



**Australian
Human Rights
Commission**

President

Professor Gillian Triggs

13 December 2013

Senator John Williams
Chair
Senate Environment and Communications Legislation Committee
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Dear Chair,

Submission on the Parliamentary Proceedings Broadcasting Amendment Bill 2013

The Commission makes this short submission to the Committee on the technical operation of the *Parliamentary Proceedings Broadcasting Amendment Bill 2013*. The Commission would like to draw to the Committee's and Parliament's attention the human rights considerations which are relevant to rules which seek to prohibit the re-broadcasting of parliamentary proceedings for the use of 'satire or ridicule'.

In particular, the Commission urges that the right to freedom of expression and the right to participation in public affairs, protected by articles 19 and 25 of the *International Covenant on Civil and Political Rights* (ICCPR) respectively, be given full consideration in the Committee's inquiry.

The right to freedom of expression in article 19(2) includes the right to seek, receive and impart information and ideas of all kinds. The UN Human Rights Committee (HRC) has stated that a critical element of the right to freedom of expression protected by article 19(2) of the ICCPR is the free communication of information and ideas about public and political issues.¹

In this respect, the HRC has made clear the close relationship between articles 19 and 25, explaining that in order for there to be full enjoyment of the rights in article 25 to participate in public life and to vote:

the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential. This implies a free press and other media able to comment on public issues without censorship or restraint and to inform public opinion.²

Accordingly, the HRC has stated that read together, articles 19 and 25 imply that 'citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information and opinions about the activities of elected bodies and their members.'³

The HRC has also made clear that States Parties must ensure that the right to freedom of expression is 'given effect to in the domestic law of the State'.⁴

Permissible restrictions

Restrictions on the right to freedom of expression in the ICCPR are only permitted in limited circumstances. Article 19(3) provides that the right in article 19(2) can only be subject to restrictions which are 'provided by law' and are 'necessary for respect of the rights or reputations of others' or 'for the protection of national security or of public order (*ordre public*), or of public health or morals.'

Restriction of the right which are 'provided by law' may include rules which follow from the law of parliamentary privilege.⁵ However, the HRC has stated that any law restricting freedom of expression 'may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution.'⁶ Rather, the relevant law should be 'formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly':⁷

Laws must provide sufficient guidance to those charged with their execution to enable them to ascertain what sorts of expression are properly restricted and what sorts are not.⁸

The HRC has also warned that restrictions must not be 'overbroad'; there are strict tests of necessity and proportionality with which any restrictions to freedom of expression must comply.⁹ The HRC has expressed the view that the principle of proportionality requires that restrictions on freedom of expression within the political domain receive particular scrutiny because:

[T]he value placed by the Covenant upon uninhibited expression is particularly high in the circumstances of public debate in a democratic society concerning figures in the public and political domain.¹⁰

The Commission submits that particularly relevant to the Committee's present inquiry are the HRC's comments that:

[T]he mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties... all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition. Accordingly, the Committee expresses concern regarding laws on such matters as, lese majesty, *desacato*, disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.¹¹

The HRC has found that parliamentary rules restricting freedom of speech, such as rules 'for the protection of Parliamentary procedure', are subject to the proportionality requirement in article 19(3).¹²

The Commission's position

The Commission considers that the re-broadcasting of parliamentary proceedings for the purposes of satire or ridicule fall within the right to freedom of expression protected by article 19 of the ICCPR. Any restrictions on the re-broadcasting of these proceedings must therefore be necessary and proportionate to the aims pursued by such restrictions. The Commission cannot envisage a sufficient justification for a blanket prohibition on re-broadcasting parliamentary proceedings for the purposes of satire or ridicule.

Yours sincerely,

Gillian Triggs

President

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- ¹ Human Rights Committee, *General Comment No. 34: Article 19: Freedom of opinion and expression*, UN Doc CCPR/C/GC/34 (2011), para 13.
- ² Human Rights Committee, *General Comment No. 25: The right to participate in public affairs, voting rights and the right of equal access to public service (Art. 25)*, UN Doc CCPR/C/21/Rev.1/Add.7, (1996), para 25.
- ³ Human Rights Committee, *Gauthier v Canada*, Communication No. 633/95, U.N. Doc. CCPR/C/65/D/633/1995 (1999), para 13.4.
- ⁴ Human Rights Committee, *General Comment No. 34*, note 1, para 8.
- ⁵ See Human Rights Committee, *Gauthier v Canada*, note 3.
- ⁶ Human Rights Committee, *General Comment No. 34*, note 1, para 25.
- ⁷ Above , paras 24-25.
- ⁸ Above , para 25.
- ⁹ Above , para 34.
- ¹⁰ Above, paras 34 and 38.
- ¹¹ Above, para 38 (citations omitted).
- ¹² Human Rights Committee, *Gauthier v Canada*, note 3.