Date Introduced: 25 September 1979
House: Senate
Presented by: Senator the Hon. Peter Durack, Attorney-General

Short Digest of Bill

Purpose

To establish a Human Rights Commission with the major function of ensuring that Commonwealth and Territory laws, acts and practices conform with the provisions of the International Covenant on Civil and Political Rights.

Background

The Covenant was adopted by the U.N. in 1966 and came into force on 23 March 1976. Australia became a signatory on 18 December 1972 under the then Labor Government.

Article 2 of the Covenant commits each party to respect and ensure to all its citizens the rights guaranteed in the Covenant without distinction of any kind; as well, each party is required to take all necessary steps to give effect to these rights where they are not already guaranteed. In response to this latter obligation, the Government has, in this Bill, opted for a human rights commission with the essential function of monitoring rather than adjudicating on the consistency of laws and practices with the Covenant. This course of action is partly as a result of severe constitutional question marks over the Federal Government's powers to legislate to protect and enforce human rights as well as the Government's belief that the guaranteeing of these rights does not require a Bill of Rights and the accompanying judicial powers of enforcement, believing instead, that the present law adequately protects these rights and that Parliament is the more appropriate body to ensure the continued protection of these rights.

A wide range of rights is covered by the Covenant. Among the more important are the inherent right to life; freedom from cruel and degrading treatment; freedom from arbitrary arrest and detention; right to trial within a reasonable time; liberty of movement; equality before the law; the presumption of innocence; freedom of thought,
The Labour Government introduced the Human Rights Bill 1973 in the Senate on 21 November 1973 as its response to Australia's obligations under the Covenant. That Bill was quite different in its approach. It sought to create under Australian law, the rights and freedoms contained in the Covenant in language very similar to that of the Covenant. As well it established a Human Rights Commissioner whose prime function was to investigate infringements of those rights and freedoms. He also had the power to institute court proceedings against persons whom he believed had infringed the legislation. A similar right rested with a person affected by such infringement. The 1973 Bill was the subject of some controversy and the then Attorney-General invited submissions on its provisions. Debate in the Senate was adjourned after the Second Reading Speech and the Bill lapsed at the prorogation of Parliament in February 1974 and was never restored to the Notice Paper.

A Human Rights Commission Bill was introduced by the then Attorney-General Mr. Ellicott on 1 June 1977. Following the Second Reading Speech, debate was adjourned and was never resumed. However, in his speech opening the 31st Parliament, the Governor-General declared that it was the Government's intention to carry out a continuing program of law reform, particularly with a view to protecting civil liberties and enhancing individual rights and it would, in consultation with the States, reintroduce legislation to establish a Human Rights Commission. The present Bill is very similar in content to that 1977 one.

Main Provisions

Clause 3 outlines the relevant definitions; "act or practice" means that done by, or on behalf of, the Commonwealth or under an enactment or that engaged in wholly or partly within a Territory of the Commonwealth, except the Northern Territory; "human rights" means those rights outlined in the Covenant appended to the Bill.

The Commission

Clause 6 establishes the Commission as a statutory authority with the normal legal characteristics. Clause 7 provides for its membership which shall consist of a Chairman, Deputy-Chairman and between 5 and 9 other members appointed by the Governor-General; in particular, a person may not be appointed as Chairman unless he is or was a judge or is a barrister or solicitor of the High Court, another federal court or the Supreme Court of a State or Territory.
Clause 20 provides that members may be appointed for up to 7 years but may be reappointed. Clause 25 outlines the usual grounds for termination of appointment by the Governor-General, including misbehaviour or physical or mental incapacity. Clause 27 places all staff of the Commission under the Public Service Act 1922. Clause 28 outlines the requirements for meetings of the Commission which may be convened at any time by the Minister or the Chairman. Clause 29 requires the Commission to report annually to the Minister on its operations as soon as practicable after 30 June of each year. As well, clause 30 provides that the Minister shall lay the Report before each House of Parliament within 15 days of receiving it.

