

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

Remarks delivered by the Chair of the Committee, Mr Harry Jenkins MP, to the 2012 Australian Government and Non-Government Organisations Forum on Human Rights, Parliament House, 14 August 2012.

THE PJCHR'S ROLE IN ENHANCING RESPECT FOR HUMAN RIGHTS

These remarks provide a brief overview of the role of the committee in the protection of rights with particular reference to statements of compatibility and the consideration of human rights in the development of policies, programs and legislation.

The *Human Rights (Parliamentary Scrutiny) Act 2011* is an important step in the implementation of Australia's Human Rights Framework.

It establishes two key mechanisms for elevating the consideration of human rights in the development of policy and legislation:

- the Parliamentary Joint Committee on Human Rights; and
- the requirement for each bill or instrument introduced into the Parliament to be accompanied by a Statement of Compatibility.

These two mechanisms are part of a concerted effort to enhance the understanding of, and respect for, human rights issues and to ensure the appropriate recognition of human rights in the legislative process.

The Act gives the Committee a very broad set of functions:

- examine and report to Parliament on the compatibility of bills and legislative instruments with Australia's human rights obligations under seven core human rights treaties;
- examine existing legislation; and
- conduct broad inquiries into matters relating to human rights as referred to it by the Attorney-General.

The powers and procedures set out in Committee's resolution of appointment give the Committee a great deal of latitude in how it will undertake its functions.

The approach implemented through the *Human Rights (Parliamentary Scrutiny) Act 2011* is not new, it has a lot in common with that applied in other parliaments.

The key difference is that human rights are not defined in terms of a Charter of rights, but by direct reference to the rights and freedoms recognised or declared in seven international human rights instruments as applied to Australia.

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

COMMITTEE'S WORK TO DATE

Since its establishment in March this year the committee has been giving careful consideration to how it will approach this task. The committee has been very fortunate to have been assisted along this path by a number of key individuals and organisations with specialist knowledge and expertise in this area. The committee has been heartened by the practical encouragement it has received.

During the June sittings the committee began to consider bills currently before the Parliament. In doing so it was mindful of:

- the work of other parliamentary committees, where this is relevant to the Committee's work; and
- correspondence from Members, Senators and from key stakeholders.

These will continue to be important sources of information for the committee in deciding where to focus its attention, even once the committee establishes a regular routine of considering bills and instruments as they come before the Parliament.

STATEMENTS OF COMPATIBILITY

A key part of the committee's consideration of each bill and instrument is the statement of compatibility that accompanies it.

This requirement was introduced from 4 January 2012 with the intention of elevating the consideration of human rights in the development of policy and legislation.

I cannot overemphasise the importance the committee attaches to the Statement of Compatibility.

As well as being an obvious starting point for the Parliament's consideration of human rights in the legislative process, the Committee considers that statements of compatibility have the potential to significantly increase transparency and accountability in the development of policy and legislation;

In my statement to the House of Representatives on 20 June 2012 I outlined the Committee's expectations for statements of compatibility. These expectations are guided by the Explanatory Memorandum to the *Human Rights (Parliamentary Scrutiny) Act 2011*:

- [a] statement of compatibility must include an assessment of whether the bill [or legislative instrument] is compatible with human rights as defined [in the Act]; and
- statements of compatibility are intended to be succinct and should contain 'a level of analysis that is proportionate to the impact of the proposed legislation on human rights'.

The Committee observes that the preparation of a Statement of Compatibility should be the culmination of a process that commences early in the development of policy.

The Statement of Compatibility should reflect in a succinct form the assessment of human rights that took place during the development of the policy and the drafting of the legislation. The statement should:

- take the objective of the legislation as its point of reference;
- identify the rights engaged;
- indicate the circumstances in which the legislation may promote or limit the rights identified; and
- set out the justification for any limitations, in an appropriate level of detail, together with any safeguards provided in the legislation or elsewhere.

Ideally, Statements of Compatibility should not be drafted retroactively. However, the committee is realistic about this.

Much of the legislation currently before the Parliament had its genesis well before the introduction of the requirement for Statements of Compatibility and not all Statements of Compatibility conform to the committee's expectations.

The committee proposes to take a constructive approach in working with Ministers and Departments to effectively meet the requirements.

The committee does not want to see Statements of Compatibility outsourced to legal specialists, nor does it want them to be seen as mere procedural hurdles at the end of the drafting process. The committee wishes to see consideration of human rights genuinely elevated in the policy development process.

The committee considers that the requirement for Statements of Compatibility has the potential to instil a culture of human rights in the federal public sector by integrating the consideration of human rights into the development of policy.

Cultural change requires patience and constructive support. For its part the committee intends to approach its role in a considered and responsible way by seeking to foster an effective dialogue with the Executive and Departments.

I would like to take this opportunity to acknowledge the excellent support and training already provided to Ministers and their Departments by the Attorney-General's Department. The Committee is committed to working with the Attorney-General's Department to build on this work.

Effective communication is key to the role of the committee. The committee aspires to a range of influence far beyond that of its primary legislative scrutiny role.

I commented recently that the committee seeks to become a trusted source of advice that is difficult to ignore.

The committee sees itself as having a key role in stimulating discussion and debate both within and beyond the Parliament. Committee members see

themselves as human rights advocates within the Parliament, within their own party rooms and in the wider community.

The committee hopes that through its work in the Parliament, it can educate and engage the wider Australian community about human rights.

A key factor in the committee's success in this will be how readily it can be understood.

The committee is determined to resist the temptation to allow its processes to become overly legalistic.

Legal interpretation has an important place in the committee's work and the committee has been encouraged by the offers of assistance it has received in this regard.

Ultimately, it is the elected representatives of the people who must make the final call on whether a bill or an instrument meets Australia's human rights obligations.

If the committee is to successfully inform deliberation on the floor of the Parliament, and through this the enhance the understanding of human rights more broadly in the community, it must communicate in a way that is readily understood by all elected representatives in this place and by the people they represent.