

**AMNESTY
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Submission to the

Standing Committee on Legal and Constitutional Affairs
Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010

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Submitted by

Amnesty International Australia



Executive summary

Amnesty International welcomes the introduction of the Human Rights (Parliamentary Scrutiny) Bill 2010. A Parliamentary Scrutiny Committee tasked with assessing legislation on the basis of adherence to the seven major international human rights instruments to which Australia has committed to upholding is a positive step towards human rights protection in this country. Nevertheless we are disappointed that the Australian Government has not enacted the recommendation of the National Human Rights Consultation Committee (NHRCC report) and ignored the calls of over 29,000 Australians and experts that outlined the need for overarching Federal human rights legislation.

In the absence of a Human Rights Act, the Human Rights (Parliamentary Scrutiny) Bill 2010 if implemented in full will be a useful and tangible measure to further the human rights protection for people in Australia. This will require thorough and consistent compatibility statements; thorough training of Ministers; guidance to Departments; adequate time and resources made available to the Committee and public and expert consultation where proposed legislation is likely to have an adverse human rights impact for any group or individual. We are concerned that it is only new legislation - and that human rights issues referred to the committee by the Attorney General - that the committee is able to assess. This leaves retrospective legislation and any continuing causal human rights violations unaddressed, for example – the Northern Territory Emergency Response Act 2007, Anti-Terrorism Bill (No.2) 2005 and the Migration Amendment Excision from Migration Zone) Act 2001.

It is essential that the Committee use the definition of human rights as provided in section 3(1) of the Bill, whereby all of the human rights and freedoms enshrined in all of the core international human rights treaties to which Australia is a party are included.

About Amnesty International

Amnesty International is a worldwide movement to promote and defend all human rights enshrined in the Universal Declaration of Human Rights (UDHR) and other international instruments. Amnesty International undertakes research focused on preventing and ending abuses of these rights. Amnesty International is the world's largest independent human rights organisation, comprising more than 2.8 million supporters in more than 150 countries and has over 100,000 supporters in Australia. Amnesty International is impartial and independent of any government, political persuasion or religious belief. It does not receive funding from governments or political parties.



Introduction

Amnesty International welcomes the opportunity to make a submission to the inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010. We refer the committee to our April 2010 submission into the 'Inquiry into the future direction and role of the Scrutiny of Bills Committee' (Attachment A).

This previous submission addresses many of our concerns relating to broad issues such as time allowances, competing priorities for Committee members and widening the terms of reference for Committees looking at human rights in the manner of the UK Joint Committee on Human Rights which has a much wider remit to address thematic issues of human rights abuse. We acknowledge that this Bill constitutes part of the implementation of Australia's Human Rights Framework announced in April 2010 and we would welcome full implementation of this framework with a view to the adoption of a Human Rights Act.

This submission outlines recommendations to better 'improve parliamentary scrutiny of new laws for consistency with Australia's human rights obligations and to encourage early and ongoing consideration of human rights issues in policy and legislative development'¹, as stated by the Attorney-General as a purpose of this Bill.

Recommended improvements to the Parliamentary Joint Committee on Human Rights

The Bill establishes that the Joint Committee will be able to:

- examine Bills for Acts, and legislative instruments, that come before either House of the Parliament for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- examine Acts for compatibility with human rights, and to report to both Houses of the Parliament on that issue;
- inquire into any matter relating to human rights which is referred to it by the Attorney-General, and to report to both Houses of the Parliament on that matter.²

We welcome the timing of this proposed Committee's assessment and the inclusion of compatibility statements alongside explanatory memorandums in proposed new legislation. Especially given that, as noted in our April 2010 submission, there have been historical incidences where Ministerial response has been provided to Committees after the legislation passed both houses of parliament and received Royal Assent.³ The issues of timing have come up for many federal and state parliamentary Committees, for example in the case of the NSW Legislation review Committee it is noted that 'Controversial legislation fraught with serious human rights concerns has been rushed

¹ The Hon Robert McClelland MP, Attorney-General, *Second Reading Speech*, Human Rights (Parliamentary Scrutiny) Bill 2010, 2 June 2010.

² *Human Rights (Parliamentary Scrutiny) Bill 2010*, section 7, p. 5. Available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/bills/r4380_first/toc_pdf/10123b01.pdf;fileType=application%2Fpdf (viewed June 17 2010).

³ Senate Standing Committee for the Scrutiny of Bills First Report for 2002, 20 February 2002 available at <http://www.aph.gov.au/senate/committee/scrutiny/bills/2002/b01.pdf> (accessed 25.3.10); Senate Standing Committee for the Scrutiny of Bills Ninth report for 2007, 12 September 2007 available at <http://www.aph.gov.au/senate/committee/scrutiny/bills/2007/b09.pdf> (accessed 25.3.10).



through parliament with no opportunity for pre-enactment scrutiny, allowing Government to avoid the scrutiny of Parliament on the grounds of 'urgency'.⁴

To ensure the Committee is able to perform its duties to a high standard and ensure Australia's compliance with international human rights law the Committee will require expertise and or access to in-depth legal knowledge in accordance with all seven international instruments listed. Amnesty International would like to see this Committee address laws deemed by Non-Government Organisations, the Australian Human Rights Commission and UN bodies such as Special Rapporteurs as having human rights concerns. Amnesty International believes that the Committee would have greater independence and impact if this remit was widened. Outside of proposed legislation, the Attorney-General should be only one not the sole source of referral for the Committee.

