

# Submission

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## Human Rights (Parliamentary Scrutiny) Bill 2010

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## **1 National Children's and Youth Law Centre**

- 1.1 The National Children's and Youth Law Centre ("the NCYLC") is the only Australian national community legal centre for children and young people. The NCYLC promotes the rights and interests of Australian children and young people through advocacy, information and education.
- 1.2 Since its inception in 1993, the NCYLC has made over 180 public submissions on law and policy affecting children and young people and handled over 150,000 requests for information and advice. The NCYLC seeks to increase children and young people's access to legal assistance and to improve the status of children and young people in Australia.

## **2 Introduction**

- 2.1 The NCYLC welcomes the opportunity to comment on the Human Rights (Parliamentary Scrutiny) Bill 2010 ("the Bill"). The NCYLC supports the introduction of the Bill and looks forward to greater community awareness and understanding of the value of engagement with human rights as a result of the passage of the Bill and the Parliamentary processes it will auspice.
- 2.2 In addressing this review (as it seeks to do with all its work), the NCYLC has taken a child rights-based approach. This reflects the understanding that children are the holders of human rights – including not only basic survival and development rights and the special rights associated with protection from harm, but also rights of participation including the right to be consulted and heard on issues affecting them.<sup>1</sup>
- 2.3 This submission will principally focus on the anticipated powers and procedures of the Parliamentary Joint Committee on Human Rights provided by the Bill.

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<sup>1</sup> United Nations Convention on the Rights of the Child, Article 6 and 12. This Convention has been almost universally ratified. The Australian Law Reform Commission notes: "Given the diversity of its States Parties and breadth of coverage, CROC is clear evidence of customary international norms regarding the rights and responsibilities of children. While CROC is not incorporated in its entirety into the domestic law of Australia, it is a strong statement of Australia's commitment to children's rights and their participation in the legal process." Australian Law Reform Commission and Human Rights and Equal Opportunity Commission, Report No 84, *Seen and Heard: Priority for Children in the Legal Process*, Sydney, 1997, at [1.29]

### **3 Committee Consultation**

- 3.1 Section 6 of the Human Rights (Parliamentary Scrutiny) Bill 2010 provides: "All matters relating to the powers and proceedings of the Committee are to be determined by resolution of both houses of the Parliament."
- 3.2 Given the nature of the tasks of the Committee, it is important in the NCYLC's view that the powers and proceedings of the Committee allow for effective consultation with the Australian community. Those who will benefit the most from careful scrutiny of the impact of legislation on human rights are likely to be those that are most vulnerable in our society. These people will often also be those with the least access to more formal mechanisms of communication with decision-makers. Depending on the particular legislation being considered, these will include children and young people, Indigenous people, people from newly arrived and culturally diverse communities, those involved in the criminal justice system, the homeless, those in contact with the child protection system and those suffering from mental illness or with disability.
- 3.3 Consultation with such groups requires careful thought and planning. It requires consideration of alternative consultative mechanisms that are specifically designed to engage these groups. For example, obtaining the views of children cannot effectively and widely be achieved by a call for submissions or invitation to give evidence.
- 3.4 The Committee should be encouraged to consider the support and resources necessary for community groups to facilitate alternative methods of consultation. Often the most valuable insights are held by service providers and community groups that themselves are not adequately resourced for advocacy. For children, there is growing expertise and access to community being developed by state and territory Children's Commissioners and Guardians.
- 3.5 However, often there are complex barriers that exist to sharing insight for children (age, awareness and understanding, communication skills) as well as the more familiar obstacles of particular disadvantage (poverty, disability, geography and language).
- 3.6 The NCYLC would encourage the Committee to invest and support the development of best practice in consultative and participation mechanisms for all community groups – but for children and young people in particular.

## **4 Sharing insight with the international community**

- 4.1 Effective consultation will support the Committee to perform its appointed functions in an influential and meaningful manner to support human rights awareness and protection. This will reduce the risk of what some commentators have suggested – that Parliament's legislative role is somehow to be abrogated to unelected courts or international bodies. Human rights are about the impact of laws and policies on our day-to-day lives. The challenge is to use the process offered by this Bill to enhance our understanding of those experiences and hearing the voices of all those affected by the law. We should not fear testing our own understanding of human rights against the collected knowledge and experience of the international community.
- 4.2 The NCYLC endorses the Human Rights Law Resource Centre's suggestion (at paragraph 19 of its submission) that the Committee's powers be expanded 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." This recommendation is also made by Amnesty International in its submission at page 6 and NSW Disability Discrimination Legal Centre in its submission at page 3.
- 4.3 This is important for ensuring that the Australian Parliament can engage with the expertise and observations of the international human rights community. This will build Australia's reputation as a leader in supporting the promotion and protection of human rights in the international community.

## **5 Referral for investigation from Attorney-General**

- 5.1 The NCYLC also supports the recommendations of other submissions<sup>2</sup> that the source of referral for investigations<sup>3</sup> should be broadened to include the Committee's power to initiate its own investigations in addition to that of either House of Parliament. This will further the effectiveness of the Committee and reduce the risk that it be narrow or limited in its focus.

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<sup>2</sup> Human Rights Law Resource Centre, Amnesty International NSW Disability Discrimination Legal Centre and Liberty Victoria

<sup>3</sup> Section 7(c) of the Bill provides for a referral from the Attorney-General to the Committee to undertake investigations