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Parliamentary Committees and the Promotion and Protection of Human Rights

**Submission to the
Senate Scrutiny of Bills Committee:
Inquiry into the Future Direction
and Role of the Committee**

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Human Rights Law Resource Centre Ltd

Level 17, 461 Bourke Street

Melbourne VIC 3000

Australia

www.hrlrc.org.au

Philip Lynch and Rachel Ball
Human Rights Law Resource Centre Ltd
Level 17, 461 Bourke Street
Melbourne VIC 3000

T: + 61 3 8636 4450
F: + 61 3 8636 4455
E: phil.lynch@hrlrc.org.au
W: www.hrlrc.org.au

About the Human Rights Law Resource Centre

The Human Rights Law Resource Centre protects human rights and, in so doing, seeks to alleviate poverty and disadvantage, ensure equality and fair treatment, and enable full participation in society.

The Centre also aims to build the capacity of the legal and community sectors to use human rights in their casework, advocacy and service delivery.

The Centre achieves these aims through human rights litigation, education, training, research, policy analysis and advocacy. The Centre undertakes these activities through partnerships which coordinate and leverage the capacity, expertise and networks of pro bono law firms and barristers, university law schools, community legal centres, and other community and human rights organisations.

The Centre works in four priority areas: first, the enhanced legal protection of human rights at the local, national, regional and international levels; second, socio-economic rights, particularly the rights to health and adequate housing; third, equality rights, particularly the rights of people with disabilities, people with mental illness and Indigenous peoples; and, fourth, the rights of people in all forms of detention, including prisoners, involuntary patients, asylum seekers and persons deprived of liberty by operation of counter-terrorism laws and measures.

The Centre has been endorsed by the Australian Taxation Office as a public benefit institution attracting deductible gift recipient status.

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1. Summary

1. The Senate has announced an Inquiry into the future direction and role of the Senate Scrutiny of Bills Committee (the **Inquiry**).
2. This submission focuses on Terms of Reference 1(c) and 2, namely:
 - (a) what, if any, additional role the Committee should undertake in relation to the human rights obligations applying to the Commonwealth; and
 - (b) the role, powers and practices of similar committees in other jurisdictions.
3. As an overarching proposition, the HRLRC considers that parliamentary committees should play a more significant role in the promotion and protection of human rights in Australia.
4. This should occur in two primary ways:
 - (a) the mandates of all relevant parliamentary committees should require that the committee give proper consideration to the Commonwealth's human rights obligations, including Australia's obligations under all international human rights treaties to which it is party; and
 - (b) the Parliament should establish a Joint Committee on Human Rights to lead parliamentary engagement with and understanding of human rights issues.
5. The proposed Joint Committee on Human Rights should be mandated to:
 - (a) scrutinise all Bills and subordinate legislation for compatibility with human rights;
 - (b) conduct thematic inquiries into human rights issues;
 - (c) 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; and
 - (d) monitor and report on government responses to Declarations of Incompatibility (under any Australian Human Rights Act) and other relevant court and tribunal decisions and judgments.

2. The Role of Parliament in the Promotion and Protection of Human Rights

6. Australia is a party to a significant majority of the core international human rights treaties. These treaties impose legal obligations on the Commonwealth to respect, protect and fulfil human rights. Thus, for example, article 2(2) of the *International Covenant on Civil and Political Rights* provides that States Parties to the Covenant must take all necessary legislative, administrative and other steps and measures to promote and protect human rights.
7. The legal obligation to respect, protect and fulfil human rights applies to all arms of government – legislative, executive and judicial – and directly engages the parliament.¹
8. Notwithstanding Australia's international legal obligations, however, the Commonwealth has not established formal domestic mechanisms to ensure comprehensive parliamentary scrutiny of human rights. According to the 2009 Report of the National Human Rights Consultation Committee (**NHRC Committee**):²

Greater consideration of human rights is needed in the development of legislation and policy and in the parliamentary process in general. The primary aim of such consideration is to ensure that human rights concerns are identified early, so that policy and legislation can be developed in ways that do not impinge on human rights or, in circumstances where limitations on rights are necessary, those limitations can be justified to parliament and the community.
9. Reflecting this finding, the NHRC Committee recommended that parliament establish a 'Joint Committee on Human Rights to review all Bills and regulations for human rights compliance'.³
10. The UN Human Rights Committee – a body of independent international human rights experts – has similarly recently recommended that Australia establish a mechanism to consistently ensure the compatibility of domestic law with the Covenant⁴ and establish appropriate procedures to implement views of the Committee in individual cases.⁵

¹ Human Rights Committee, *General Comment No 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN Doc CCPR/C/21/Rev.1/Add.13 (2004), [4].

