



HUMAN RIGHTS
COMMISSION

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

Dear Committee

Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010.

Thank you for the opportunity to make a submission to the Committee's inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010 (the Bill).

The Commission supports this Bill, which will establish a Parliamentary Joint Committee on Human Rights, and introduce a new requirement for statements of compatibility to be tabled with all new bills and disallowable legislative instruments. While ultimately the Commission would like to see a full legislative charter of human rights at federal level as recommended by the Brennan Report,¹ the Bill is an important step forward in the protection of human rights in Australia.

As you would be aware, in the ACT, the *Human Rights Act 2004* (HR Act) requires that all Government bills be accompanied by a statement of compatibility and also requires the Scrutiny of Bills Committee to consider human rights in the scrutiny process. Over the first five years of the operation of the HR Act, compatibility and scrutiny mechanisms for the enforcement of human rights have had a clear impact in improving the quality of law making in the ACT. The Commission's submission to the five year review of the HR Act (attached for your information) provides more detail about the operation of the HR Act since its enactment. We consider that the compatibility and scrutiny mechanisms set out in the Bill will play a significant role at federal level in ensuring that human rights are given proper consideration in the development and scrutiny of legislation.

The Commission particularly welcomes the inclusion in the Bill of the full scope of human rights drawn from all seven core human rights treaties to which Australia is a party. The comprehensive scope of rights protected recognises the indivisibility of human rights and the commitment of the Australian government to respecting, protecting and fulfilling human rights under each of these treaties.

¹ National Human Rights Consultation Committee, *Report of the National Human Rights Consultation Committee* (2009), Recommendation 18.

We note that one area where the Bill might be clarified is in relation to the content of compatibility statements. The Attorney-General's media release accompanying the Bill suggests that it is intended the statements should contain detailed reasons as the statements should:

assist in explaining the purpose and intent of legislation, to contextualise human rights considerations, and where appropriate, justify restrictions or limitations on rights in the interests of other individuals or society more generally.²

In our view the requirement for reasoned statements could be made clearer in the Bill, which currently states in cl 9 (2) only that:

A statement of compatibility must include an assessment of whether the legislative instrument is compatible with human rights.

In our view this is important, because in the ACT the absence of reasons for compatibility has reduced the transparency of the compatibility assessment process, and has made it more difficult for the community to understand the reasoning behind compatibility decisions.

We note also that the Bill does not include a general provision regarding permissible limitations on human rights (as is contained in the HR Act in s.28). In our view the ACT provision, which draws upon the jurisprudence of the Supreme Court of Canada in *R v Oakes*,³ has provided important guidance to decision makers and those conducting the scrutiny and compatibility assessment process. Such a provision may assist in the complex process of assessing compatibility against a large number of human rights.

Please let us know if you would like to discuss any of these issues. Our contact officers for this submission are _____

Yours sincerely,

Alasdair Roy

Children & Young People Commissioner
Acting Human Rights & Discrimination Commissioner
Acting Health Services Commissioner and Disability & Community Services Commissioner

9 July 2010

² The Hon Robert McClelland MP, Attorney-General, 'Enhancing Parliamentary Scrutiny of Human Rights', Media release, 2 June 2010.

³ [1986] 1 SCR 103, 138 (per Dickson CJ).