



COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

**HUMAN RIGHTS (PARLIAMENTARY
SCRUTINY) BILL 2010**

**HUMAN RIGHTS (PARLIAMENTARY
SCRUTINY) (CONSEQUENTIAL
PROVISIONS) BILL 2010**

Second Reading

SPEECH

Monday, 22 November 2010

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

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Date Monday, 22 November 2010
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Questioner
Speaker Zappia, Tony, MP

Source House
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Mr ZAPPIA (Makin) (7.52 pm)—I welcome the opportunity to speak on the Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010. The two key provisions of them are on, firstly, the establishment of a parliamentary joint committee on human rights and, secondly, the preparation of a statement of compatibility to accompany all bills and legislative instruments subject to disallowance. The question of a bill of rights is something that I have taken an interest in for many years. These bills go a significant way toward ensuring that we do have more rights entrenched in our legislation than in the past. Whilst the rights may not be legally entrenched, it will certainly be the case that as a result of these bills there will be more scrutiny of our legislation to ensure that in fact human rights do get the support of the parliament when bills are debated and legislated. The very fact that we are debating this bill, and that Australia went through a lengthy public discussion about human rights and how we can best ensure them, reflects the strength of the Australian democracy. It is also a measure of our common decency because human rights are fundamentally about constructing a society in which people are all treated equally and, just as importantly, a society in which we treat all others in the same way that we would like society to treat us.

What has clearly emerged from the public consultation is that the question of a bill of rights—or a charter of rights as it has often been referred to—is argued as passionately by those in favour of such a bill or charter as it is by those who oppose it. Given the legal implications associated with the public consultation, I note that some of the nation's most eminent jurists have contributed to this debate and put forward opposing views. Interestingly, whilst the views are opposing, both sides of this debate are united in the belief that there is a strong case for the support of human rights in this country. The difference, however, is on how those rights are best protected.

Our laws are essentially premised on a belief in human rights. The question, however, is whether they adequately protect basic human rights or not. That is the question that led to the call for a bill of rights and the public consultation on this matter. My view is that the answer lies not in whether Australia adopts a bill of rights but rather, if it does, what is spelt out in such a bill. That is the key question, yet disappointingly that was not the question addressed by many of those who made submissions and certainly not by those who ran campaigns against such a bill or a charter of rights. In fairness to those people who had concerns about such a bill or a charter, there was not a bill before them on which they could comment.

My concern is that you cannot oppose a proposal without first seeing the contents of it. How can you argue that a proposal will weaken human rights, as some did, when you do not know what the proposal is? Both sides of this debate quite properly pointed to real examples to support the case for and against the proposal for a bill or a charter of rights. That is why I believe that the process leading to this bill serves a very useful purpose. One only has to ask a person who has been the victim of unfair or unjust treatment or personally deprived of basic rights to understand just how unjust and soul destroying it can be to have basic rights denied, yet it sometimes happens in spite of all the laws and judicial processes we have in place in Australia. Where the problem arises because the laws are deficient, the problem is easily rectified by amending the laws. However, that is not always the case.

I want to raise three matters which highlight that Australia's current laws are still inadequate in protecting what we all accept as basic rights. Firstly, in recent decades we have seen the introduction of a number of anti-discrimination laws. These laws were intended to protect rights and ensure all people are treated fairly. Whether those laws resolve the problem may be debatable, but what those laws certainly did do is acknowledge that there was a problem. We have also appointed human rights and equal opportunity commissioners tasked with the responsibility of overseeing compliance with those laws.

Secondly, in recent years we have seen the appointment of numerous ombudsmen, primarily to intervene where it appeared that natural justice had been denied to people. The number of ombudsmen or commissioners appointed continues to grow, further highlighting that existing laws still fail some people. Thirdly, and perhaps most importantly, since adopting the United Nations Human Rights Charter, Australia has over the years adopted several other specific charters on rights or has been a party to international treaties—for example, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the Convention against

Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and other conventions and treaties that I could refer to.

I make two points about all these charters and treaties. The first is that such charters, which are intended to protect human rights, would not be necessary if the rights expressed in those charters were already enshrined in Australian law by way of a bill of rights, a charter of rights or in the legislation itself. Secondly, adopting such charters or conventions or treaties does not make them binding on Australia unless they are, in fact, written into our laws. The critical point about international conventions and charters adopted by Australia is that they expose the shortfalls in our own Australian laws.

I want to raise a couple of other matters in respect to submissions made in the national human rights consultation. I note that there was considerable opposition to a bill of rights raised by the religious sector. Whilst I understand their concerns—and I believe that their concerns in many respects are justified when assessed against existing bills of rights that are in place in other jurisdictions—I am not convinced that their concerns could not have been resolved by a careful crafting of a bill of rights or a charter of rights for Australia.

The DEPUTY SPEAKER (Ms K Livermore)—Order! It being 8 pm, the debate is interrupted in accordance with standing order 34. The debate is adjourned and the resumption of the debate will be made an order of the day for the next sitting. The member will have leave to continue speaking when the debate is resumed.