Recommendation

- Section 7 of the Bill should be amended to widen the Committee's remit, permitting referrals for analysis to be given by sources outside the Attorney General.
- The Committee should establish adequate time, resources, access to expert and public input to ensure that a thorough analysis can take place before a Bill's debate, redraft and passage through either House of Parliament to address controversial legislation and permit independent advice, consultation and legal input as required.

The need for strong statements of compatibility

It is imperative that Ministers and their departments are provided with thorough training and access to necessary international human rights experts in order to address the compliance of proposed legislation with all of the following instruments:

- The International Covenant on Civil and Political Rights
- The international Covenant on Economic, Social and Cultural Rights
- The Convention on the Elimination of All Forms of Racial Discrimination
- The Convention on the Elimination of All Forms of Discrimination Against Women
- The Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
- The Convention on the Rights of the Child
- The Convention on the Rights of Persons with Disabilities.

The role of the Committee is to assess the compatibility of Bills before Parliament with regard to the seven above mentioned instruments. The Committee should not defer to the whole Senate for decision. It should also have responsibility for incorporating future international human rights conventions into its compliance scrutiny.

⁴ Andrew Byrnes, "The protection of human rights in NSW through the Parliamentary process – a review of the recent performance of the NSW Parliament's Legislation Review Committee" (October 2009). *University of New South Wales Faculty of Law Research Series. University of New South Wales Faculty of Law Research Series 2009. Working Paper 44. Page 11.*



The Human Rights (Parliamentary Scrutiny) Bill 2010 currently states that the Committee's statement of compatibility "*does not prescribe a particular form for statements of compatibility but provides that a statement of compatibility must include an assessment of whether the bill is compatible with human rights*".⁵ Amnesty International believes that for such an assessment to be adequate it must include a detailed analysis and an evidence-based explanation. We acknowledge that varying Bills will require varying degrees of analysis and some will have greater potential human rights impact than others. However we are concerned with Attorney-General McClelland's statement of April 21, at the National Press Club pertaining to the issue that 'some Ministers will be better than others at preparing statements of compatibility.' Amnesty International supports the need for a system that sets high minimum standards for these statements and where the Committee and the Attorney General ensures consistency across Minister's statements.

Attachment A refers to the Victorian Equal Opportunity and Human Rights Commission report of 2008 report⁶ addressing the processes of human rights assessment in that state. We understand that the Attorney General's office is investigating the experiences of human rights protection in Victoria and we look forward to a national model that takes the best and learns from this system and also international systems, such as the UK.

The Committee's publications must also serve to inform all parliamentarians of the human rights implications of specific bills before voting on them. It is therefore equally paramount for Ministerial responses to be required to address and justify the reasons for non compliance to specific clauses.

Recommendation

- Require full explanations of where compliance existed and with relevance to which of the seven conventions.
- Require full explanation with reasons where there is a non-compliance.

The Committee's mandate should be expanded to allow for the Committee to regularly conduct more thematic inquiries into human rights issues and how they relate to Commonwealth legislation. The UK Joint Committee on Human Rights, which the Council of Europe describes as one of the most powerful and effective parliamentary human rights scrutiny committees⁷, regularly conducts inquiries on a broad range of areas with human rights implications. Recent inquiries have considered the human rights of: older people in healthcare; counter terrorism policy, the treatment of asylum seekers; mental health care; death in custody and human trafficking.⁸

⁵ Explanatory Memorandum, *Human Rights (Parliamentary Scrutiny) Bill 2010*, Part 3, Clause 8, p. 4. Available at http://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r4380_ems_6087fdb6-e657-4e32-8212-d208be3ec648/upload_pdf/343355.pdf;fileType=application%2Fpdf.

⁶ "Emerging Changes: The 2008 report on the Operation of the Charter of Human rights and Responsibilities" Available at <http://www.humanrightscommission.vic.gov.au/pdf/2008charterreport.pdf>

⁷ Council of Europe Commissioner for Human Rights 'National Human Rights can do more to promote human rights' 16.2.09 available at http://www.coe.int/t/commissioner/Viewpoints/090216_en.asp

⁸ The UK Joint Committee on Human Rights working practices are available at: http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights/legscru200910.cfm

**Recommendation**

- The mandate of the Parliamentary Joint Committee on Human Rights should allow it to conduct regular thematic inquiries into human rights issues and table its recommendations in Parliament.

Further, as part of its human rights monitoring functions, the Committee should also be responsible for overseeing the Australian Government's response to and implementation of Concluding Observations of UN treaty bodies, recommendations of Special Rapporteur and other special procedures. This is necessary to make sure Australia is meeting its international human rights obligations.

Recommendation

- The Parliamentary Joint Committee on Human Rights should monitor and report on Australia's implementation of UN reports.