Wednesday 23 October 2002

Lynn Lovelock  
Acting Clerk of the Parliaments  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Lynn,

Standing Committee on Law and Justice:  
_A NSW Bill of Rights_

Please find attached the Government's response to the recommendations of the above Report.

Would you please arrange for this response to be tabled.

Yours sincerely

Michael Egan  
Treasurer

Received by me Thursday 24 October 2002 and authorised to be published

Lynn Lovelock  
At Clerk of the Parliaments

Treasurer, Minister for State Development, Leader of the Government in the Legislative Council and Vice-President of the Executive Council.  
Level 32, Governor Macquarie Tower, 1 Farrer Place, Sydney 2000. Telephone: (02) 9228 3856 Facsimile: (02) 9228 5476
The Hon M R Egan MLC  
Treasurer, Minister for State Development and Vice President of the Executive Council  
Level 33, Governor Macquarie Tower  
1 Farrer Place  
SYDNEY NSW 2000

Dear Mr Egan

I am writing to advise the Government’s response to the report of the Legislative Council’s Standing Committee on Law and Justice, A NSW Bill of Rights, released on 3 October 2001.

The Committee made two recommendations:

1. That a parliamentary Scrutiny of Legislation Committee be established, based on the Senate Scrutiny of Bills Committee, and

2. that the Interpretation Act 1987 be amended to permit judges to consider international treaties and conventions to which Australia is a party when there is an ambiguity in a NSW statute. (The Standing Committee stated that this would confirm the position at common law.)

In response to the first recommendation, the Government introduced the Legislation Review Amendment Bill 2002 to expand the role of the Regulation Review Committee to include a scrutiny of Bills function. To reflect its broader role, the Committee will be retitled the Legislation Review Committee.

As you would be aware, the Bill was passed by the Legislative Council on 25 September 2002.

In relation to recommendation 2, the Government does not agree with the Committee’s view that this will confirm the position at common law. At common law, the courts may consider a treaty in interpreting ambiguous legislation if the legislation was intended to give effect to the treaty.

The Government does not understand the common law position to be that ambiguities in State legislation may be resolved by reference to treaty law (as opposed to customary international law) regardless of whether the treaty was considered in the legislation itself or in the course of its passage.
Section 34 of the Interpretation Act specifically permits any treaty or other international agreement that is referred to in an Act and any speech made in the second reading debate to be considered in interpreting the Act.

No other Australian jurisdiction has a provision of the kind recommended by the Committee. The Government believes that it is important to maintain maximum consistency between states and territories on issues of statutory interpretation.

Accordingly, adoption of the recommendation does not appear to be warranted.

Yours sincerely

Bob Carr
Premier