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SUBMISSION TO THE

INQUIRY INTO THE FUTURE DIRECTION AND ROLE OF THE SENATE SCRUTINY OF BILLS COMMITTEE

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Introduction

UnitingJustice Australia, the justice and advocacy unit of the National Assembly of the Uniting Church in Australia, welcomes this opportunity to make a submission on the future direction and role of the Scrutiny of Bills Committee. Our submission focuses primarily on part 1(c) of the Terms of Reference:

what, if any, additional role the committee should undertake in relation to human rights obligations applying to the Commonwealth.

The Uniting Church in Australia believes that it has a responsibility to contribute to the building of societies in which all people are valued and respected. In the context of public policy and international affairs, this means participating the development of systems, processes and structures, such as the international human rights system and the protection of human rights domestically, that function to both protect and promote human dignity and peace, and hold all of us mutually accountable in this.

The Uniting Church's support for human rights and the upholding of the dignity of all people was fully articulated in its statement on human rights, *Dignity in Humanity: Recognising Christ in Every Person*¹, adopted by the National Assembly of the Church in 2006. As well as laying out the theological basis of our commitment to human rights, this statement expresses the Church's support for 'the human rights standards recognised by the United Nations', which express the birthright of all people to 'all that is necessary for a decent life and to the hope for a peaceful future.'

In *Dignity in Humanity*, the Uniting Church also urged the Australian Government to fulfil its responsibilities under the human rights covenants, conventions and treaties that Australia has ratified or signed

and pledged

to assess current and future national public policy and practice against international human rights instruments, keeping in mind Christ's call and example to work for justice for the oppressed and vulnerable.

¹ available at http://www.unitingjustice.org.au/images/pdfs/issues/human-rights/assembly-resolutions/11_dignityhumanity2006.pdf

It is these promises which continue to drive the Church's involvement in the development of just and responsible government policy and practice in Australia and underlie our submission to this inquiry.

The role of Parliament in the protection of human rights

It is incumbent on the legislature in Australia to ensure that no legislation causes harm, intentionally or unintentionally, to any person in our community.

The many international human rights instruments Australia is a party to, impose obligations to promote and protect human rights through legislative, administrative and other means. For instance, article 2(c) of the International Covenant on the Elimination of All Forms of Racial Discrimination states

Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists

All legislation, both current and proposed, should be assessed against the international human rights standards which Australia has committed to uphold. It is important to ensure that legislation does not, even unintentionally, undermine our commitments. It is also important that the Parliament set a high standard for itself in terms of the protection of human rights, so that Australia, as a stable, high functioning democracy, can become a model for other countries, demonstrating the highest level of achievement in the protection of human rights in all areas of government policy and practice.

In addition, the Committee of the National Human Rights Consultation has reported that there appears to be a high level of community support for mechanisms which ensure human rights are taken into account when policies and legislation are being formulated.² We would concur with such a position: the most effective process for ensuring the protection of human rights is one that intentionally assesses legislation as it is being drafted and considered rather than after implementation when damage has been done.

² National Human Rights Consultation Committee (2009), *Report of the National Human Rights Consultation Committee*, p.163

We acknowledge that legislative scrutiny of proposed laws for human rights infringements does occur through parliamentary committees, including the Senate Scrutiny of Bills Committee and the Senate and House of Representatives Standing Committees on Legal and Constitutional Affairs. However we believe that these processes have fundamental limitations, not the least of which is the increasingly limited timeframes for such consideration. Also, the parliamentary committee process occurs after the legislation has been drafted, policy objectives formulated, and often after politicians have publicly committed to the Bill's implementation.³

The Committee of the National Human Rights Consultation, in its report after conducting a far-reaching inquiry into the protection of human rights in Australia, stated that '[g]reater consideration of human rights is needed in the development of legislation and policy and in the parliamentary process in general.'⁴

In recent years the Uniting Church has expressed concern about many instances where the increasing power of the executive to rush legislation through Parliament has lead to drastically inadequate timeframes for proper parliamentary debate and for parliamentary inquiries to conduct appropriate review.⁵

The problems with this system were evident, for example, in the enactment of the WorkChoices legislation which, owing to a Government majority in both houses of Parliament, was passed after a formal inquiry of just one week – a desperately insufficient timeframe for the level of scrutiny necessarily required for legislation with such far-reaching effect on the minimum working conditions of millions of Australians.

In the following example, the parliamentary process was insufficient to ensure a proper discussion of the human rights issues associated with the many NTER measures.

3 The Hon John von Doussa QC, President, Human Rights and Equal Opportunities Commission (2007), 'Cross party briefing on a proposed Human Rights Act: Creating a culture of human rights compliance', speech at Parliament House, Canberra, 28 February, available: http://www.humanrights.gov.au/about/media/speeches/speeches_president/2007/culture_of_hr_compliance.html

4 National Human Rights Consultation Committee (2009), *Report of the National Human Rights Consultation Committee*, p.174

5 These concerns have been presented, for example, in submissions to the Senate Legal and Constitutional Affairs Committee's inquiries into the provisions of the *Anti-Terrorism (No. 2) Bill 2005* and into the *Classification (Publications, Films and Computer Games) Amendment (Terrorist Material) Bill 2007*, available: http://www.unitingjustice.org.au/images/pdfs/issues/human-rights/submissions/anti-terrorismsub_uca1105.pdf, and http://www.unitingjustice.org.au/images/pdfs/issues/human-rights/submissions/censorshiplegsub_uja0707.pdf respectively

CASE STUDY: Northern Territory Emergency Response legislation

The Northern Territory Emergency Response legislation, which continues to have far-reaching consequences for the rights of Aboriginal and Torres Strait Islander peoples, was rushed through Parliament by the executive without needing to adhere to any processes for review and was enacted with scant regard for engagement with the people and communities affected.