² National Human Rights Consultation Committee, *Report of the National Human Rights Consultation Committee* (2009) 174.

³ National Human Rights Consultation Committee, *Report of the National Human Rights Consultation Committee* (2009) 174.

⁴ Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009), [8].

⁵ Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia*, UN Doc CCPR/C/AUS/CO/5 (2009), [10].

11. According to the Commonwealth Human Rights Initiative, 'there are a number of reasons why Parliamentary Committees can be effective tools for promoting human rights', including that:
- (a) it may not be practical for Parliament as a whole to monitor and recommend ways to make laws comply with human rights;
 - (b) Committees can consider the human rights impact of laws in depth;
 - (c) Committees can consult with the public on human rights issues;
 - (d) Committee reports make the Parliament more effective and heighten Parliamentary transparency;
 - (e) if no national human rights institution (such as a human rights commission or ombudsman) exists in a country, Committees can fill the gap in monitoring and advising on legislation; and
 - (f) Committees can play a complementary role with national institutions since many of the latter advise on law but have no binding powers.⁶

3. Enhancing Parliamentary Protection of Human Rights

12. In our view, parliamentary promotion, protection and scrutiny of human rights should be enhanced in two primary ways.
13. First, the mandates of all relevant parliamentary committees should require that the committee give proper consideration to the Commonwealth's human rights obligations, including Australia's obligations under all international human rights treaties to which it is party.
14. Second, the Parliament should establish a Joint Committee on Human Rights to lead parliamentary engagement with and understanding of human rights issues.
15. The proposed Joint Committee on Human Rights should be mandated to:
- (a) scrutinise all Bills and subordinate legislation for compatibility with human rights;
 - (b) conduct thematic inquiries into human rights issues;
 - (c) monitor and report on the implementation of the Concluding Observations, Recommendations and Views of UN treaty bodies and the Recommendations of the

⁶ Commonwealth Human Rights Initiative, *The Parliamentary Committee as Promoter of Human Rights* (2007) 3.

Special Procedures and the Universal Periodic Review of the UN Human Rights Council; and

- (d) monitor and report on government responses to Declarations of Incompatibility (under any Australian Human Rights Act) and other relevant court and tribunal decisions and judgments.
16. As recognised by the NHRC Committee, the scrutiny of new and existing legislation for compatibility with protected rights is an important preventative measure that can reduce the risk of legislation infringing human rights.⁷ The Joint Committee on Human Rights should be given the power to review all legislation – proposed or existing, primary or subordinate – of its own motion, in response to a report from an independent body such as the Australian Human Rights Commission, or following referral from either House of Parliament. The Committee should have the usual powers of parliamentary committees, including receiving submissions from relevant stakeholders and reporting back to Parliament with findings and recommendations.
17. The Joint Committee on Human Rights should also lead parliamentary engagement with, and understanding of, human rights issues and monitor and report on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of the Special Procedures and Universal Periodic Review of the UN Human Rights Council.
18. The UK Joint Committee on Human Rights has similar functions and is an example of a highly effective parliamentary committee. It has been described as 'one notable way in which parliamentary accountability is being enhanced.'⁸ The Council of Europe has recommended the model and modalities of the UK Joint Committee on Human Rights as a model for other member states.⁹
19. According to an Allen Consulting report commissioned for the NHRC Committee, the establishment of a Joint Committee on Human Rights would be 'low risk', relatively low-cost and efficient to establish and operate, and have benefits to stakeholders.¹⁰

⁷ National Human Rights Consultation Committee, *Report of the National Human Rights Consultation Committee* (2009) 174.

⁸ Lord Anthony Lester, 'Parliamentary Scrutiny of Legislation under the Human Rights Act 1998' (2002) 33 *Victoria University of Wellington Law Review* 1, 2.

⁹ Further information about the work of the Committee is available in their 2008-09 Annual Report at <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/20/2002.htm>.

¹⁰ National Human Rights Consultation Committee, *Report of the National Human Rights Consultation Committee* (2009) 173.

