Rights Council".

We would like to see the Committee given broad and permissive powers relating to all human rights matters with the ability to investigate any Bills which raise prima facie human rights concerns.

Scrutiny of Bills for *Statements of Compatibility* should not be just a last-minute reading exercise, but allow the Committee sufficient time and power to conduct its own independent analysis, taking into account international and foreign human rights jurisprudence with power to call for submissions, convene public hearings and examine witnesses as appropriate, as part of their charged duty to increase the level of community engagement.

It goes without saying that the earlier this scrutiny is engaged in will assist the better likelihood of compatibility as well as assisting compliance and the policy direction of proposed Bills.

It is important that *Statements of Compatibility* provide detailed evidence-based reasons for compliance or non-compliance.

WILPF supports the call for a *Statement of Compatibility* to be available with the Second Reading Speech to ensure informed debate and also included in Hansard to ensure accessibility to the public.

Summary

1. WILPF Australia would prefer, for the domestication of international human rights, that the Government introduce a Bill for a Human Rights Act as recommended by the Brennan Committee. This preference notwithstanding, **WILPF supports the legislation for the Human Rights (Parliamentary Scrutiny) Bill 2010 with the additional powers mentioned above considered for inclusion in this Bill.**

Our reasons for strong support for this legislation are that the proposed Bill

provides for all new legislation to be accompanied by a Statement of *Compatibility* with those human rights defined in the seven United Nations human rights instruments which Australia has signed and ratified over six decades. We feel this would neither diminish the sovereignty of Parliament, nor hand new powers to the judiciary. Parliament would always remain in control of legislation yet the attention of law-makers would be focussed on the human rights implications of the laws being enacted. In addition human rights understanding among parliamentarians, departmental and government agency administrators, the judiciary and the police would be enhanced.

2. WILPF Australia opposes any amendment that would replace the seven United Nations instruments with Australia's anti-discrimination legislation as the standard by which compatibility with human rights should be determined. We believe such amendments would negate the intention and effect of the Bill. The seven United Nations instruments cover a range of human rights issues not yet dealt with in Australian domestic laws. Replacement of this feature of the Bill would, therefore, significantly weaken its intended impact.

3. WILPF supports the established of A Joint Parliamentary Committee on Human Rights with the additional powers mentioned above considered for inclusion in this Bill.

4. WILPF Australia believes that human rights should be a bi-partisan matter. WILPF Australia believes that joint parliamentary enquiries and discussion in decision making would bring respect and interest in democracy from the general public - respect and interest that has been diminishing while parliament has been conducted in an adversarial manner, rather than a conflict resolving place for the nation's needs and problems.

WILPF Australia urges the Senate Legal and Constitutional Affairs Committee to facilitate the passage of the proposed Human Rights (Parliamentary Scrutiny) Bill 2010.

*Submission prepared for WILPF (Australian Section)
by Ruth Russell, Joint National Coordinator.*