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NTEU Response to the *Senate Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010*

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The National Tertiary Education Union (NTEU) represents approximately 25,000 members employed in Australia's higher education sector, including academic, professional and technical staff employed at every Australian university.

NTEU welcomes the opportunity to respond to the Senate Inquiry into the *Human Rights (Parliamentary Scrutiny) Bill 2010* (hereafter referred to as the Bill).¹ Australia's reputation as an advocate for the protection of human rights within the international community is longstanding, from Australia's involvement in the formation of the United Nations through to participation in the drafting of many international human rights treaties and treaty bodies over many decades.

A stronger commitment to Australia's international obligations is clearly desirable in terms of building Australia's reputation and engagement within the global community. The introduction of Federal legislation is also crucial as a legal foundation for the domestic protection of human rights. Legislative reform is necessary for the purposes of establishing both local engagement and domestic jurisprudence around the interpretation of Australia's human rights commitments. NTEU believes the Bill is a timely addition to the Australian human rights framework.

NTEU acknowledges and endorses the ACTU's submission to the Senate Inquiry which focuses on the following areas of the proposed Bill:

- Capturing the full scope of internationally protected human rights;
- Capturing the Australian context; and
- Procedural issues relating to the Statement of Compatibility including: the role of the bureaucracy; the function of the Committee and the power and proceedings of the Committee.

Further to the ACTU submission, NTEU wishes to raise the following specific issues to ensure the Bill captures the full scope of Australia's international human rights obligations.

Capturing the full scope of internationally protected human rights

Under Section 3, the Bill prescriptively limits the definition of 'human rights' to rights and freedoms recognised or declared under the following international treaties and conventions;

- (a) the International Convention on the Elimination of all Forms of Racial Discrimination (1965);
- (b) the International Covenant on Economic, Social and Cultural Rights (1966);
- (c) the International Covenant on Civil and Political Rights (1966);
- (d) the Convention on the Elimination of All Forms of Discrimination Against Women (1979);

¹ Senate Legal and Constitutional Committee, 2010, *Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010*, http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills/info.htm

- (e) the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984);
- (f) the Convention on the Rights of the Child (1989);
- (g) the Convention on the Rights of Persons with Disabilities (2006).

Like the ACTU submission, NTEU believes that the definition of 'human rights' should be broadened. There are other universal instruments that relate to human rights other than those currently listed above. The list fails to adequately capture the international obligations that Australia maintains either as a direct signatory, or as a member state within the UN human rights structure. NTEU is concerned that major areas of the United Nations human rights architecture that Australia is committed to upholding are excluded by the narrowing of the definition of 'human rights'.

The ACTU submission establishes these concerns in terms of a range of labour rights outlined in basic ILO conventions, drawing particular attention to the eight conventions highlighted in the ILO's 1998 *Declaration on Fundamental Principles and Rights at Work*.² NTEU would draw attention to the fact that the Bill's definition of human rights fails to address:

- Conventions, declarations and recommendations flowing from membership of various specialised agencies including the ILO and UNESCO,
- the United Nations Declaration on the Rights of Indigenous Peoples (2007) which Australia formally endorsed on April 3, 2009,
- Prospective human rights obligations that Australia may become a signatory to in the future.

a) Participation in specialised agencies such as the ILO and UNESCO

Specialised agencies are autonomous organisations that work within the UN through the Economic and Social Council. There are currently 17 specialised agencies of the UN, and Australia plays a prominent role in a number of these including:

- The International Labour Organisation (ILO)
- The United Nations Educational, Scientific and Cultural Organisation (UNESCO)

A number of specialised agencies have a longstanding role in the protection of human rights and workers rights. For instance, the ILO since its inception in 1919 has sought to protect human rights through the promotion of principles such as 'freedom of association'. The ILO Declaration of Philadelphia (1944) emphasises that labour is not a commodity, and that freedom of expression and association are essential for human progress.³

Likewise, UNESCO which was established in 1946 states in Article I of its Constitution that its purpose is 'to contribute to peace and security by promoting collaboration among nations through education, science, and culture in order to further universal respect for justice, for

² *ILO Declaration on Fundamental Principles and Rights*, 1998, <http://www.ilo.org/declaration/lang--en/index.htm>

³ *ILO Declaration of Philadelphia*, 1944, http://www.ilocarib.org.tt/projects/cariblex/conventions_23.shtml

the rule of law, and for the human rights and fundamental freedoms which are affirmed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.' The UNESCO Constitution also recommends that member states establish 'National Commissions' to assist government on their participation in UNESCO. The Australian National Commission for UNESCO was established in 1947 shortly after UNESCO itself.

