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**Human Rights and Parliamentary Scrutiny:
Submission to the
House Standing Committee on Procedure:
Inquiry into the Effectiveness of House Committees**

July 2009

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The Human Rights Law Resource Centre acknowledges the pro bono contribution of **Allens Arthur Robinson**, a leading national law firm, in researching and preparing this submission.

About the Human Rights Law Resource Centre

The Human Rights Law Resource Centre (**HRLRC**) is an independent community legal centre that is a joint initiative of the Public Interest Law Clearing House (Vic) Inc and the Victorian Council for Civil Liberties Inc.

The HRLRC provides and supports human rights litigation, education, training, research and advocacy services to:

- (a) contribute to the harmonisation of law, policy and practice in Victoria and Australia with international human rights norms and standards;
- (b) support and enhance the capacity of the legal profession, judiciary, government and community sector to develop Australian law and policy consistently with international human rights standards; and
- (c) empower people who are disadvantaged or living in poverty by operating within a human rights framework.

The four 'thematic priorities' for the work of the HRLRC are:

- (a) the development, operation and entrenchment of Charters of Rights at a national, state and territory level;
- (b) the treatment and conditions of detained persons, including prisoners, involuntary patients and persons deprived of liberty by operation of counter-terrorism laws and measures;
- (c) the promotion, protection and entrenchment of economic, social and cultural rights, particularly the right to adequate health care; and
- (d) the promotion of equality rights, particularly the rights of people with disabilities, people with mental illness and Indigenous peoples.

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1. Introduction

1.1 Scope of this submission

1. The Standing Committee on Parliamentary Procedure has announced an Inquiry into the effectiveness of House Committees (the **Inquiry**).
2. This submission focuses on the second and fourth of the Committee's Terms of Reference namely, 'the type of work being undertaken by committees' and 'the powers and operations of committees'. The HRLRC considers that parliamentary committees should play a more significant role in the promotion and protection of human rights in Australia.
3. This submission analyses the Terms of Reference of the Inquiry with particular reference to the obligations set out in Article 2 of the International Covenant on Civil and Political Rights (**ICCPR**), which provides that:

Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant. ...

4. The fulfillment of obligations under Article 2 of the ICCPR is instrumental to the effective protection of all other human rights, and must be central to any discussion of the role of Parliament, including the role of House Committees.
5. Following the establishment of a Joint Parliamentary Committee to consider human rights issues in the United Kingdom, and similar moves in other jurisdictions, an analysis of the role of such committees in these jurisdictions is useful for considering the best approach to take in Australia.
6. The submission concludes that Parliament should establish a Joint Parliamentary Committee on Human Rights to lead parliamentary engagement with and understanding of human rights issues, including by:
 - (a) scrutinising all Bills and subordinate legislation for compatibility with protected rights;
 - (b) conducting thematic inquiries into human rights issues;
 - (c) monitoring and reporting on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of the Special Procedures of the UN Human Rights Council; and

- (d) monitoring and assisting in government responses to Declarations of Incompatibility (under any Australian Human Rights Act) and other court and tribunal decisions and judgments.

2. The Importance of Strong Parliamentary Human Rights Mechanisms

- 7. Compliance with obligations arising under both international and domestic human rights laws requires effective monitoring systems.
- 8. Parliamentarians are 'essential actors' in the protection and promotion of human rights. According to a recent report by the Inter-Parliamentary Union titled 'Parliament and Democracy in the Twenty-First Century':¹
 - parliamentary activity as a whole – legislating, adopting the budget and overseeing the executive branch – covers the entire spectrum of political, civil, economic, social and cultural rights and has thus an immediate impact on the enjoyment by the people of their human rights...
- 9. It is therefore important that a parliamentary body exist to monitor and take responsibility for the role of the legislature in protecting and promoting human rights. The HRLRC considers that the parliament and government should establish domestic mechanisms to monitor and report on the implementation of human rights obligations, including establishing a Joint Parliamentary Committee on Human Rights. We discuss this in more detail below.
- 10. Currently, Australia is subject to periodic review by UN treaty bodies established under each of the ICCPR, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture, the Convention on the Rights of Persons with Disabilities, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Elimination of All Forms of Racial Discrimination. These reviews provide an opportunity for a comprehensive analysis of the state of human rights in Australia and for a constructive dialogue as to how best to promote and protect these rights between the Government and independent international human rights experts.
- 11. Australia has also accepted the jurisdiction of the Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Racial Discrimination and the

