05/07/2010

Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600

Submission: Human Rights (Parliamentary Scrutiny) Bill 2010 (Cth) & Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010 (Cth)

Dear Secretary,

As a concerned and interested Australian citizen, I would like to make a submission to the Senate Legal and Constitutional Committee on the proposed Human Rights (Parliamentary Scrutiny) Bill 2010 (Cth) and Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010 (Cth).

These Bills would appear *prima facie* to be an attempt to introduce a legislative national Charter of Rights, or Bill of Rights, by the back door, when the Federal Government has so recently rejected such a proposal from the Brennan Committee on the grounds that it would be unnecessarily divisive, learned and popular opinion on this subject being so deeply divided in Australia.

The primary difference between these Bills and the proposed Charter of Rights, as I understand it, is that the proposed Charter of Rights would have given the Courts oversight of Commonwealth legislation in order to assess it against the rights listed in the Charter and make declarations of incompatibility where legislation conflicts with judicial interpretation of the rights listed in the Charter (thereby derogating from Parliamentary sovereignty), whereas these proposed Bills seek to establish a Joint Parliamentary Committee to assess all Commonwealth legislation against the rights specified in seven human rights treaties to which Australia is a signatory, and to give this proposed Committee the power to make statements of compatibility or otherwise.

The first point to consider is what is driving the need for such a Joint Committee and review process? This question goes to the very purpose of introducing any new law – what is the harm that it is designed to correct? In providing a convincing response to this question, the proponents of these Bills need to provide concrete examples of where or how our existing laws have become dysfunctional and are failing to protect human rights in Australia, and demonstrate how countries that have a similar review process have successfully protected these human rights to a greater extent than in Australia, as a direct result of such a review process. General speculation is simply not good enough. Empirical evidence is required here in order to convincingly demonstrate the need for such a proposed review mechanism.

This is because, absent some pressing need to introduce more rigour into the protection of human rights in Australia, the proposed Joint Parliamentary Committee is simply redundant. As matters stand, domestic legislation is in any case drafted so as to conform as closely as possible to Australia's obligations under international treaties to which we are a signatory. Further, there is already an existing mechanism for reviewing any legislation that falls short of the required level of compliance with our international obligations. Such legislation can be scrutinised in the Commonwealth Parliament in the first instance even without a separate Joint Committee dedicated to the task, and it can challenged in the Courts in the second instance and, if necessary, struck down by the High Court, as happened, for example, in the *Tasmanian Dam Case*. Where therefore, is the pressing need for a further mechanism for review which duplicates these functions?

I would suggest that Australia has one of the very best human rights records anywhere in the world. The freedom, prosperity, and way of life in Australia is the envy of the world, and this is evidenced by the fact that immigrants and asylum seekers the world over are so keen to come to live in our country, even to the extent of bypassing numerous other countries on the way. Australia has a proud record of protection of human rights, and stands second to no country anywhere in the world in this regard. It is not for nothing that Australia has been termed the 'lucky country'. I invite anyone doubting this proposition to visit any other country, anywhere in the world, and compare the protection of human rights in that country with the protection of human rights in Australia. Further, I challenge anyone doubting this proposition to nominate any other country anywhere in the world where human rights are better protected than in Australia, and to produce empirical evidence to demonstrate that this is the case.

In the meantime, I would strongly urge the Committee to give serious consideration to the points I have made, and in particular to bear in mind that legislation of this nature that seeks to introduce a version of a Charter of Rights by the backdoor is likely to be every bit as divisive and contentious as the legislative Charter of Rights proposed by the Brennan Committee. It begs the question as to what merit such a potentially divisive piece of legislation has in the absence of any pressing need for duplication of existing mechanisms.

Thank you for your kind consideration of my submission.

Yours sincerely,

Bob Wright