

Monday 11th October 2010

Attention: Senate Legal and Constitutional Affairs Legislation Committee

Re: Enquiry Into:- Human Rights (Parliamentary Scrutiny) Bill 2010
And:- Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010

Dear Mesdames et Messieurs,

I write in support of amendment of the definition of human rights proposed for the Parliamentary Joint Committee on Human Rights, removing the partial list of human rights in section 3 subsection 1 and replacing same with:-

“human rights means the rights and freedoms established in Australian law, wheresoever found, as well as rights and freedoms established by international conventions, whenever adopted, that in the opinion of the Committee are relevant and material to the social question being addressed by the legislation being scrutinised”.

I object to the selectiveness of the choice of which international conventions and which rights established in Australian law to include as recognised human rights. What about the rights of, say, prisoners of war under the Geneva Conventions? Or the right of personal property established by the Magna Carta? All established rights allegedly infringed by a piece of legislation should be scrutinised for, not just a list that suits the lawyer led human rights activist's agenda.

I object to the attempt to reduce all social questions to mere questions of rights. Trying to address some questions in terms of rights, or in terms of rights and obligations, and ignoring the situational logic of a social question in society at large and the wider world and ignoring physics and chemistry may lead to a silly policy. Take climate change, now well established as slowly occurring and leading to major problems in fifty to a few hundred years. What to do in terms of a rights framework? I'd say that climate change needs a science based policy not a rights based policy. And a sound science based policy. Energy efficiency regulation and water efficiency regulation will prove absolutely necessary here.

I think some questions are too complex to be addressed in terms of rights and obligations and lawsuits in relation thereto, but need a statute that declares and outlines a legal solution to the social question. Take the weights and measures legislation, for example. Whilst such law should be drafted in a way mindful of rights and liberties, I do think that scientific considerations, international standards, and commercial considerations must take precedence in such a law.

Often claimed human rights conflict. Some human rights charters if one analyses each sentence might seem to incorporate hundreds of competing rights. But how to organise or decide the precedence of these hundreds of competing rights? At present administrative policy, administrative discretion, statute law and legal precedent may help decide for any particular case. Injustice is however ever-present in a world where values are dissolving and the ordinary people are encouraged to be litigious in demanding their rights. Rather than simply defer to the text set in stone of international conventions, parliamentarians should think for themselves. Parliament is after all the body established to settle difficult social questions. Also, values education would help in reducing futile and unnecessary litigation. And parliament should get its act together and legislate when absolutely necessary, say to implement prudential banking regulation, rather than have an unfettered laissez faire policy of “self regulation.”

Whilst I do think that some political and process rights need constitutional protection by the High Court, in order that political freedom enable the marketplace for ideas to work in the hope that Australia might become an ideal republic the best of outcomes for the ordinary people, I fear that to solely focus on human rights to the exclusion of other considerations will lead to human rights for the rich and the new class, who have the resources to litigate their rights, and nothing for the poor and ordinary people.

I ask that this contribution to this issue be considered by the members of parliament on the Committee.

Yours Sincerely,

Andrew Oliver (copy with signature to follow by post.)