



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: JD:HumanRights:VK:586366

10 February 2012

The Hon Paul Lynch MP  
Shadow Attorney General  
PO Box 3089  
LIVERPOOL NSW 2170

By email: [ElectorateOffice.Liverpool@parliament.nsw.gov.au](mailto:ElectorateOffice.Liverpool@parliament.nsw.gov.au)

Dear Mr Lynch,

**Proposed amendment to the *Interpretation Act 1987 (NSW)***

Thank you for your letter dated 15 December 2011, which the Human Rights Committee ("Committee") of the Law Society of NSW considered at its meeting of 6 February 2012.

The Committee is a long-standing committee of the Law Society, comprised of experts drawn from the Society's members. The Committee has the responsibility to consider and monitor Australia's obligations under international law in respect of human rights; to consider reform proposals and draft legislation with respect to issues of human rights; and to advise the Law Society of any proposed changes.

The Committee congratulates you on your proposal to amend the *Interpretation Act 1987* to require courts to construe legislation in a manner that is consistent with human rights obligations, and strongly encourages you to introduce a Private Member's Bill in this regard. The Committee supports the enactment of a Human Rights Act in NSW, but notes that if passed, this amendment would represent a significant advancement in the protection and promotion of human rights in NSW. The Committee makes the following additional points:

1. As a preliminary matter, the Committee notes that despite the fact that Australia is a federation with legislative powers divided between Commonwealth and the States, State Parliaments should observe international law as the obligations Australia undertakes when it ratifies a treaty are unaffected by internal legal arrangements.<sup>1</sup> Enacting legislation such as that which you suggest would see Australia moving towards complying with its international obligations.
2. The Committee suggests that in addition to the six treaties listed in your discussion paper, a bill to amend the *Interpretation Act 1987* for human rights consistency should include reference to the *Convention on the Elimination of All forms of Discrimination Against Women*. This would ensure that NSW is

<sup>1</sup> United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, United Nations, Treaty Series, vol. 1155, p. 331, Article 27.

consistent with the core UN human rights treaties referred to in the Federal Government's "Australia's Human Rights Framework" policy and the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

3. The Committee suggests that the amendment to the *Interpretation Act 1987* be consistent with the interpretation provision in the *Charter of Human Rights and Responsibilities Act 2006* (Vic). The Committee's view is that this provision provides a useful legislative precedent. For your convenience, section 32 of the Victorian Charter provides:

### **32. Interpretation**

- (1) So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.
- (2) International law and the judgments of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting a statutory provision.
- (3) This section does not affect the validity of-
  - (a) an Act or provision of an Act that is incompatible with a human right;
  - (b) a subordinate instrument or provision of a subordinate instrument that is incompatible with a human right and is empowered to be so by the Act under which it is made.

The Committee thanks you for the opportunity to provide comment on your proposal and would be pleased to assist you in this regard, if any assistance would be helpful.

Yours sincerely,



Justin Dowd  
**President**