4. Parliamentary Protection of Human Rights in Comparable Jurisdictions

4.1 Overview

20. In both Victoria¹¹ and the Australian Capital Territory,¹² human rights legislation confers on a parliamentary committee the function of scrutinising proposed legislation for compatibility with human rights and reporting to parliament its findings and recommendations. This is intended to inform and enhance the parliamentary 'dialogue' on human rights.
21. The United Kingdom and Canada have each established a parliamentary mechanism relating to human rights. Each of these mechanisms is focused, at least in part, on monitoring the compliance of the relevant state with its international human rights obligations.
22. In the United Kingdom, the Joint Parliamentary Committee on Human Rights is tasked to undertake thematic inquiries on human rights issues and report its findings and recommendations to parliament, scrutinise all Bills and report on those with significant human rights implications, and review Government action to deal with judgments of the UK courts and the European Court of Human Rights where breaches of human rights have been found.¹³ The Committee has been described as 'central' and 'influential' to the enterprise of human rights in the political and parliamentary process.¹⁴
23. In Canada, the Senate Standing Committee on Human Rights has a mandate covering human rights generally. The Committee's orders of reference for 2009 include the request to review the machinery of government dealing with Canada's international and national human rights obligations.
24. While neither the Netherlands, South Africa nor New Zealand has established a formal parliamentary mechanism as described above, they have in place mechanisms to ensure that human rights are given due consideration.
25. We set out in more detail below the various parliamentary mechanisms formed to consider human rights in each of Victoria, the United Kingdom, Canada, the Netherlands, New Zealand and South Africa.

¹¹ Pursuant to the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹² Pursuant to the *Human Rights Act 2004* (ACT).

¹³ See http://www.parliament.uk/parliamentary_committees/joint_committee_on_human_rights.cfm.

¹⁴ David Feldman, 'The Impact of Human Rights on the UK Legislative Process' (2004) 25 *Statute Law Review* 91, 115.

26. We have also included information on Belgium, Norway and Germany jurisdictions to provide the Committee with illustrations of alternative means of dealing with the powers and operations of the parliamentary human rights committees.

4.2 Victoria

27. Pursuant to section 30 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic), the Scrutiny of Acts and Regulations Committee (**SARC**) ‘must consider any Bill introduced into Parliament and must report to the Parliament as to whether the Bill is compatible with human rights’. It has similar functions in relation to statutory rules pursuant to section 21 of the *Subordinate Legislation Act 1994* (Vic).
28. According to the most recent annual report of the Victorian Human Rights Commission, an independent statutory body mandated to monitor and report on the operation of the *Charter*, the SARC ‘continues to approach its role diligently and comprehensively, subjecting bills to thorough and multi-party scrutiny.’¹⁵
29. The Commission found that:
- (a) ‘the formal mechanisms of the parliamentary dialogue seem to be drawing out meaningful differences’;
 - (b) the SARC is facilitating an ‘increased level of community engagement’ with the parliamentary dialogue and ‘playing a key role in influencing the accessibility and utility of this dialogue’; and
 - (c) by consequence of the work of SARC, among others, the Victorian Parliament is ‘actively engaging with the “territory” of human rights’.¹⁶

4.3 United Kingdom

30. The Joint Committee on Human Rights was established in 2001 and comprises 6 members from each of the House of Commons and the House of Lords.
31. The Joint Committee on Human Rights cannot consider individual cases, but considers a range of broader issues in the human right arena. As discussed above, the functions of the Joint Committee include:

¹⁵ Victorian Equal Opportunity and Human Rights Commission, *Emerging Change: The 2008 Report on the Operation of the Charter of Human Rights and Responsibilities* (2009) 71.

¹⁶ Victorian Equal Opportunity and Human Rights Commission, *Emerging Change: The 2008 Report on the Operation of the Charter of Human Rights and Responsibilities* (2009) 71.

