

Received 1/7/09
jul.



Inquiry into the effectiveness of the House Committees

*Submission to the
House Standing Committee on Procedure*

1 July 2009

1 Australian Lawyers for Human Rights

- 1.1 Australian Lawyers for Human Rights (ALHR) is a national network of Australian lawyers active in furthering awareness, understanding and recognition of human rights in Australia. It was established in 1993, and incorporated as an association in NSW in 1998.
- 1.2 ALHR has nearly 1,500 members nationally, most of whom are practising lawyers. Membership also includes non-practising layers, academics, policy makers and law students. ALHR is comprised of a National Committee with State and Territory committees.
- 1.3 ALHR promotes the practice of human rights law in Australia through training, publications and drawing attention to human rights standards. We work with Australian and international human rights organisations to achieve these aims. It is a member of the Australian Forum of Human Rights Organisations and is regularly consulted by government including through the Attorney-General and Department of Foreign Affairs and Trade NGO forums.
- 1.4 ALHR is grateful for the opportunity to present a submission to the House Standing Committee on Procedure. We will focus on the following term of reference, relating

to subject coverage, arguing that the House of Representatives needs to improve human rights scrutiny of bills:

To investigate and report on the effectiveness of House of Representatives domestic and general purpose standing committees including:

the number, subject coverage, membership and means of appointment of committees;

the type of work being undertaken by committees;

the powers and operations of committees;

factors influencing the effectiveness of House committees, including resources and structural issues.

1.5 ALHR submits that there should be better mechanisms to ensure that as Australia commits to new international human rights treaties, these obligations are incorporated into domestic legislation. Further, there should be a more rigorous examination of policies and legislation in the Parliament to ensure they conform to existing obligations. In order to improve the protection of the rights and responsibilities of Australian citizens through Parliamentary processes, ALHR proposes the following reforms.

1.6 First, a national charter of rights should impose an obligation to prepare “statements of compatibility” or “human rights impact statements”. Such an obligation is a feature of many statutory bills of rights. By way of example, s28 of the Charter of Human Rights and Responsibilities Act 2006 (Vic) provides:

(1) *A member of Parliament who proposes to introduce a Bill into a House of Parliament must cause a statement of compatibility to be prepared in respect of that Bill.*

(2) *A member of Parliament who introduces a Bill into a House of Parliament, or another member acting on his or her behalf, must cause the statement of compatibility prepared under subsection (1) to be laid before the House of Parliament into which the Bill is introduced before giving his or her second reading speech on the Bill.*

Note The obligation in subsections (1) and (2) applies to Ministers introducing government Bills and members of Parliament introducing non-government Bills.

(3) *A statement of compatibility must state-*

(a) whether, in the member's opinion, the Bill is compatible with human rights and, if so, how it is compatible; and

(b) if, in the member's opinion, any part of the Bill is incompatible with human rights, the nature and extent of the incompatibility.

(4) *A statement of compatibility made under this section is not binding on any court or tribunal.*

Two important features of that provision should be reflected in a national charter:

(a) First, the obligation should apply to all bills (compare the position in the UK where the obligation applies only to government bills);

(b) Second, the statement should be required to be a substantive statement (see the requirement in s28(3)), rather than a one line assertion that the bill is compatible with human rights. ALHR considers that the requirement should be expressed as a requirement to state "whether, in the member's opinion, the Bill is compatible with human rights and, if so, the reasons why the member considers it to be compatible"

1.7 Second, the statement of compatibility mechanism should be accompanied by a requirement that new bills be scrutinised by a Parliamentary Committee to ensure that they are compatible with human rights. Such a mechanism was discussed by the Victorian Consultative Committee in the following terms:

The Committee received many submissions that stated that once new legislation is introduced into Parliament, a parliamentary committee should scrutinise the legislation and report on its compatibility with the Charter. It was recognised that such a committee can facilitate a more robust debate by providing a clear statement to Parliament about a Bill's

consistency with the Charter. The Australian Human Rights Centre said that such a committee could contribute to a deeper and more considered form of deliberation on the rights implications of all Bills (Report of the Human Rights Consultation Committee on the proposed Victorian Charter, p76).

- 1.8 ALHR considers that those comments apply with equal force to the Commonwealth Parliament.

Recommendation

That a national charter of rights should impose an obligation to prepare “statements of compatibility” or “human rights impact statements”, on the above terms.

2 Machinery

- 2.1 Unlike Victoria, there are no existing Committees that might readily fill such a role. It therefore seems desirable to constitute a new Committee for that purpose. Given the important role of such a Committee, ALHR considers that:

- (a) It should be established by legislation to ensure its ongoing role;
- (b) It should be a joint Committee of both houses of Parliament (modeled on the Joint Standing Committee on Human Rights of the UK Parliament);
- (c) there should be an obligation upon a member introducing a bill to ensure that the Committee has adequate time to consider and report upon the bill prior to any vote being taken;
- (d) the Committee should be required to at least consider whether to seek submissions from the public and conduct public hearings. ALHR recognizes that such a procedure will not be appropriate for every bill reviewed by the Committee. However, for bills which stand to have a significant effect upon human rights, public participation in the Committee process is an important means of ensuring proper scrutiny of the relevant provisions and for identifying unforeseen consequences which could violate Australia’s human rights obligations;
- (e) it should also be provided that the Committee may (via the public inquiry process or otherwise) seek assistance from relevant government departments and other sources of specialised knowledge (eg human rights NGOS and the

Australian Human Rights Commission).

Recommendation

That a new Parliamentary committee be established, on the above terms.

3 Other reforms

3.1 ALHR also submits that the following reforms to Parliamentary processes would assist in ensuring that Australia meets its human rights obligations:

Recommendations

(1) The role of JSCOT could be enhanced in the area of human rights actions by changing the terms of reference for DFAT National Interest Analysis and JSCOT's terms of reference. Alternatively, Australia could bypass JSCOT and adopt the automatic incorporation of international instruments - once a human rights treaty is ratified by the executive it automatically becomes justiciable domestically. (This could be done by a blanket provision similar to ss.2 and 3 of the *European Communities Act 1972* (UK) which incorporates and gives priority to directly effective community law.)

(2) Delegated legislation has a significant impact upon people's lives, and yet is insufficiently scrutinised. The Senate Committee on Regulations and Ordinances should be acknowledged as a powerful accountability mechanism and its resources significantly increased. It should be specifically required to consider whether delegated legislation is consistent with human rights.

(3) An Indigenous Audit Committee should be created. It should be comprised of Indigenous Australians and empowered to examine relevant portfolio estimates from the point of view of impact on Indigenous people. That process might be combined with inclusion of a requirement to consider Indigenous impact in Cabinet Submission process

(4) A Women's Audit Committee or a Standing Committee on Women's Affairs should be created. Australia lacks the kind of parliamentary committees that have responsibility for gender equality matters in European and many other parliaments. In 2008 the Inter-Parliamentary Union (IPU) reported on 80 countries with 93 such parliamentary committees.ⁱ

(5) The Joint Parliamentary Committee on Human Rights referred to above should be required to consider UN treaty body decisions in relation to human rights and determine

how those decisions might be best implemented.

4 Conclusion

4.1 ALHR thanks the Committee for this timely inquiry and stands ready to provide evidence if necessary.

ⁱ IPU, *Equality in Politics: A Survey of Women and Men in Parliaments*, Geneva, IPU, 2008, p 65; IPU, *The Role of Parliamentary Committees in Mainstreaming Gender and Promoting the Status of Women*, Geneva, IPU, 2007.