¹ Inter-Parliamentary Union, *Parliament and Democracy in the Twenty-First Century* (2006), available at: <http://www.ipu.org/PDF/publications/democracy_en.pdf>.

Committee on the Elimination of Discrimination against Women to hear and determine individual complaints regarding Australia. The Government is also taking steps to ratify the Optional Protocol on the Convention on the Rights of Persons with Disabilities which would empower the Committee on the Rights of Persons with Disability to determine individual complaints under the CRPD.

12. In addition, the Special Procedures of the UN Human Rights Council may issue findings and recommendations on Australia.
13. However, while international scrutiny and accountability are important aspects of the promotion and protection of human rights, there are currently no formal domestic mechanisms to ensure comprehensive parliamentary scrutiny of human rights, including by independently monitoring and reporting on the implementation of the recommendations of UN treaty bodies or Special Procedures.

3. Improving Parliamentary Mechanisms in Australia

14. The position in Australia with respect to the role of parliament in the implementation of Concluding Observations and Views of treaty bodies can be contrasted with monitoring and implementation mechanisms developed in other jurisdictions, including South Africa, the Netherlands and the United Kingdom.
15. There is currently a review of the Australian human rights framework, – and submissions to the National Human Rights Consultation (**NHRC**) closed on 15 June 2009. The HRLRC made two key submissions to the NHRC: *A Human Rights Act for All Australians*,² which recommended the enactment of a comprehensive national Human Rights Act; and *Engage, Educate, Empower*,³ which suggested a range of complementary legislative, administrative and policy measures to promote human rights. In both submissions, the HRLRC proposed the establishment of a Joint Parliamentary Human Rights Committee (**JPHRC**) to:
 - (a) scrutinise all Bills and subordinate legislation for compatibility with protected rights;
 - (b) conduct thematic inquiries into human rights issues;

² Available at <<http://www.hrlrc.org.au/content/topics/national-human-rights-consultation/a-human-rights-act-for-all-australians/>>.

³ Available at <<http://www.hrlrc.org.au/content/topics/equality/engage-educate-empower/>>.

- (c) monitor and assist in government responses to Declarations of Incompatibility under any Australian Human Rights Act and other court and tribunal decisions and judgments; and
 - (d) monitor and report on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of the Special Procedures of the UN Human Rights Council.
16. The UK Joint Committee on Human Rights has similar functions and is an example of an extremely effective parliamentary committee. It has been described as 'one notable way in which parliamentary accountability is being enhanced.'⁴
17. The scrutiny of new and existing legislation for compatibility with protected rights is an important preventative measure that can reduce the risk of legislation infringing human rights. The Committee should be given the power to review all legislation – proposed or existing, primary or subordinate – of its own motion, in response to a report from an independent body such as the Australian Human Rights Commission, or following referral from either House of Parliament. The Committee should have the usual powers of parliamentary committees, including receiving submissions from relevant stakeholders and reporting back to Parliament with findings and recommendations.
18. The JPCHR could also lead parliamentary engagement with, and understanding of, human rights issues and monitor and report on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of the Special Procedures of the UN Human Rights Council.
19. The UN Human Rights Committee's recent Concluding Observations on Australia recommended that Australia establish a mechanism to consistently ensure the compatibility of domestic law with the Covenant⁵ and establish appropriate procedures to implement views of the Committee in individual cases.⁶

⁴ Anthony Lester, 'Parliamentary Scrutiny of Legislation under the Human Rights Act 1998' (2002) 33 *Victoria University of Wellington Law Review* 1, 2.

