

Committee Secretary

Senate Legal and Constitutional Committee
Parliament House
Canberra ACT 2600

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

8 July 2010

Senate Legal and Constitutional Affairs Committee Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010

Dear Secretary

The Federation, as the peak body for 51 community legal centres (CLCs) across Victoria, welcomes the introduction of this Bill. CLCs work for justice that is accessible and fair for all Australians, including our clients, who are among some of the most disadvantaged and marginalised members of our communities.

As you will be aware, following the biggest public consultation in Australian history, the National Human Rights Consultation Committee found that there is overwhelming support for a federal Human Rights Act.

We believe that proper protection and promotion of human rights requires a legislative dialogue model of human rights which engages the executive, legislative and judicial arms of Australian Government, and offers accessible and appropriate redress for individuals and groups whose rights have been violated.

We also strongly support the other recommendations in the National Human Rights Consultation Report, including the development of a human rights culture in the federal public sector, human rights education within Australian communities, and the strengthening of the Australian Human Rights Commission.

We therefore support the Bill as the first part of a package of reforms to provide for enhanced protection of the human rights for everyone in Australia.

We fully endorse the submission to the Inquiry from our member CLC, Human Rights Law Resource Centre (HRLRC), and we make further comment on the basis of our work with our clients and our experience to date of the operation of the Victorian Charter.

Scope of human rights (Clause 3)

The National Human Rights Consultation Report concluded that there are many, often interconnected, human rights in Australia that require protection, but that existing approaches do not provide this in an effective and equitable manner. CLCs see the results of this failure to protect in the experiences of significant numbers of

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our clients.

We therefore support the HRLRC's submission (at 2.1-2.2) that not only should all of the core human rights treaties to which Australia is a party be included in the Bill's definition of human rights, but that the definition should also encompass customary international human rights law.

We believe that this range of rights should be expressly protected and promoted in Australia because they are all important to the realisation of human dignity, and are frequently indivisible from one another. For example, Australia's obligation to protect the right to life of a woman who is subjected to domestic violence – a civil and political right – requires Government to ensure that if that woman flees the relationship, she is able to obtain adequate housing – an economic, social and cultural right.

Similarly, the right to just conditions of work and wages sufficient to support a minimum standard of living – an economic, social and cultural right – cannot be protected unless workers are also able to realise their right to equality before the law – a civil and political right.

We further support the HRLRC's recommendation (2.3) that in assessing the scope and content of the meaning of human rights, international and foreign human rights jurisprudence should be considered. This amendment to the Bill would assist Australia to recognise its international obligations and thereby enhance our standing in the international community.

One example of the efficacy of requiring consideration of international human rights jurisprudence concerns violence against women. The Commonwealth Government is in the process of implementing its National Plan for Australia to Reduce Violence against Women and Children.¹ International jurisprudence emphasises that freedom from violence against women is a significant aspect of the right to freedom from discrimination under the UN Convention on the Elimination of All Forms of Discrimination Against Women,² and clarifies the extent of State obligations in this regard.³

Joint Parliamentary Committee on Human Rights (Part 2)

The Federation supports the two primary functions of the Joint Committee proposed in the Bill, but also endorses HRLRC's recommendations for expansion of the Committee's functions in order to facilitate its independence and effectiveness.

We further support the HRLRC recommendation that the Committee have the power to consider, monitor and report on Australia's implementation of the recommendations and views of UN human rights treaty bodies or the Human Rights

¹ National Council to Reduce Violence against Women and their Children, *Time for Action: The National Council's Plan for Australia to Reduce Violence against Women and their Children*, 2009-2021 (March 2009); Commonwealth of Australia, *The National Plan to Reduce Violence against Women: Immediate Government Actions* (April 2009).

² UN Committee on the Elimination of All Forms of Discrimination Against Women General Recommendation No. 19 (11th session, 1992); UN Declaration on the Elimination of Violence Against Women, UN Doc A/RES/48/104.

³ See eg *Opuz v Turkey* [2009] ECHR 870 (9 June 2009).

Council (including the Special Procedures). Again we believe that this amendment to the Bill would assist Australia to recognise its international obligations and enhance our standing in the international community.

From our experience with the Scrutiny of Acts and Regulations Committee process in Victoria under the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (the Victorian Charter), we believe that it is crucial that the process of Joint Committee scrutiny is established in a manner which allows sufficient time for in-depth and meaningful Committee analysis and reports, so that Parliament and the broader community are able to engage effectively with the issues. As the HRLRC recommends, this process can only be achieved by adequate resourcing of the Committee.

Statements of Compatibility (Part 3)

As the HRLRC submission details, Statements of Compatibility must be thorough, on point, informed by international jurisprudence and timely, if they are to play an effective part in the scrutiny process.

The Federation believes that the scrutiny process mandated under the Victorian Charter is in many aspects an appropriate model. However, we particularly endorse the view of HRLRC and the Australian Human Rights Commission that to be truly useful, Statements of Compatibility must be prepared early in the policy development process rather than being added on at the end stage of preparing a Bill.

Our experience of the Victorian process is that sometimes deadlines for public submissions to SARC are unreasonably short due to the demands of the parliamentary agenda, and the SARC Report on a Bill may only become available just as parliamentary debate on the Bill begins. It is not unusual for a Ministerial response to the SARC Report to only become publicly accessible in the very last stage before a Bill is passed, thereby again restricting public dialogue.

Please do not hesitate to contact me on 9652 1506 or policy@fclc.org.au if you wish to clarify any points in our submission.

Sincerely



Dr Chris Atmore
Policy Officer