- (a) legislative scrutiny – this involves scrutinising and reporting on Bills for their human rights compatibility and implications. The JCHR aims to complete these reports before the second reading;
 - (b) monitoring and reporting on Declarations of Incompatibility – this involves reporting on responses to Declarations of Incompatibility made by UK courts under the *Human Rights Act 1998*;
 - (c) monitoring of European Court of Human Rights judgments and remedial orders – this involves scrutinising and reporting on adverse judgments from the European Court and, where appropriate, making recommendations to prevent repetition of the violation and adequate remediation;
 - (d) scrutiny of compliance with UN human rights treaties – this involves monitoring implementation of the Concluding Observations of UN treaty bodies. According to the Committee, it also ‘serves a wider purpose of directing domestic parliamentary and public attention to the extent to which the Government’s policy is in accordance with the provisions of those human rights treaties by which the Government is bound in international law, stimulating debate about the treaties themselves and the human rights principles which they embody. By focusing attention on the implications of each of these treaties in each reporting round we would also hope proactively to influence the Government in its policy stance as it prepares to submit its next periodic report to the monitoring body’;¹⁷
 - (e) scrutiny of human rights treaties pre-ratification – this involves ‘reporting to Parliament on all human rights treaties before they are ratified if they raise any significant issues of which Parliament should be made aware’;
 - (f) urgent and thematic inquiries – for example, currently, the Committee recently conducted a major inquiry into business and human rights; and
 - (g) monitoring implementation of the *Human Rights Act* and human rights institutions.¹⁸
32. The Committee currently meets at least once per week during parliamentary session. In discharging its functions, it regularly seeks written submissions from government, legal

¹⁷ Joint Committee on Human Rights, *The Committee’s Future Working Practices: Twenty-Third Report of Session 2005-06* (2006), [65] at <http://www.parliament.the-stationery-office.com/pa/jt200506/jtselect/jtrights/239/239.pdf>.

practitioners, non-government organisations and associations, and human rights advocates. Occasionally, the Committee also takes oral evidence.

33. As discussed above, the Council of Europe has recommended the model and modalities of the UK Joint Parliamentary Committee on Human Rights as a model for other member states.¹⁹

4.4 Canada

34. Canada has a Senate Standing Committee on Human Rights, with a mandate of 'matters relating to human rights generally.' Among the Committee's orders of reference for the 2009 parliamentary session is the request to 'monitor issues relating to human rights and, inter alia, to review the machinery of government dealing with Canada's international and national human rights obligations'. The Committee has also been asked this year to 'monitor the implementation of recommendations contained in the Committee's report entitled 'Children: The Silenced Citizens: Effective Implementation of Canada's International Obligations with Respect to the Rights of Children'.
35. The House of Commons has a Standing Committee on Justice, Human Rights, Public Safety and Emergency Preparedness. Its mandate includes the examination of any report submitted by the Canadian Human Rights Committee. The House of Commons also has a Subcommittee on International Human Rights. Its sphere of activity is focused on human rights and the dissemination of information gathered through investigation.

4.5 The Netherlands

36. New legislation must be drafted according to 'legislative instructions' which contain a set of quality standards that must be met, including a determination as to whether there are 'higher rules' which constrain the drafting process. These higher rules include obligations laid down in international human rights instruments. In addition, the instructions mandate that an explanatory memorandum be attached to new laws addressing its relationship to other legislation and international law.
37. While legislation is still in the draft phase, external stakeholders (e.g. representatives of the legal profession and the judiciary) are consulted about the draft legislation. The explanatory

¹⁸ See generally, Joint Committee on Human Rights, *The Committee's Future Working Practices: Twenty-Third Report of Session 2005-06* (2006) at <http://www.parliament.the-stationery-office.com/pa/it200506/jtselect/jtrights/239/239.pdf>.

memorandum appended to every bill is provided to these individuals and organisations, and their input that often leads to changes in the bill.²⁰

38. Further, in the Netherlands the law requires the government report to Parliament every four years on the implementation of the Convention for the Elimination of Discrimination Against Women before presenting its report to the Committee on the Elimination of Discrimination against Women. The concluding comments of the Committee are also presented to Parliament.²¹

4.6 New Zealand

39. The process of passing legislation in New Zealand includes the referral of the Bill to a select committee for further consideration (between the first and second reading). The Select Committee may consider the compliance of proposed legislation with international instruments.
40. The Foreign Affairs, Defence and Trade Committee considers bills, petitions, international treaties and other matters referred by the House of Representatives. It may conduct inquiries on its own initiative. Its work in the past has included initiating an inquiry into the role of human rights in foreign policy, considering the International Crimes and International Criminal Court Bill and examining the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

4.7 South Africa

41. In South Africa, all national reports submitted under human rights treaties are debated in parliament. In the course of debate, parliament holds public hearings, calls in ministers and requests documents and reports from a wide range of departments and citizens' groups. Members of parliament are included in national delegations to the treaty bodies, ensuring that they better understand the treaty bodies' recommendations.

