



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

July 2010

About ACTCOSS

ACTCOSS acknowledges that Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered as a result of European settlement. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the Territory.

ACTCOSS is a member of the nationwide COSS network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' objectives are a community in which all people have the opportunities and resources needed to participate in and benefit from social and economic life and the development of a dynamic, collaborative and viable community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

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ACTCOSS advises that this document may be publicly distributed, including by placing a copy on our website.

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Introduction

ACTCOSS welcomes the opportunity to comment on the *Human Rights (Parliamentary Scrutiny) Bill 2010* and consequential provisions. Our comments are limited to the experience community organisations in the ACT have had with the *Human Rights Act (2004) ACT* (ACTHRA) in relation to 'statements of compatibility'.

ACT Legislation

Statements of Compatibility

In the ACTCOSS submission to the national human rights consultation it was noted there was support for a national human rights framework with an included requirement for scrutiny of legislation and issuing of Statements of Compatibility. Requiring new legislation to either comply or justify any incompatibility was seen as 'a good start' and having the potential to deliver positive outcomes.

ACTCOSS is of the opinion, however, that rather than following the ACT example, the national legislation could be strengthened by the adoption of a similar model to s28(3) of the *Victorian Charter of Rights and Responsibilities*, which requires a compatibility statement outlining:

- a) Whether the Bill is compatible with human rights and if so, how it is compatible; and
- b) If the Bill is incompatible, the nature and extent of the compatibility.

The Victorian requirement is more stringent than that of the ACT, as it requires an explanation of how the Bill is consistent, not just whether it is consistent and requires an explanation of the nature and extent of any incompatibility.

Under the ACT model, there is a risk the scrutiny will be cursory and little in-depth analysis will be engaged in about the true extent of the Bill's compatibility with human rights.

Recommendation:

That the Joint Committee on Human Rights adopt a model for Statements of Compatibility similar to the Victorian model, requiring more in-depth scrutiny of Bills' compatibility with human rights.

Statements of Incompatibility

Currently, under s32 of the ACTHRA, the ACT Supreme Court is empowered to make a Statement of Incompatibility only where it finds an ACT law is incompatible with the human rights. However, the situation where human rights may fail to be protected by the absence of a law should be included in a national human rights framework. The ACTHRA only enables a dialogue about whether the ACT respects human rights in

its existing laws: it does not allow a dialogue over whether the absence of a law means human rights fail to be protected.

ACTCOSS encourages the Committee to consider the scope to expand the proposed human rights framework to make possible the issuing of a Statement of Incompatibility to areas where the Commonwealth is empowered to make a law protecting human rights but it has failed so far to do so. This would extend the current dialogue, and point to areas of 'missing' law that would assist in the protection of human rights.

Recommendation:

Consider making provision for Statements of Incompatibility in situations where the Commonwealth is empowered to make a law protecting human rights, but has failed to do so.

Powers of the Committee

Inquiry into any matter relating to human rights

A human rights culture requires popular understanding, adoption and utilisation. While human rights scrutiny at the Commonwealth level would be a welcome and important step towards building a human rights culture, the impact 'at the coalface' in assisting marginalised and disadvantaged people is difficult to identify.

The International Covenant on Civil and Political Rights (ICCPR) states governments 'must adopt such laws or other measures as may be necessary to give effect to the rights'. The International Covenant on Economic, Social and Cultural Rights (ICESCR) puts an obligation on governments 'to take steps, individually and through international assistance and cooperation... to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant'. Therefore, governments are obliged to go beyond the enactment of legislation to taking steps to fulfil the rights in the ICESCR and ICCPR.

It is essential the proposed Joint Committee consider issues beyond the legislation and make recommendations to bridge the gap between rhetoric and reality and provide greater assistance to ensure the human rights principles in human rights legislation are translated into organisational and individual practice. This requires investment in education, promotion and regulatory understanding of human rights principles. Hence the provision in the Bill for the inquiry into any matter relating to human rights, as referred by the Attorney-General is a welcome inclusion for the terms of reference of the committee.

While the consequential amendments move to include the President of the Australian Human Rights Commission as an ex officio member of the Administrative Review Council, ACTCOSS believes there is further scope to allow the proposed Joint Committee on Human Rights the power to

investigate matters raised in the annual report of the Human Rights Commission.

Recommendation:

Consider expanding the functions of the Joint Committee to include provision to undertake inquiries into matters raised in annual reports of the Australian Human Rights Commission.