



WOMEN'S LEGAL SERVICES NSW

Incorporating
Women's Legal Resources Centre
Domestic Violence Advocacy Service
Indigenous Women's Program
Walgett Family Violence Prevention Legal Service
Bourke/Brewarrina Family Violence Prevention Legal Service

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Email: scrutiny.sen@aph.gov.au

By Email

9 July 2010

Dear Committee Secretary,

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

1. Women's Legal Services NSW (WLS NSW) welcomes the invitation and opportunity to make a submission to the Committee's inquiry into the *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010*.
2. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims compensation, care and protection, human rights and access to justice.
3. Our submission is set out in detail below. In short, we have read and wholly endorse the Human Rights Law Resource Centre's submission and also make the following recommendations:
 - 1) A federal Human Rights Act be introduced.
 - 2) The *Declaration on the Rights of Indigenous Peoples* be included in the list of human rights instruments considered in the Bill's definition of human rights.



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- 3) The definition of human rights include recognition of customary international human rights law and international human rights law jurisprudence.
- 4) Committee members be provided with ongoing human rights training to increase the effectiveness of the Committee.
- 5) The Committee Secretariat be adequately resourced and have the appropriate level of knowledge and understanding of human rights.
- 6) Inquiries into any matter relating to human rights occur by resolution of either House.
- 7) The Bill specifically state that the Committee has the power to call for submissions, convene hearings and examine witnesses.
- 8) The Committee's function be expanded to include the power to monitor and report on the implementation of the Concluding Observations, Recommendations and Views of UN treaty bodies and the Recommendations of the Special Procedures and the Universal Periodic Review of the UN Human Rights Council.
- 9) The Committee has sufficient time to assess the compatibility of proposed laws with human rights obligations before they are passed in Parliament
- 10) In order to facilitate community engagement and public awareness about human rights and increase the transparency of the Committee's inquiry process, findings and reports made by the Committee to Parliament be concise and written in plain English.
- 11) The Committee conduct its own inquiries to determine whether a Bill, Act or legislative instrument is compatible with human rights.
- 12) Statements of compatibility be made at the earliest possible stage.
- 13) Government policies and practices be submitted to the Committee for human rights compatibility scrutiny.

Introduction

4. In April 2010, the Australian Government unveiled *Australia's Human Rights Framework*. The Framework is a response to the Government's National Human Rights Consultation, which inquired into the promotion and protection of human rights and responsibilities in Australia. On 2 June 2010, the Attorney General introduced two Bills into the House of Representatives. The *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010* aim to incorporate key elements of the Framework.
5. WLS NSW welcomes the Australian Government's Human Rights Framework. With respect to this inquiry, WLS NSW supports the introduction of a joint committee on human rights and statements of compatibility as a sign of Australia's ongoing commitment to our international human rights obligations.

6. While outside the terms of reference of this inquiry, WLS NSW expresses its disappointment that the Government did not introduce a Human Rights Act.
7. Over 87% of those who raised the issue of a Human Rights Act in their submissions to the National Human Rights Consultation Committee supported the introduction of a Human Rights Act.
8. A Human Rights Act could provide much greater protection than can be achieved through a parliamentary review process alone. A federal Human Rights Act could provide the “teeth” which are missing from the Committee process.¹ It could provide a mechanism to ensure that the day-to-day decision making of Commonwealth public authorities is consistent with human rights. A Human Rights Act could not only help build a culture of human rights, but also provide people with a legal remedy when their rights are breached. WLS NSW refers you to its submission to the National Human Rights Consultation for practical examples of the difference a Human Rights Act could make to its clients.²

Recommendation 1:

A federal Human Rights Act be introduced.

Human Rights

9. WLS NSW commends the definition of “human rights” in s 3 *Human Rights (Parliamentary Scrutiny) Bill 2010* to include “rights and freedoms” as outlined in the seven international human rights instruments to which Australia is a party, including the *Convention on the Elimination of Discrimination Against Women*. This acknowledges that human rights are interdependent and indivisible.
10. WLS NSW notes that the *Declaration on the Rights of Indigenous Peoples* is not included within the definition of human rights in the *Human Rights (Parliamentary Scrutiny) Bill 2010* and recommends that it should be. While noting that this human rights instrument is not a treaty, in the absence of any treaty or covenant regarding the Rights of Indigenous Peoples, it should be included in the Bill’s definition of human rights.
11. WLS NSW also supports broadening the definition of human rights to include recognition of customary international human rights law and international human rights law jurisprudence. This will further strengthen Australia’s commitment to human rights and help promote this commitment on the international stage.

Recommendation 2:

The *Declaration on the Rights of Indigenous Peoples* be included in the list of human rights instruments considered in the Bill’s definition of human rights.

Recommendation 3:

The definition of human rights include recognition of customary international human rights law and international human rights law jurisprudence.

¹ *National Human Rights Consultation Committee Report, (NHRC Report) 2009* at 169.

² Women’s Legal Services NSW, *Submission to National Human Rights Consultation*, 15 June 2009.

