



Australian
Human Rights
Commission

everyone, everywhere, everyday

Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010

Australian Human Rights Commission Submission
to the Senate Legal and Constitutional Affairs
Committee

7 July 2010

1 Introduction

1. The Australian Human Rights Commission (the Commission) makes this submission to the Senate Legal and Constitutional Affairs Committee in its Inquiry into the *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010* (the bills).
2. The Commission is established by the *Australian Human Rights Commission Act 1986* (Cth) and is Australia's national human rights institution.
3. The Commission supports the passage of the bills.
4. The Commission considers that the proposed Joint Parliamentary Committee will form an important mechanism at the parliamentary level to ensure that the human rights impact of legislation and delegated instruments are fully considered as part of the policy development process.
5. The Commission hopes that over time the Committee's operation will contribute to broad acceptance and understanding of human rights in Australia, and that its role will be seen as an accepted and expected level of scrutiny for all proposed legislation.
6. The Commission makes **4 recommendations** intended to ensure the most effective operation of the Committee as a human rights scrutiny body, and to better address consequential matters that arise from the bills. We note that some of the matters addressed in our recommendations could be addressed through the practical operation of the Committee once established, whereas others could be most effectively addressed in the legislation itself.
7. The Commission would be willing to expand upon the points raised in this submission at any public hearing of the committee into the bills.

2 Functions of the committee

8. The Commission notes the functions of the Committee as set out in section 7 of the *Human Rights (Parliamentary Scrutiny) Bill 2010*. We support the Committee having a scrutiny role in relation to future legislation (section 7(a)) as well as existing legislation (section 7(b)). We also support the Committee being able to conduct inquiries into other matters relating to human rights upon referral by the Attorney-General (section 7(c)), and note that a referral by a Minister is consistent with the practices of other joint parliamentary committees.
9. **Recommendation 1: The Commission recommends that the functions of the Committee be expanded to include an ability to initiate and conduct inquiries regarding the issues raised in the findings of United Nations treaty bodies (such as concluding observations) and special procedures of the UN Human Rights Council (such as reports of special rapporteurs, working groups and under the Universal Periodic Review process).** Such a function should be able to be self-initiated by the Committee.

10. Australia appears before each UN human rights treaty committee on a periodic basis. Those UN committees provide recommendations on how Australia's human rights performance can be improved, including recommendations about legislative change. For most treaties, for example in the case of the Human Rights Committee and Committee on Economic, Social and Cultural Rights, this is every 5 years. Such an additional function would, therefore, not be onerous.
11. An additional function of this nature would enable the Joint Committee to more efficiently address a range of human rights concerns that may exist across a number of pieces of legislation in a holistic and coordinated manner. It would also ensure a clearer link between international scrutiny and domestic implementation of our human rights obligations.
12. The Commission notes that the Australian Human Rights Framework commits the Government to develop and implement a National Action Plan on Human Rights. In the future, a broad monitoring role on the National Action Plan would also be an appropriate activity for the Joint Committee.

3 Definition of human rights

13. The Commission considers that there should be consistency between the definition of human rights for the purposes of the Joint Committee and for the purposes of the Commission's mandate under the *Australian Human Rights Commission Act 1986*. This will entail amendments to the definition of human rights in the current bills, and the definition of human rights in the *Australian Human Rights Commission Act*.

Amendments to the definition in the bills

14. The Commission notes the definition of human rights in section 3(1) of the *Human Rights (Parliamentary Scrutiny) Bill 2010*. The Commission supports the Committee's role covering the seven human rights treaties that are listed in section 3(1) and to which Australia is a party. However, the Commission also recommends three additions to the jurisdiction of the Committee.
15. Firstly, The Commission notes that the *Australian Human Rights Commission Act 1986* empowers the Commission to investigate complaints and to report to Parliament on breaches of human rights in relation to ILO Convention 111 and the UN Declaration on Religion and Belief. Given that people in Australia have an avenue to pursue a remedy through the Commission where their rights are breached under these instruments, it would be logical for government to ensure processes to assess compatibility with these instruments in order to avoid infringements of people's rights in the first place.
16. Secondly, while the UN Declaration on the Rights of Indigenous Peoples does not create binding legal obligations, it does provide a comprehensive guide to assist in protecting the rights of Indigenous peoples. The rights in the Declaration are covered in the seven instruments listed and under which Australia does have binding legal obligations. Including the Declaration in the definition of human rights would explicitly acknowledge this connection and

