

Your ref: Ms Sarah Moulds

Our ref: International Law and Relations Committee

2 July 2010

Mr Bill Grant
Secretary-General
Law Council of Australia
GPO Box 1989
CANBERRA ACT 2601

By Email: bill.grant@lawcouncil.asn.au, sarah.moulds@lawcouncil.asn.au

Dear Mr Grant

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS COMMITTEE'S INQUIRY INTO THE *HUMAN RIGHTS (PARLIAMENTARY SCRUTINY) BILL 2010* AND *HUMAN RIGHTS (PARLIAMENTARY SCRUTINY) (CONSEQUENTIAL PROVISIONS) BILL 2010*

Thank you for your memo dated 10 June 2010, inviting the Queensland Law Society to provide comments to the Senate Inquiry into the *Human Rights (Parliamentary Scrutiny) Bill 2010* and the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010* ("the Bills").

This response has been compiled with the assistance of our International Law and Relations Committee who have a thorough understanding of the issues impacting this area of law.

Overall support for the Bills

The Society supports the adoption of a Human Rights Framework and the amendments proposed in the *Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010*.

The Society concurs with the Law Council of Australia and supports the elements of the *Human Rights (Parliamentary Scrutiny) Bill 2010* which:

- establishes a Parliamentary Joint Committee on Human Rights ("the Committee") to ensure human rights are taken into account during the legislative process;
- requires a member of Parliament to prepare a Statement of Compatibility confirming a bill or legislative instrument complies with human rights; and
- allows the Committee to examine bills and legislative instruments, to report to parliament and inquire into any human rights issues.

Notwithstanding this support, the Society has similar concerns to the Law Council of Australia in relation to the implementation, interpretation and operation of the Bills.

Implementation Challenges

The Society agrees with the Law Council's submission that broadly defining 'human rights' by reference to seven international treaties provides a level of uncertainty to legislators, the legal profession and the public, given the differing limitation and proportionality tests. This uncertainty would be exacerbated if there were no consensus regarding which treaty is to apply in the event of inconsistency. The Society therefore supports a cohesive set of human rights principles to assist the Committee in performing their functions. This will ensure uniformity in relation to the Committee's interpretation and application of human rights principles when examining bills and legislative instruments.

The Society also submits that in the event the Committee concludes that the bill or legislative instrument is incompatible, the Bills do not appear to specify:

- the status of the bill;
- the validity and enforceability of that legislative instrument; and
- the action required to ensure the bill or legislative instrument is compatible.

The Society proposes that if this issue is clarified, it will provide certainty to our members in advising clients of their rights and whether the legislation is unconstitutional or does not comply with the Human Rights principles under the Bills.

Parliamentary Joint Committee on Human Rights

The Society supports the Law Council's proposal for the Committee to be able to initiate its own inquiry.

We also support the proposal for the Committee to have a broader monitoring role. This will promote transparency with respect to the Committee's role in examining, reporting and conducting inquiries. The Society also proposes that any knowledge base or database in relation to international interpretations of protected rights be accessible to professional organisations and the public.

Statements of Compatibility

The Society agrees with the Law Council's submission that when a Committee 'assesses' a bill or legislative instrument, reasons must be set out in a Statement of Compatibility confirming whether a bill or legislative instrument complies with human rights.

To that end the Society suggests that clause 3(1) of the *Human Rights (Parliamentary Scrutiny) Bill 2010* defines 'assessment' as requiring reasons for the Committee's decision.

If you have any questions regarding the contents of this letter, please do not hesitate to contact Ms Binny De Saram, a Policy Solicitor with our office on (07) 3842 5885 or b.desaram@qls.com.au.

Yours faithfully

Peter Eardley
President