Joint Parliamentary Committee on Human Rights

12. Section 5(1) *Human Rights (Parliamentary Scrutiny) Bill 2010* states the Parliamentary Joint Committee on Human Rights will consist of 10 members of Parliament: 5 members of the Senate and 5 members of the House of Representatives.
13. Upon the introduction of the proposed Bills, President Branson of the Australian Human Rights Commission stated: “human rights are not political tools and should be considered in a bi-partisan way.”³ A Joint Parliamentary Committee, consisting of members from both Houses of Parliament and across party lines will enhance the concept of participatory democracy. WLS NSW welcomes bipartisan participation in the Committee.
14. WLS NSW recommends those appointed to the Committee be provided with ongoing human rights training to increase the effectiveness of the Committee in undertaking its functions. WLS NSW also recommends the Committee Secretariat be adequately resourced and have the appropriate level of knowledge and understanding of human rights.
15. WLS NSW notes that the functions of the Committee as defined in s 7(1) & (2) include examining Acts, Bills and legislative instruments for compatibility with human rights. WLS NSW supports this function.
16. WLS NSW believes limiting the power to “inquire into any matter relating to human rights” to matters “referred to it by the Attorney-General” undermines the bipartisan nature of the Committee. WLS NSW recommends inquiries should occur by resolution of either House. This will increase the efficacy of the Committee, making it more accountable to civil society, as the inquiries will not be solely determined by the government of the day. This will further “enhance public confidence that Australia’s laws reflect our human rights obligations.”⁴
17. WLS NSW supports the Committee having the power to “call for submissions, convene hearings and examine witnesses” as outlined in the Explanatory Memorandum.⁵ WLS NSW recommends that this be included in the Bill itself. This provides civil society with an important role in engaging with human rights issues and is a concrete way of facilitating “community engagement” with human rights.⁶
18. WLS NSW supports the recommendation made by the Human Rights Law Resource Centre to expand the Committee’s function to include the power “to monitor and report on the implementation of the Concluding Observations, Recommendations and Views of UN treaty bodies and the Recommendations of the Special Procedures and the Universal Periodic Review of the UN Human Rights Council.”⁷

³ Australian Human Rights Commission 2010 *Human rights bills should strengthen protections for all Australians* Media Release, 2 June 2010 accessed on 27 June 2010 at:
<http://www.hreoc.gov.au/about/media/media_releases/2010/52_10.html>

⁴ *Australia's Human Rights Framework*, April 2010 at 8.

⁵ *Human Rights (Parliamentary Scrutiny) Bill 2010*, Explanatory Memorandum, House of Representatives at 4.

⁶ *Australia's Human Rights Framework*, April 2010 at 2.

⁷ Human Rights Law Resource Centre, *Human Rights (Parliamentary Scrutiny) Bill 2010 Inquiry submission*, June 2010 at 4.

19. WLS NSW recommends that the Committee be given sufficient time to assess the compatibility of proposed laws with human rights obligations before they are passed in Parliament. There have been instances where the NSW Legislative Review Committee has provided its report after a Bill has been passed in Parliament, as occurred with the *APEC Meeting Bill*.⁸ WLS NSW would like to see this avoided.
20. In order to facilitate community engagement and public awareness about human rights and increase the transparency of the Committee's inquiry process, WLS NSW recommends that findings and reports made by the Committee to Parliament be concise and written in plain English.

Recommendation 4:

Committee members be provided with ongoing human rights training to increase the effectiveness of the Committee.

Recommendation 5:

The Committee Secretariat be adequately resourced and have the appropriate level of knowledge and understanding of human rights.

Recommendation 6:

Inquiries into any matter relating to human rights occur by resolution of either House.

Recommendation 7:

The Bill specifically state that the Committee has the power to call for submissions, convene hearings and examine witnesses.

Recommendation 8:

The Committee's function be expanded to include the power to monitor and report on the implementation of the Concluding Observations, Recommendations and Views of UN treaty bodies and the Recommendations of the Special Procedures and the Universal Periodic Review of the UN Human Rights Council.

Recommendation 9:

The Committee has sufficient time to assess the compatibility of proposed laws with human rights obligations before they are passed in Parliament

Recommendation 10:

In order to facilitate community engagement and public awareness about human rights and increase the transparency of the Committee's inquiry process, findings and reports made by the Committee to Parliament be concise and written in plain English.

Statements of Compatibility

21. The *Human Rights (Parliamentary Scrutiny) Bill 2010* requires parliamentary lawmakers to submit a statement of compatibility with all Bills to the Committee. WLS NSW commends this provision in the Bill as it will encourage lawmakers to consider human

⁸ Snell, L. 2008 *Protest, protection, policing: the expansion of police powers and the impact on human rights in NSW* Combined Community Legal Centres Group: Sydney at 29.

rights implications before introducing Bills into Parliament.

22. The statement of compatibility account for any restriction or limitation of human rights that would arise if a Bill were passed. The Committee rigorously scrutinise the Bill and the statement of compatibility to determine whether the restriction of rights is minimal and necessary.
23. The Committee conduct its own inquiries to determine whether a Bill, Act or legislative instrument is compatible with human rights.
24. The timing of the statement of compatibility is unclear. WLS NSW supports consideration of a statement of compatibility at the earliest possible stage so as to meaningfully inform policy development that is consistent with human rights.
25. Sections 8 & 9 *Human Rights (Parliamentary Scrutiny) Bill 2010* do not provide that government policies and/or practices should also be subject to a statement of compatibility with human rights obligations. WLS NSW recommends that government policies and practices also be submitted to the committee for human rights compatibility scrutiny.

Recommendation 11:

The Committee conduct its own inquiries to determine whether a bill, act or legislative instrument is compatible with human rights.

Recommendation 12:

Statements of compatibility be made at the earliest possible stage.

Recommendation 13:

Government policies and practices be submitted to the Committee for human rights compatibility scrutiny.

Conclusion

26. In conclusion, while disappointed the Government has not introduced a Human Rights Act, WLS NSW welcomes the introduction of legislation designed to improve parliamentary scrutiny against human rights obligations.
27. If you would like to discuss any of the issues raised in our submission in more detail, please contact Liz Snell, Solicitor, on _____ or at _____

Yours faithfully,

Liz Snell
Solicitor

Josephine Rechichi
Welfare student clerk