⁵ Human Rights Committee, Concluding Observations of the Human Rights Committee: Australia [8], UN Doc CCPR/C/AUS/CO/5 (2009).

⁶ Human Rights Committee, Concluding Observations of the Human Rights Committee: Australia [10], UN Doc CCPR/C/AUS/CO/5 (2009).

Recommendation: Establish a Joint Parliamentary Committee on Human Rights

The Parliament should establish a Joint Parliamentary Committee on Human Rights to lead parliamentary engagement with and understanding of human rights issues, including by:

- (a) scrutinising all Bills and subordinate legislation for compatibility with protected rights;
- (b) conducting thematic inquiries into human rights issues;
- (c) monitoring and reporting on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of the Special Procedures of the UN Human Rights Council; and
- (d) monitoring and assisting in government responses to Declarations of Incompatibility (under any Australian Human Rights Act) and other court and tribunal decisions and judgments.

4. Parliamentary Mechanisms – Comparative Jurisdictions

4.1 Overview

20. The United Kingdom and Canada have each established a parliamentary mechanism relating to human rights. Each of these parliamentary mechanisms are focused, at least in part, on monitoring the compliance of the relevant state with its international human rights obligations.
21. In the United Kingdom, the Joint Parliamentary Committee on Human Rights has been established as part of the parliamentary framework and has been described as ‘central’ and ‘influential’ to the enterprise of human rights in the political process.⁷ The Council of Europe has recommended the model and modalities of the UK Joint Parliamentary Committee on Human Rights as a model for other member states.
22. In Canada, the Senate Standing Committee on Human Rights has a mandate covering human rights generally. The Committee's orders of reference for 2009 include the request to review the machinery of government dealing with Canada's international and national human rights obligations.

⁷ David Feldman, ‘The Impact of Human Rights on the UK Legislative Process’ (2004) 25 *Statute Law Review* 91, 115.

23. While neither the Netherlands, South Africa nor New Zealand has established a formal parliamentary mechanism as described above, they have in place mechanisms to ensure that human rights are given due consideration.
24. In relation to the type of work to be undertaken by House Committees and the Powers and Operations of House Committees, we set out in more detail below the various parliamentary mechanisms formed to consider human rights in each of the United Kingdom, Canada, the Netherlands, New Zealand and South Africa.
25. We have also included information on other jurisdictions to provide the House Standing Committee with illustrations of alternative means of dealing with the powers and operations of the parliamentary human rights committees.

4.2 The United Kingdom

26. The Joint Committee on Human Rights was established in 2001 and comprises 6 members from each of the House of Commons and the House of Lords.
27. The Joint Committee on Human Rights cannot consider individual cases, but considers a range of broader issues in the human right arena. As discussed above, the functions of the Joint Committee include:
 - (a) legislative scrutiny – this involves scrutinising and reporting on Bills for their human rights compatibility and implications. The JCHR aims to complete these reports before the second reading;
 - (b) monitoring and reporting on Declarations of Incompatibility – this involves reporting on responses to Declarations of Incompatibility made by UK courts under the Human Rights Act;
 - (c) monitoring of European Court of Human Rights judgments and remedial orders – this involves scrutinising and reporting on adverse judgments from the European Court and, where appropriate, making recommendations to prevent repetition of the violation and adequate remediation;
 - (d) scrutiny of compliance with UN human rights treaties – this involves monitoring implementation of the Concluding Observations of UN treaty bodies. According to the Committee, it also ‘serves a wider purpose of directing domestic parliamentary and public attention to the extent to which the Government’s policy is in accordance with the provisions of those human rights treaties by which the Government is bound in international law, stimulating debate about the treaties themselves and the human rights principles which they embody. By focusing attention on the implications of each of these treaties in each reporting round we would also hope proactively to influence

the Government in its policy stance as it prepares to submit its next periodic report to the monitoring body';⁸

