



Express law *fast track information for clients*

25 November 2011

New human rights obligations for agencies

On 25 November 2011, the Human Rights (Parliamentary Scrutiny) Bill 2010 was passed by the Senate and is now awaiting Royal Assent. It is anticipated the new Act will commence operation in early 2012.

The Act will place new obligations on agencies to assess the compatibility of any legislation they are developing with certain international human rights instruments.

What will the Human Rights (Parliamentary Scrutiny) Act 2011 do?

The Act will implement 2 key initiatives:

- It will establish the Parliamentary Joint Committee on Human Rights. This Committee will be made up of members of both Houses of Parliament and will have 3 functions:
 - to examine Bills and legislative instruments coming before the Parliament for compatibility with ‘human rights’ (defined in s 3 of the Act to mean the rights and freedoms recognised or declared by the 7 core international human rights instruments to which Australia is a party) and to report to Parliament on that issue
 - to examine current Acts for compatibility with human rights and to report to Parliament on that issue
 - to inquire into any matter relating to human rights that is referred to the Committee by the Attorney-General and to report to Parliament on that matter.
- It will require any member of Parliament who proposes a Bill to prepare a statement of compatibility for that Bill. Statements must also be prepared for any disallowable legislative instrument. The statement must include an assessment of whether the Bill or legislative instrument is compatible with human rights, and must be presented to the Parliament. However, these statements will not be binding on courts or tribunals and will not affect the validity of the Act or legislative instrument.

What will the Act mean for agencies?

The Act will require a new focus upon human rights in the processes of policy development and law-making. In particular, agencies developing new legislation and legislative instruments must prepare statements of compatibility, which should be ‘succinct assessments’ with a ‘level of analysis that is proportionate’ to the impact of the proposed legislation on human rights. These statements will inform parliamentary debate and, potentially, the subsequent interpretation of the legislation by courts and tribunals.

Where can agencies get more information on their obligations?

Government is providing support for agencies in fulfilling the new obligations. For example, on 7 September 2011, the Attorney-General launched the Australian Human Rights Framework Public Sector Education Program, which is being rolled out across the public service to assist officers in administering programs and developing policy and legislation consistently with Australia's international human rights obligations.

AGS can assist

AGS has broad experience in and can provide specialist advice and assistance on human rights issues. In conjunction with the support being provided by Government, AGS can assist with understanding human rights obligations, analysis of Bills and instruments against these human rights obligations, and the preparation of statements of compatibility.

For further information please contact:

Robert Orr QC
Chief General Counsel
T 02 6253 7129 F 02 6253 7304
robert.orr@ags.gov.au

Leo Hardiman
Deputy General Counsel
T 02 6253 7074 F 02 6253 7304
leo.hardiman@ags.gov.au

Susan Reye
Senior General Counsel
T 02 6253 7110 F 02 6253 7304
susan.reye@ags.gov.au

Robyn Briese
Counsel
T 02 6253 7569 F 02 6253 7304
robyn.briese@ags.gov.au

Andrew Yuile
Counsel
T 02 6253 7237 F 02 6253 7304
andrew.yuile@ags.gov.au

Important: The material in *Express law* is provided to clients as an early, interim view for general information only, and further analysis on the matter may be prepared by AGS. The material should not be relied upon for the purpose of a particular matter. Please contact AGS before any action or decision is taken on the basis of any of the material in this message.

This message may contain confidential or legally privileged information. Only the addressee has the right to use or disseminate this information. If you think it was sent to you by mistake, please delete all copies and advise the sender. For the purposes of the *Spam Act 2003*, this email is authorised by AGS. Find out more about AGS at <http://www.ags.gov.au>.

If you do not wish to receive similar messages in the future, please reply to: <mailto:unsubscribe@ags.gov.au>