The Uniting Church expressed its concerns about the swift passage of this tremendously important legislation in 2007:

This is some of the most significant legislation in the history of our nation, over riding aspects of the Race Discrimination and Native Title acts. It is with disbelief that we note that it merited only a one-day Senate hearing, which did not consult with some of the key stakeholders in the plan.⁶

It was pointed out during the debate by Mr Daryl Melham MP, member for Banks in the then-ALP Opposition:

We are currently debating five bills. They come to 537 pages in total. There are also 196 pages of explanatory memoranda. With regard to the opposition's ability to scrutinize these bills, the public should appreciate that the shadow spokesperson was only given copies midmorning yesterday and they filtered through all the way into the evening. The ultraspeedy passage of these bills is clearly designed to avoid public scrutiny, not least from Aboriginal communities but also from other community bodies with legitimate concerns about the government's proposals.⁷

The NT Intervention has illuminated the extent of the denial of human rights and access to basic support and services that Indigenous Australians have endured since colonisation. However, it is clear that numerous aspects of the Intervention continue this legacy of human rights violation.

International human rights law requires that solutions be found to the problems of violence, abuse and poverty in Indigenous communities that protect all human rights. Policy cannot be sustainable in the long term if it does not safeguard the human rights of the population it is designed to protect and benefit.

6 'Uniting Church condemns parliament processes on NT Indigenous Intervention', media release, 15 August 2007, available: http://www.unitingjustice.org.au/images/pdfs/issues/indigenous-justice/media/ntlegislationsenatereport_150807.pdf

7 House of Representatives Official Hansard, 7 August 2007, available: <http://aph.gov.au/hansard/rep/dailys/dr070807.pdf>, p.89

How can the Parliament's role in human rights protection be strengthened?

The Uniting Church believes that an increased role for the Parliament is needed to strengthen the protection of human rights in Australia.

The Committee of the National Human Rights Consultation recommended that a Joint Committee on Human Rights be established as part of efforts to improve the consideration of human rights in the parliamentary process.⁸ We support this recommendation and believe that such a Committee should be mandated to review all legislation (proposed and existing) for compatibility with human rights, conduct thematic inquiries into human rights issues and monitor and report on the recommendations handed down by the various United Nations human rights treaty bodies on Australia's compliance with international human rights standards. This Committee should also be resourced with a specialised human rights secretariat and be able to bring in experts, from both academia and non-government organisations, on particular human rights issues. We believe a joint committee is preferable to a Senate committee, in order that both houses of the Parliament are involved in the consideration of human rights.

In the UK, the Joint Committee on Human Rights scrutinises all Government Bills, selecting those with significant human rights implications for further examination, and undertakes broader thematic inquiries on human rights issues.⁹ This Committee provides a viable example of how a parliamentary committee can operate to improve compliance with human rights standards.

At this point in time, while the Government has not responded to the recommendations of the National Human Rights Committee including that for a Joint Committee on Human Rights, we would prefer that the Scrutiny of Bills Committee's mandate is not extended to more comprehensively assess legislation for human rights problems. However, should the Government reject a Joint Committee on Human Rights, we would support changes to the Scrutiny of Bills Committee's functions to enable it to play a greater role in the protection of human rights.

We would like to note that our position on the role of the Parliament in the protection of human rights was first voiced in the submission of the National Assembly of the Uniting Church in Australia to the National

Human Rights Consultation.¹⁰ In this submission, we noted that Mr Murray Hunt, Legal Advisor to the UK Parliament's Joint Committee on Human Rights had remarked that the UK Committee has the influence it does largely because its work is backed by the UK Human Rights Act. This Committee's criticisms and recommendations are responded to with considerable attention and in detail (albeit to varying degrees) because of the legal and moral authority that the Human Rights Act has afforded the Committee.¹¹ We believe that it is therefore important that any increased role for parliamentary committees in the protection of human rights be accompanied with comprehensive legislation protecting human rights, such as a Human Rights Act. The proposed Joint Committee on Human Rights should be tasked with monitoring and reporting on government responses to any pieces of legislation deemed incompatible with the Human Rights Act by the judiciary.

Conclusion

UnitingJustice Australia's response to the Inquiry into the future direction and role of the Scrutiny of Bills Committee focuses on the role of parliamentary committees in the protection of human rights in Australia. We believe that a greater role is needed for the Parliament in this regard, and as such we support the recommendation of the Committee of the National Human Rights Consultation that a new Joint Committee on Human Rights be established. This new Committee should be accompanied by comprehensive human rights legislation in order to ensure current and proposed legislation does not infringe the human rights standards Australia has committed at the international level to uphold. Should the Australia Government reject this recommendation, we would support changes to the mandate of the Scrutiny of Bills Committee to allow it to perform a similar role.

8 National Human Rights Consultation Committee (2009), *Report of the National Human Rights Consultation Committee*, p.175

9 UK Joint Committee on Human Rights, http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm

10 This submission is available at: http://www.unitingjustice.org.au/images/pdfs/issues/human-rights/submissions/nationalhumanrightsconsultation_web.pdf

11 An audio recording of this speech is available at http://www.humanrights.gov.au/letstalkaboutrights/events/Hunt_2009.html