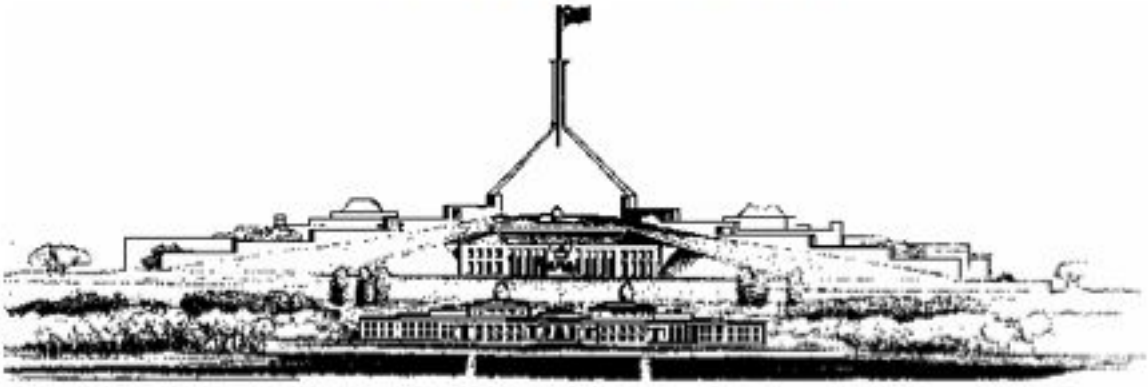
COMMONWEALTH OF AUSTRALIA

PARLIAMENTARY DEBATES



HOUSE OF REPRESENTATIVES

HUMAN RIGHTS (PARLIAMENTARY SCRUTINY) BILL 2010

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

Second Reading

SPEECH

Tuesday, 23 November 2010

BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES

SPEECH

Date	Tuesday, 23 November 2010	**Source**	House
Page	3516	**Proof**	No
Questioner		**Responder**	
Speaker	Zappia, Tony, MP	**Question No.**	

Mr ZAPPIA (Makin) (8.44 pm)—In continuing my remarks in respect of the Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010, I make the point that the fundamental question that needs to be answered is whether the granting of rights to one person simultaneously denies the reasonable rights to another. This argument was frequently made during the consultation period by religious groups, who argued that a bill of rights removed their right to freely practise their religion. That argument is based on an assumption about what would be in a bill or charter of rights. An additional question that also needs to be asked is whether the rights of the individual should take priority over the rights of the wider community. These are complex matters and, not surprisingly, the complexity was reflected in the diversity of submissions put forward during the consultation. This legislation reflects that diversity and I believe provides a sensible compromise.

I note that Australia is the only Western democracy that does not have some form of national charter or bill of rights. Of the 35,014 submissions received, 27,888 were in favour and 4,203 were opposed to a charter of rights. There have been two attempts—1944 and 1998—to amend the Australian Constitution and include a human rights charter. Both those attempts failed. Four attempts—1973, 1981, 1984 and 1985—were made to introduce federal legislation in respect of human rights. Only the Fraser government was successful with the 1981 Human Rights Commission Act. Constitutional changes were opposed by the states because they feared that any change would affect their ability to legislate. The ACT and Victoria have, however, since introduced their own charter of rights. Tasmania and Western Australia have deferred a decision on introducing their own legislation pending the outcome of the federal inquiry—which is what we are debating right now. Queensland and New South Wales had parliamentary committees inquire into this issue. Both committees rejected a human rights act.

Another frequent objection to a human rights act is that power would be transferred from the democratically elected parliament to the unelected judiciary. That argument is very contestable. Politicians are just as likely to make politically popular decisions as they are to ensure that policies are fair and just. Because the judiciary is not elected it is more likely to administer laws which, in fact, are just. Members of the judiciary also have personal political views and at times have served in parliament prior to being appointed to the bench. Judicial appointments have also been made or rejected because of the political views of those being considered for appointment to the bench. So to suggest that somehow members of the judiciary are not influenced by their own political views or to suggest that because politicians are accountable to the public they are more likely to make fair and just decisions are two statements which need to be qualified.

A bill of rights may in fact ensure more fairness and less political sway in judicial appointments. I am very familiar with one particular case where because of a particular person's views rather than that person's ability that person was not elected to the bench for many, many years. Ultimately, when he was, he proved to be an eminent member of the bench. Had a bill of rights existed in his time, perhaps he would have been appointed much earlier. However, the reality is that even without a bill of rights the judiciary are hardly constrained. In handing down decisions over the years, the judiciary have drawn on convention, precedence, written law, international law and international conventions and treaties to which we are signatories in order to determine their own decisions. I understand that in the Mabo case Justice Brennan alluded to an international convention to which this country had been a signatory.

The Australian Constitution expressly provides for a limited number of rights. Among them are: section 51, which refers to the acquisition of property on just terms; section 75, which refers to the right to review of government actions; section 80, which refers to the right to trial by jury; section 92, which refers to freedom of interstate trade; section 116, which refers to freedom of religion; and section 117, which refers to a prohibition on discrimination based on residence. The obvious question is why those particular rights were written into the Constitution and others were not. If they had been, the current debate about gay marriage may well have been dealt with differently, as may have been the case with respect to the debate about the Northern Territory intervention. The case against a bill of rights has not been made nor can it be made without a draft bill being drawn up. Interestingly, past Attorneys-General—Lionel Murphy, Gareth Evans and Lionel Bowen—all had bills

which attempted to introduce similar legislation, and none of them were successful. I nevertheless acknowledge the genuinely held concerns raised by many of those who oppose a bill of rights. This bill in my view strengthens the preservation of human rights in Australia and is one that we should support.

In closing, can I also commend the committee—led by Father Frank Brennan and including Mary Kostakidis, Tammy Williams and Mick Palmer—for the consultation process that they oversaw as part of the report to parliament that we are now effectively debating. I believe that their work will be incredibly useful not only to this parliament but to future parliaments in determining our position on a bill of rights. It certainly gave the Australian community the opportunity to comment on what I believe is not only a matter of interest to the broader community but is very important for the future of this nation. I commend the bill to the House.