- (e) scrutiny of human rights treaties pre-ratification – this involves 'reporting to Parliament on all human rights treaties before they are ratified if they raise any significant issues of which Parliament should be made aware';
 - (f) urgent and thematic inquiries – for example, currently, the Committee is conducting an inquiry into business and human rights. They are considering issues such as the way in which businesses can affect human rights and whether the existing UK regulatory, legal and voluntary framework provides adequate guidance and clarity to business as well as adequate protection to individual rights.⁹; and
 - (g) monitoring implementation of the Human Rights Act and human rights institutions.¹⁰
28. The Committee currently meets at least once per week during parliamentary session. In discharging its functions, it very often seeks written submissions from government, legal practitioners, non-government organisations and associations, and human rights advocates. Occasionally, the Committee also takes oral evidence.
29. As discussed above, the Council of Europe has recommended the model and modalities of the UK Joint Parliamentary Committee on Human Rights as a model for other member states.¹¹

4.3 Canada

30. Canada has a Senate Standing Committee on Human Rights, with a mandate of 'matters relating to human rights generally.' Among the Committee's orders of reference for the 2009 parliamentary session is the request to 'monitor issues relating to human rights and, inter alia, to review the machinery of government dealing with Canada's international and national

⁸ Joint Committee on Human Rights, *The Committee's Future Working Practices: Twenty-Third Report of Session 2005-06* (2006), from < <http://www.parliament.the-stationery-office.com/pa/jt200506/jtselect/jtrights/239/239.pdf>>, accessed 1 July 2009, [65].

⁹ 'Joint Committee on Human Rights Press Notice No. 45', *UK Parliament*, from <http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/jchrpn045_090609.cfm>, accessed 30 June 2009.

¹⁰ See generally, Joint Committee on Human Rights, *The Committee's Future Working Practices: Twenty-Third Report of Session 2005-06* (2006), from < <http://www.parliament.the-stationery-office.com/pa/jt200506/jtselect/jtrights/239/239.pdf>>, accessed 1 July 2009.

¹¹ Further information about the work of the Committee is available in their 2007 Annual Report at <http://www.publications.parliament.uk/pa/jt200708/jtselect/jtrights/38/3802.htm>.

human rights obligations'. The Committee has also been asked this year to 'monitor the implementation of recommendations contained in the Committee's report entitled 'Children: The Silenced Citizens: Effective Implementation of Canada's International Obligations with Respect to the Rights of Children'.

31. The House of Commons has a Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. Its mandate includes the examination of any report submitted by the Canadian Human Rights Committee. The House of Commons also has a Subcommittee on International Human Rights. Its sphere of activity is focused on human rights and the dissemination of information gathered through investigation.

4.4 The Netherlands

32. New legislation must be drafted according to 'legislative instructions' which contain a set of quality standards that must be met, including a determination as to whether there are 'higher rules' which constrain the drafting process. These higher rules include obligations laid down in international human rights instruments. In addition, the instructions mandate that an explanatory memorandum be attached to new laws addressing its relationship to other legislation and international law.
33. While legislation is still in the draft phase, external stakeholders (e.g. representatives of the legal profession and the judiciary) are consulted about the draft legislation. The explanatory memorandum appended to every bill is provided to these individuals and organisations, and their input that often leads to changes in the bill.¹²
34. Further, in the Netherlands the law requires the government report to Parliament every four years on the implementation of the Convention for the Elimination of Discrimination Against Women before presenting its report to the Committee on the Elimination of Discrimination against Women. The concluding comments of the Committee are also presented to Parliament.¹³

¹² 'National Report by the Kingdom of the Netherlands for the Universal Periodic Review: February 2008', *Office of the High Commissioner of Human Rights*, from http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/NL_NL_UPR_S1_2008_Netherlands_uprsubmission.pdf accessed 30 June 2009

¹³ Inter-Parliamentary Union, *Parliament and Democracy in the Twenty-First Century* (2006), available at: http://www.ipu.org/PDF/publications/democracy_en.pdf at 160.

