



**THE LAW SOCIETY
OF SOUTH AUSTRALIA**

THE VOICE OF THE SOUTH AUSTRALIAN LEGAL PROFESSION

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22 July 2010



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Ms Julie Dennett
The Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Dear Ms Dennett

Human Rights (Parliamentary Scrutiny) Bills 2010

This Submission is made on behalf of the Law Society of South Australia. The Society consents to the publication of the submission.

We accept that this submission is late and we apologise for that. The submission has been prepared by the Society's Human Rights Committee and endorses the position taken by the Law Council of Australia.

The Society supports the enactment of the *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010*, as a step towards a stronger accountability of our Government institutions to human rights in this country.

The Society has a proud record of promoting and advocating for the protection of human rights in Australia. It contributed to the national debate on the development of a Human Rights Framework for Australia and made a written submission to the National Human Rights Consultation Committee. The following comments were prepared by the Society's Human Rights Committee after its review of the proposed Bills and the accompanying explanatory memoranda as well as the Second Reading Speech of the Attorney-General.

Whilst appreciating the reference to the seven core international instruments in the *Human Rights (Parliamentary Scrutiny) Bill 2010*, the language in Clause 3, paragraph 2 of that Bill is somewhat ambiguous as to the exact nature of Australia's international human rights obligations. It is our view that the Committee should have the ability to review the General Comments of the treaty bodies (these have been compiled by the UN High Commissioner for Human Rights), the jurisprudence of those treaty bodies having the power to consider individual complaints and the recommendations made to Australia after its appearances before the various treaty bodies. The use of the word 'recognised' in both paragraphs 1 and 2 of the Bill might encompass such materials, but alternatively might be construed as limiting the Committee's consideration to the wording of the instruments alone. We believe that the Attorney-General should clarify this point prior to the Bill's enactment. It is vital that the

proposed joint Parliamentary committee have access to the expertise developed by the treaty bodies. Further, for the process to be fully transparent and to assist in developing accountability, the Australian public should be made aware of the comments and recommendations made to the government of Australia after each of its reporting sessions.

In the Explanatory Memorandum accompanying the *Human Rights (Parliamentary Scrutiny) Bill 2010* there is a reference to the Committee's ability under clause 7 to examine witnesses when it determines that a 'more thorough' inquiry is necessary. We would like to urge the Committee and the Attorney-General to ensure that consideration is given to utilising members of the treaty bodies, Special Rapporteurs of the UN Human Rights Council, Special Representatives of the Secretary-General as well as academics and representatives of major Non-government Organisations where the knowledge of such individuals is relevant to a particular inquiry. Australia is part of the international community and its implementation of human rights should take into account the views of those with international expertise.

The text of the Attorney-General's Second Reading Speech referred to the additional resources that will be given to 'Non-Government Organisations to engage and inform the community about human rights.' We believe it would be appropriate for the Attorney-General and the Australian Human Rights Commission to work with State and Territory law societies as well as the Law Council of Australia. The Law Society of South Australia has a proud tradition of engaging in community education and the Law Foundation of South Australia supports a range of community groups in their efforts to improve the public's understanding of law and policy. We are not suggesting that other organisations be excluded from the process, but rather that the government and Commission should inform themselves about the community organisations in existence, their ability to reach the public and the types of public information materials they have produced.

Another issue arising from the Attorney-General's second reading speech is the education and training of the Australian Public Service. There is little information in his remarks about the individuals or organisations that would be undertaking this training. We believe it is important that the public be made aware of the expertise of those providing the training. In addition we are of the view that some assurance should be given that the training will include materials that incorporate the manner in which rights have been interpreted by the international community. If you require any further information concerning this submission please do not hesitate to contact the following members of our Human Rights Committee:

Yours sincerely

Jan Martin
EXECUTIVE DIRECTOR