

Senate Legal and Constitutional Committee

By email: legcon.sen@aph.gov.au

20 July 2010

Dear Committee Secretary,

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

The Sydney Centre for International Law is a leading centre of international law research and policy with particular expertise in international human rights law. The establishment of a Joint Parliamentary Committee on Human Rights is very welcome as an important means of enhancing scrutiny of Australia's compliance with its international human rights law obligations. **This submission argues for two procedural improvements to the Bill to maximise the effectiveness of the new Joint Committee.**

First, where the Committee finds that a Bill is not compatible with a human right, and such incompatibility had previously not been raised and explained in the 'statement of compatibility' presented to the Parliament by the member who proposed the Bill ('the proposer'), then the Bill should impose an obligation on the proposer to provide to the Parliament a further explanation or justification for the incompatibility. This additional procedure would ensure that there is a genuine dialogue between the Parliament and (particularly government) members proposing bills, and that members are accountable to provide specific answers to findings by the Committee that rights would be infringed. Preferably, this further dialogue would take place before the passage of a bill.

Secondly, the Committee should be empowered to initiate 'own motion' inquiries into any human rights matters which the Committee itself believes are worthy of inquiry. At present, only the Attorney-General may refer matters to the Committee for inquiry, which limits the Committee's independence of the executive. There is no reason why the Joint Parliamentary Committee cannot be entrusted to determine for itself which human rights matters warrant further inquiry, particularly those of systemic or national significance.

The Sydney Centre looks forward to the creation of the Committee as part of the evolution of stronger human rights protection in Australia over time.

Yours sincerely

Associate Professor Ben Saul