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4 May 2010

Committee Secretary  
Senate Standing Committee for the Scrutiny of Bills  
PO Box 6100  
Parliament House, Canberra ACT 2600  
By email: [scrutiny.sen@aph.gov.au](mailto:scrutiny.sen@aph.gov.au)

Dear Committee Secretary,

**Re: Inquiry into the direction and role of the Scrutiny of Bills Committee**

Thank you for the opportunity to make a late submission to the above inquiry. The Sydney Centre for International Law is a leading centre of international law research and policy in the Asia-Pacific region. This submission focuses on terms of reference (1)(c): 'what, if any, additional role the committee should undertake in relation to human rights obligations applying to the Commonwealth'. We make the following key points and recommendations:

1. With the Government's announcement of a new national human rights framework on 21 April 2010, the future role of the Senate Standing Committee on the Scrutiny of Bills concerning human rights needs to be clearly clarified in relation to the proposed new 'Parliamentary Joint Committee on Human Rights'. That proposed new committee is designed to provide greater scrutiny of legislation for compliance with Australia's international human rights obligations. In addition, new bills introduced into Parliament will be accompanied by a statement of compatibility with Australia's human rights obligations.

The Senate Standing Committee currently has a role in assessing whether bills 'trespass unduly on personal rights and liberties' under Standing Order 24. Before proper consideration can be given to sharpening or strengthening the future role of the Senate Standing Committee in human rights, the scope of the mandate of the proposed new Parliamentary Joint Committee needs to be known, so that a proper division of labour between the committees can be worked out. If the new Joint Committee will assess Australia's obligations under the major international human rights treaties, then it may well be appropriate for the Senate Standing Committee to retain a residual power to consider other 'rights and liberties' in the broader, non-exhaustive, non-legalistic sense.

2. In the event that the proposed Joint Parliamentary Committee on Human Rights does not materialize, we recommend that the Senate Standing Committee should be expressly mandated (by amendment to Standing Order 24) to assess proposed legislation for ‘compatibility with Australia’s human rights treaty obligations’, specifically under the key framework treaties (the *International Covenant on Civil and Political Rights* and *International Covenant on Economic, Social and Cultural Rights*).

In addition, consideration might be given to empowering the Committee to also consider rights arising under the specialised treaties, to the extent that those treaties are relevant to the subject matter of a given bill (*Convention on the Elimination of All Forms of Discrimination against Women*, *Convention on the Elimination of All Forms of Racial Discrimination*, *Convention on the Rights of the Child*, *Convention against Torture*, and *the Convention on the Rights of Persons with Disabilities*).

Although assessing bills against all of Australia’s human rights treaty obligations may appear onerous, in practice it will usually not be so. Many of the specialised treaties simply restate or particularise the general principles in the ICCPR or ICESCR; and in many cases, the applicability or non-applicability of a particular specialised treaty will be readily apparent from the subject matter of a given bill.

At present, the reference in Standing Order 24 to whether laws ‘trespass unduly on personal rights and liberties’ is too vague to provide meaningful scrutiny, since it does not identify with precision the legal grounds of review and may result in the deficient scrutiny of proposed legislation for compatibility with Australia international human rights obligations.

Tasking the Committee with a more precise legal basis for its rights-based review of laws would sharpen the analysis of human rights concerns and tap the Committee’s work into the accepted international jurisprudence on human rights related issues. Such analysis can both assist the Committee in better weighing the competing public interests at stake – thus improving policy outcomes – and also assist in ensuring that Australia better meets its international human rights obligations. As part of that analysis, the Committee could assess whether any restrictions on particular human rights would be regarded as necessary in pursuit of a legitimate aim and proportionate to that aim in accordance with international jurisprudence.

3. Consideration should be given to involving the Senate Standing Committee in the process of legislative drafting at an earlier phase, prior to the presentation of a final draft bill. Involving the Committee at an earlier stage can enable the Committee to identify human rights based concerns



and draw these to the attention of drafters, so that such concerns can be taken into account at an earlier stage in the drafting of bills and dealt with appropriately. The involvement of the Committee in commenting on early drafts of bills can also avoid the politicisation of bills at a much later stage where there is pressure to pass bills quickly.

4. Where expedited procedures are utilized to pass a bill, in circumstances where the Committee would be unable to complete its consideration of the bill, a specialised procedure should be established to enable human rights concerns to be raised prior to the passage of the bill. For example, any Senator could be empowered to flag a particular expedited bill as engaging human rights concerns in relation to Australia's international treaty obligations. Upon such request, the new procedure would enable those concerns to be considered and addressed before the bill is passed.
  
5. Consideration also should be given to extending the Committee's powers to authorize it to conduct inquiries and collect evidence on pressing or anticipated human rights problems, similar to the power possessed by the UK's Parliamentary Joint Committee on Human Rights. Such a broadening of the terms of reference of the Commonwealth's Scrutiny Committee would be especially desirable in light of the potentially enhanced role that the Committee might now be expected to fulfil in lieu of the federal adoption of a statutory Bill of Rights in the near future.

Please be in touch if you require any further information.

Yours sincerely,

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**Professor David Kinley**  
Professor of Human Rights

**Mr David Lewis**  
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