¹⁹ Further information about the work of the Committee is available in their 2008-09 Annual Report at <http://www.publications.parliament.uk/pa/jt200910/jtselect/jtrights/20/2002.htm>.

²⁰ 'National Report by the Kingdom of the Netherlands for the Universal Periodic Review: February 2008', *Office of the High Commissioner of Human Rights*, at http://lib.ohchr.org/HRBodies/UPR/Documents/Session1/NL/NL_NL_UPR_S1_2008_Netherlands_uprsubmission.pdf.

²¹ Inter-Parliamentary Union, *Parliament and Democracy in the Twenty-First Century* (2006), 160 at http://www.ipu.org/PDF/publications/democracy_en.pdf.

42. The Joint Monitoring Committee on Improvement of Quality of Life and Status of Children, Youth and Disabled Persons monitors and evaluates progress with regard to the improvement in the quality of life and status of children, youth and disabled persons in South Africa. It does so with special reference to the government's commitments in respect of any applicable international instruments and to duties and responsibilities in respect of any applicable legislation. It may also put forward non-binding recommendations to both or either of the Houses of Parliament. The Committee sets its own agenda and has the power to summon any person to appear before it and to order the production of documents.
43. Similarly, the Joint Monitoring Committee on Improvement of Quality of Life and Status of Women has a mandate to monitor and evaluate progress with regard to the improvement in the quality of life and status of women in South Africa, with specific reference to the Government's commitments to the Beijing Platform of Action, regarding the implementation of the Convention on the Elimination of Discrimination against Women and in respect of any other applicable international instruments.

4.8 Belgium

44. The Justice Committee is a permanent committee responsible for monitoring human rights issues within Belgium.
45. The Exterior Relations Committee considers external human rights problems and the ratification of international human rights treaties. The Exterior Relations Committee is responsible for dealing with human rights issues outside Belgium's national boundaries and issues concerning the ratification of international human rights instruments. The Committee is composed of seventeen members and, other than in special circumstances, meetings are conducted publicly. The Exterior Relations Committee has examined a number of issues, including the delivery of Belgian weapons to Nepal and the political situation in Nepal, and the proposal for a resolution relating to the sentence condemning Amina Lawal, a Nigerian woman sentenced to death under Islamic law, to death by stoning in Nigeria.²²
46. Both committees set their own agenda and their meetings are typically held in public. The committees can adopt motions and resolutions and discuss draft legislation. These are subsequently submitted to the plenary House, which then votes on them.

²² 'Belgium: Chambre des Représentants', *Inter-Parliamentary Union*, at http://www.ipu.org/parline/reports/instance/2_20.htm.

4.9 Germany

47. Within the federal Parliament (the German Bundestag), the Committee on Human Rights and Humanitarian Aid has responsibility for human rights and humanitarian policy.
48. The Committee examines draft laws and motions put forward by parliamentary groups, as well as government reports and documents (such as the biennial human rights reports prepared by the Bundestag).
49. The Committee's mandate extends to human rights and humanitarian issues at both national and international levels. For example, the Committee was influential in the establishment of the German Institute of Human Rights. In March 2004, the Committee drew attention to humanitarian and human rights issues in Afghanistan following a visit by Committee delegates.
50. The Committee comprises 16 members of the Bundestag, who are nominated by their parliamentary groups in proportion to their representation in the Bundestag. Between 1998 and 2005, the Committee held 158 meetings.

4.10 Norway

51. Standing Committees in Norway are preparatory bodies that serve and report to the Norwegian Parliament, the Stortinget, making written recommendations on matters referred to them by the Stortinget.

Standing Committee on Foreign Affairs

52. The Standing Committee on Foreign Affairs considers all foreign affairs issues, including matters relating to agreements between Norway and other states or international organisations. These matters include human rights agreements. This committee is appointed by the Stortinget for a period of four years, and has 15 members.

Standing Committee on Justice

53. The Standing Committee on Justice considers all issues within the mandate of the Ministry for Justice, including human rights at the national level. This committee is also appointed by the Stortinget for a period of four years, and has 11 members.