4.5 New Zealand

35. The process of passing legislation in New Zealand includes the referral of the Bill to a select committee for further consideration (between the first and second reading). The Select Committee may consider the compliance of proposed legislation with international instruments.
36. The Foreign Affairs, Defence and Trade Committee considers bills, petitions, international treaties and other matters referred by the House of Representatives. It may conduct inquiries on its own initiative. Its work in the past has included initiating an inquiry into the role of human rights in foreign policy, considering the International Crimes and International Criminal Court Bill and examining the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

4.6 South Africa

37. In South Africa, all national reports submitted under human rights treaties are debated in parliament. In the course of debate, parliament holds public hearings, calls in ministers and requests documents and reports from a wide range of departments and citizens' groups. Members of parliament are included in national delegations to the treaty bodies, ensuring that they better understand the treaty bodies' recommendations.
38. The Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons monitors and evaluates progress with regard to the improvement in the quality of life and status of children, youth and disabled persons in South Africa. It does so with special reference to the government's commitments in respect of any applicable international instruments and to duties and responsibilities in respect of any applicable legislation. It may also put forward non-binding recommendations to both or either of the Houses of Parliament. The Committee sets its own agenda and has the power to summon any person to appear before it and to order the production of documents.
39. Similarly, the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women has a mandate to monitor and evaluate progress with regard to the improvement in the quality of life and status of women in South Africa, with specific reference to the Government's commitments to the Beijing Platform of Action, regarding the implementation of the Convention on the Elimination of Discrimination against Women and in respect of any other applicable international instruments.

4.7 Belgium

40. The Justice Committee is a permanent committee responsible for monitoring human rights issues within Belgium.

41. The Exterior Relations Committee considers external human rights problems and the ratification of international human rights treaties. The Exterior Relations Committee is responsible for dealing with human rights issues outside Belgium's national boundaries and issues concerning the ratification of international human rights instruments. The Committee is composed of seventeen members and, other than in special circumstances, meetings are conducted publicly. The Exterior Relations Committee has examined a number of issues, including the delivery of Belgian weapons to Nepal and the political situation in Nepal, and the proposal for a resolution relating to the sentence condemning Amina Lawal, a Nigerian woman sentenced to death under Islamic law, to death by stoning in Nigeria.¹⁴
42. Both committees set their own agenda and their meetings are typically held in public. The committees can adopt motions and resolutions and discuss draft legislation. These are subsequently submitted to the plenary House, which then votes on them.

4.8 Germany

43. Within the federal Parliament (the German Bundestag), the Committee on Human Rights and Humanitarian Aid has responsibility for human rights and humanitarian policy.
44. The Committee examines draft laws and motions put forward by parliamentary groups, as well as government reports and documents (such as the biennial human rights reports prepared by the Bundestag).
45. The Committee's mandate extends to human rights and humanitarian issues at both national and international levels. For example, the Committee was influential in the establishment of the German Institute of Human Rights. In March 2004, the Committee drew attention to humanitarian and human rights issues in Afghanistan following a visit by Committee delegates.
46. The Committee comprises 16 members of the Bundestag, who are nominated by their parliamentary groups in proportion to their representation in the Bundestag. Between 1998 and 2005, the Committee held 158 meetings.

4.9 Norway

47. Standing Committees in Norway are preparatory bodies that serve and report to the Norwegian Parliament, the Stortinget, making written recommendations on matters referred to them by the Stortinget.

¹⁴ 'Belgium: Chambre des Représentants', *Inter-Parliamentary Union*, from

Standing Committee on Foreign Affairs

48. The Standing Committee on Foreign Affairs considers all foreign affairs issues, including matters relating to agreements between Norway and other states or international organisations. These matters include human rights agreements. This committee is appointed by the Stortinget for a period of four years, and has 15 members.

Standing Committee on Justice

49. The Standing Committee on Justice considers all issues within the mandate of the Ministry for Justice, including human rights at the national level. This committee is also appointed by the Stortinget for a period of four years, and has 11 members.