ensure that the rights of Indigenous peoples are explicitly considered in the development of statements of compatibility and by the Joint Committee. It would also give meaning to Australia's formal position that it supports the Declaration.

17. Recommendation 2: The Commission recommends that the following instruments be included in the definition of human rights in the bills:

- **International Labour Organisation Convention 111 concerning Discrimination in Respect of Employment and Occupation**
- **UN Declaration on the elimination of Intolerance and Discrimination Based on Religion and Belief**
- **UN Declaration on the Rights of Indigenous Peoples.**

Amendments to the definition in the Australian Human Rights Commission Act 1986

18. The Commission notes that the first key principle of the Australian Human Rights Framework is based on reaffirming our 'commitment to promoting awareness and understanding of human rights in the Australian community and respecting the seven core United Nations human rights treaties to which Australia is a party.'¹ The absence of some of these core treaties from the mandate of the Australian Human Rights Commission is a longstanding concern and is inconsistent with this commitment. It should be addressed through this legislative process in order to ensure that the Commission's work can fully reflect the purposes of the Australian Human Rights Framework.

19. Furthermore, for the reasons stated above, there should be consistency between the definitions of human rights.²

20. Recommendation 3: The Commission recommends that the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010* include amendments to the *Australian Human Rights Commission Act 1986* to include the following instruments within the definition of human rights for the purposes of that Act:

- **International Covenant on Economic, Social and Cultural Rights;**
- **Convention Against Torture and Other Cruel, Inhuman or Degrading treatment or Punishment; and**
- **UN Declaration on the Rights of Indigenous Peoples.**

¹ Attorney-General, *Australian Human Rights Framework*, p3.

² See also the Commission's submission to the National Human Rights Consultation, which also called for these instruments to be scheduled to the AHRC Act. Available online at: http://humanrights.gov.au/legal/submissions/2009/200906_NHRC.html.

4 Operational matters

21. The Commission also makes the following brief comments on administrative and technical matters relating to the bills. These are matters of implementation, once the bills are passed, rather than requiring amendment to the legislation.
22. The Commission believes that the Committee will be best able to execute its complex role with the assistance of independent legal advice. This will require adequate resourcing of the committee to ensure such advice as required. This is a common practice for committees of this nature. It is also a common feature of parliamentary scrutiny committees on human rights in other jurisdictions (such as in Victoria and in the United Kingdom).
23. The Commission notes that section 8(3) of the bill states that “a statement of compatibility must include an assessment of whether the Bill is compatible with human rights”. The Commission reads this as requiring a narrative assessment of whether a bill complies with human rights, as well as reasons and justifications for why any limitations on rights are included in proposed legislation.
24. The Commission also notes that ordinary principles of interpretation of human rights would include international jurisprudence of UN human rights treaty committees, general comments of the treaty committees and international customary law.
25. The Commission notes that the Human Rights Law Resource Centre’s submission to this inquiry provides useful elaboration on the operational considerations in the preparation of statements of compatibility and in the interpretation of human rights.
26. **Recommendation 4: Bearing in mind the three above recommendations, the Commission recommends that the bills be passed.**

5 Recommendations

The following recommendations are included at the relevant section of the submission above.

Recommendation 1: The Commission recommends that the functions of the Committee be expanded to include an ability to initiate and conduct inquiries regarding the issues raised in the findings of United Nations treaty bodies (such as concluding observations) and special procedures of the UN Human Rights Council (such as reports of special rapporteurs, working groups and under the Universal Periodic Review process).

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Recommendation 4: Bearing in mind the three above recommendations, the Commission recommends that the bills be passed.