Within UNESCO's broad aims and activities, of particular significance to Australian higher education institutions and staff has been the 1997 *Recommendation concerning the Status of Higher-Education Teaching Personnel*,⁴ a statement adopted by the General Conference of UNESCO in 1997, and administered jointly by UNESCO and the ILO through the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART).⁵

The ratification of this UNESCO Recommendation was crucial in the NTEU's international complaint to both the ILO and UNESCO over the Howard government's Higher Education Workplace Requirements (HEWRRs) in 2006.⁶ NTEU wrote to UNESCO and the ILO alleging that aspects of both the HEWRRs and the National Governance Protocols were at variance with the standards contained in the Recommendation.

CEART found in September 2008 that: (1) the evidence presented by the Federal government did not sustain its own view that the intention of the HEWRRs requirements was to increase workplace flexibility and higher productivity through individual performance agreements; and (2) the potential for politically motivated decisions was considerable because decisions of compliance were solely the prerogative of the Minister for Education.

The Joint Committee thus recommended that the Australian Government review its policies where additional funding for higher-education institutions was linked to compliance with National Governance Protocols and HEWRRs. The purpose was to ensure a proper balance was struck between respect for institutional autonomy and institutional accountability.

Amongst a range of recommendations it also requested that the Australian government review and where necessary modify national legislation and policy which may have the effect of undermining the provisions of the 1997 Recommendation on negotiation of the terms and conditions of employment in higher-education institutions. On Wednesday 13 February 2008 then Deputy Prime Minister Julia Gillard tabled legislation in the Lower House to repeal the HEWRRs and the National Governance Protocols.⁷

NTEU is concerned that under the current definition of 'human rights' the Parliamentary Joint Committee would have only a limited capacity to evaluate issues of compatibility in relation

⁴ *Recommendation concerning the Status of Higher-Education Teaching Personnel*, 1997,

http://portal.unesco.org/en/ev.php-URL_ID=13144&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁵ Joint ILO–UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART), <http://www.ilo.org/public/english/dialogue/sector/techmeet/ceart/>

⁶ NTEU International Complaints webpage, http://www.nteu.org.au/campaigns/archive/higheredatrisk_1/international

⁷ Parliamentary Library, *Higher Education Support Amendment Bill 2008*, 2008, <http://www.aph.gov.au/library/pubs/bd/2007-08/08bd074.pdf>

to international human rights obligations such as those that arise under UNESCO conventions.

b) Declaration on the Rights of Indigenous Peoples (2007)

The *Declaration on the Rights of Indigenous Peoples* was adopted by the General Assembly of the United Nations on Thursday 13 September 2007.⁸ At the time Australia was one of four countries who voted against the Declaration. On Friday 3 April 2009, the Australian Government made a statement reversing its opposition to the Declaration.

We should recognise that the Declaration is an international instrument that encourages respect for human rights between governments and Indigenous peoples. Article 46 of the Declaration states that the 'Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance and good faith'.

Minister for Indigenous Affairs, Jenny Macklin, considered that the Declaration's fundamental principles were mirrored in Australia's human rights obligations, 'The Declaration gives us new impetus to work together in trust and good faith to advance human rights and close the gap between Indigenous and non-Indigenous Australians. The Declaration recognises the legitimate entitlement of Indigenous people to all human rights - based on principles of equality, partnership, good faith and mutual benefit'.⁹

It is also important to consider the relevance of the Declaration to Australia's human rights framework by drawing attention to the *National Human Rights Consultation* final report which at Chapter 9 focused upon the need for a framework to consider the distinct impact of legislative acts upon Aboriginal and Torres Strait Islander peoples (Recommendation 15) as well as a negotiated framework for self-determination (Recommendation 16).¹⁰ Considering the Federal Government's strong stated commitment to 'closing the gap', it is a major concern that the *Declaration on the Rights of Indigenous Peoples* has not explicitly been included as a 'human rights' matter within the auspice of the Joint Committee.

c) Prospective human rights obligations and commitments

By listing the relevant treaties, the Bill's definition of human rights also presupposes that human rights are static. NTEU would prefer a definition of human rights which acknowledges the human rights infrastructure as progressive and evolving.

NTEU calls for a definition of human rights which acknowledges all international human rights obligations, both current and future, that Australia supports as a result of participation within the UN treaty system or as a participant of the UN human rights apparatus.

⁸ *Declaration on the Rights of Indigenous Peoples*, 2007, <http://www2.ohchr.org/english/issues/indigenous/declaration.htm>

⁹ Jenny Macklin, 2009, 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples Parliament,' http://cigj.anu.edu.au/cigj/link_documents/News/Copy%20of%20JENNY%20MACKLIN%20MP.pdf

¹⁰ National Human Rights Consultation Report, 2009, http://www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report_NationalHumanRightsConsultationReportDownloads#pdf