



Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO BOX 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

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

Thank you for the opportunity to participate in this enquiry. The Association of Children's Welfare Agencies (ACWA) is the NSW peak body representing agencies providing direct services to vulnerable children and young people, and their families. ACWA represents over 100 non-government agencies providing services to more than 5000 children in OOHC. As the peak body in NSW, ACWA advocates for a better future for all of the 16 542¹ children in OOHC in NSW.

To ensure the new measures are effective in improving parliamentary scrutiny of new laws with human rights obligations, ACWA proposes the following:

1. Independent analysis be undertaken by the Committee
2. Consultation with representative groups be undertaken by the Committee
3. Statements of compatibility take into consideration international human rights law and foreign legislation
4. Linking federal and state/territory legislation

Should you require further information, please contact Prasheela Karan, Policy Officer,

Yours sincerely,

Sylvia Ghaly
Director of Policy and Membership,

7 July 2010

¹ NSW Ombudsman, 2010

Comments on the Human Rights (Parliamentary Scrutiny) Bill 2010

ACWA expresses its disappointment over the Australian Government's decision not to enact a national *Human Rights Act*. As noted in ACWA's submission to the National Human Rights Consultation in June 2009, "ACWA believes that all human rights, as identified by the United Nation in the Universal Declaration of Human Rights, including civil and political rights, and economic, social and cultural rights, should be equally protected and promoted. They are indivisible and should be treated as such"². ACWA would like to reiterate this point.

ACWA does however recognise that the Bills are an important step forward with each new piece of federal legislation to be examined in terms of its compatibility with Australia's international human rights obligations.

The Bill contains two measures, which it is envisaged, will encourage early and ongoing consideration of human rights in policy and legislative development:

1. Joint Parliamentary Committee on Human Rights and;
2. Statements of compatibility

To ensure the new measures are effective in improving parliamentary scrutiny of new laws with human rights obligations, ACWA proposes the following:

1. Independent Analysis

The Committee should have the power to conduct an independent analysis to ensure that legislation is informed by lessons learnt from sector practice and realities. The Committee should be allocated resources to set up a secretariat that has sufficient expertise to facilitate the analysis by, for example, calling for submissions and undertaking consultations and interviews with key stakeholders as necessary. It is therefore important that the secretariat members have expertise in legislative processes, including reviews, human rights and social justice nationally and internationally. The analysis should be rigorous and examine the different points of view on human rights issues that may be potentially contentious. In addition, the Committee and secretariat members should be provided with the opportunity to engage with authors of statements of compatibility in its examination of proposed pieces of legislation. The Committee should also be provided with an appropriate length of time to carry out its examination.

2. Consultation with Representative Groups

² ACWA, 2009

An important aspect of the examination of pieces of federal legislation is consultation with communities and representative groups. Consultation should be inclusive and engage a wide representation of the sector. ACWA advocates that the Committee should consult expert representation of the different groups that may suffer disadvantage, including experts on child rights, Indigenous issues, and disability issues. National representative groups, including, for example, the Secretariat of National Aboriginal and Islander Child Care (SNAICC), the Child and Family Welfare Association of Australia Inc. (CAFWAA) and the People with Disability Australia Incorporated (PWD) will be able to apply their knowledge and expertise towards the examination of new pieces of federal legislation. Importantly, national representative groups will be able to coordinate the filtering up of substantive issues from state level representative groups that respond to issues on the ground. The consultation will enable the Committee to perceive how a proposed piece of legislation will affect various groups and, of equal importance, it will enable various groups who may be adversely affected to voice their concerns and influence the adoption of legislation.

3. International Human Rights Law and Foreign Legislation

The statement of compatibility should situate the piece of legislation to be examined in the context of international law to demonstrate a link with Australia's obligations to, for example, maintaining rights outlined under the UN Convention on the Rights of the Child. This will involve referring to evidence provided in periodic reports to the UN that outlines Australia's degree of compliance with international conventions. In addition to this, the rulings of international courts and tribunals should be taken into consideration. The statement of compatibility should also refer to relevant development in legislation in other countries.

4. Linking Federal and State/Territory Legislation

ACWA would like to reiterate its disappointment over the Australian Government's decision not to enact a national *Human Rights Act*. Both Victoria and the ACT enjoy a bill of rights, the Victorian Charter of Rights and Responsibilities (2006) and the Human Rights Act 2004 (ACT) respectively. States that do not have a bill of rights, such as NSW, must rely on international human rights instruments, which are not binding on domestic legislation. ACWA therefore advocates that all states and territories should consider developing a bill of rights similar to Victoria and the ACT. ACWA believes that in the absence of a national bill of rights, a state/territory bill of rights would result in international human rights instruments being applied to the Australian context at a national and state/territory level and being protected through legislation.

In the absence of a national bill of rights, ACWA believes that the Committee's examination of federal legislation should represent

Australia's best practice on the protection of human rights such as health and education. ACWA advocates that the human rights of all citizens are protected and that every citizen enjoys the benefits that the Committee's rigorous examination brings to the law. ACWA therefore believes that the Committee's scrutiny of federal legislation should strongly influence parliamentary dialogue, and policy and legislative development at the state level.

Reference

NSW Ombudsman Office (2010)

The need to better support children and young people in statutory care who have been victims of violent crime: A report arising from an investigation into the NSW Department of Human Services (Community Services) Available: <http://www.ombo.nsw.gov.au/whatsnew/latestmedia.html>. Last accessed July 2nd 2010

ACWA (2009) National Human Rights Consultation submission