Functions

The Commission's functions are set down in clause 9; they include:

- examination of enactments and proposed enactments for their consistency with the Covenant and to report to the Minister on such examination;
- inquiring into any act or practice that may be inconsistent with the Covenant, attempting to effect a settlement and reporting to the Minister on those attempts;
- reporting to the Minister as to the laws that should be made or action to be taken by the Commonwealth on human rights matters;
- at the Minister's request, reporting to him on action which needs to be taken by Australia to comply with the Covenant or any other relevant international instrument;
- promotion of an understanding and acceptance of human rights in Australia; and
- undertaking and co-ordinating of research and educational programs for the promotion of human rights in Australia.

Sub-clause 9(2) provides that any positive legislative discrimination in favour of particular groups of persons e.g., Aborigines, shall not be regarded as offending the Covenant.

Powers and Duties

Clause 10 outlines the powers and duties of the
Commission. It is given the power to report at any time to the Minister on matters arising during the performance of its functions and has a duty to do so if requested by the Minister. In respect of acts or practices, the Commission must inquire and report to the Minister (a) at his request, (b) upon receipt of a written complaint that an act or practice is inconsistent with the Covenant, or (c) when it appears to the Commission to be desirable to do so. The Commission has a discretion not to act under (b) where it feels that the complaint is frivolous, vexatious or not in good faith; that the subject matter is trivial; that the act or practice, if established, would not be inconsistent with the Covenant; some other remedy is reasonably available to the complainant; the complaint would be more effectively dealt with by another authority e.g., Ombudsman; or the complainant does not have sufficient interest in the subject matter of the complaint. The Commission may not hold an inquiry in response to a complaint if it is more than 12 months since the act was done. If the Commission decides not to hold an inquiry, the complainant must be told at once and given reasons; equally, where it holds an inquiry it shall, after reporting to the Minister, immediately supply the complainant with a copy of its findings and recommendations.

Clause 11 provides that the Minister may arrange for joint action with the States or the Northern Territory; however, this may only relate to one function of the Commission, namely the promotion of the observance of human rights in a State or Territory.

Holding of Inquiries

Clause 12 gives the Commission the power to inquire in such manner as it thinks fit and in doing so, it is not bound by the rules of evidence. Clause 14 ensures that where the Commission has found an act or practice inconsistent with the Covenant, then, before reporting to the Minister, it must give the person concerned reasonable opportunity to appear before the Commission or to make written submissions. Clause 15 gives the Commission power to require persons to produce relevant information or to give evidence; however, the Attorney-General is permitted to certify that the disclosure of information would be contrary to the public interest for a number of specified reasons. However, apart from those enumerated reasons relating to security, intergovernmental communications and Cabinet deliberations, the Attorney-General’s certificate may be overruled by the Chairman of the Commission.
Reports

Clause 16 relates to reports on examination of enactments and inquiries into acts or practices. In respect of enactments, where the Commission finds it to be contrary to the Covenant, it may recommend correcting amendments in its report to the Minister. In respect of acts and practices found to be contrary to the Covenant, the Commission must inform the person concerned and the Minister of its findings and recommendations for the prevention of a repetition and in the case of the Minister also, to report on the person's compliance with its recommendations.

Miscellaneous

Clause 32 provides for certain offences. A person commits an offence if he refuses to employ, dismisses or threatens to, prejudices or threatens to, in his employment, or intimidates, coerces or penalises any person who complains or proposes to complain to the Commission, furnishes documents or information to the Commission or gives or proposes to give evidence to the Commission. The penalty for such an offence is a fine of $500.

Clause 33 provides the normal protection for Commissioners and their staff in the performance of their functions and acting in good faith, against civil actions for damages; a person giving evidence or providing information to the Commission is similarly protected.

Clause 34 makes it an offence for present or past members or staff of the Commission to disclose information obtained about a person, except in the performance of their functions; similarly it is an offence to disclose such information to a court, except where it is required by the Act e.g., in relation to an offence under the Act. The penalty for such an offence is a fine of $1,000 and/or imprisonment for up to 3 months.

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