AUSTRALIAN PARLIAMENTS AND THE PROTECTION OF HUMAN RIGHTS

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DRAFT – CHECK AGAINST DELIVERY

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I must acknowledge at the outset that this lecture draws on a research project, funded by the Australian Research Council, that I have been jointly engaged in since early 2004 with my colleague Dr Carolyn Evans. Much of the material and many of ideas that I will discuss today reflect our joint work.

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I should also note that this is a work in progress and some of our conclusions are tentative. One aspect of work is a series of interviews with parliamentarians, legislative drafters, committee staff and advisers to identify aspects of the existing processes that are not apparent from the public record. These interviews are ongoing and we would very much welcome the opportunity to talk with any of you that might want to contribute to this process.

I TWO PROBLEM CASES

My topic today is Australian Parliaments and the Protection of Human Rights. I want to start by giving two examples of legislation passed by Australian state parliaments in the last two years that illustrate some of the limits of the parliamentary contribution to the protection of human rights.

A Serious Sex Offenders Monitoring (Amendment) Act 2006 *(Vic)*

The *Serious Sex Offenders Monitoring (Amendment) Act* 2006 (debated and passed by the Victorian Parliament in October this year) amends legislation which was passed by the Victorian Parliament in 2005, to establish 'a scheme for the extended post-sentence supervision of high-risk child-sex offenders in the community'.[1] The 2005 legislation empowers courts to make extended supervision orders, enabling strict monitoring of the location and behaviour of sex-offenders by the Secretary of the Department of Justice and the adult parole board for a period of up to 15 years after they have completed their sentence. Among its powers under the act, the parole board can decide where a convicted offender is to reside.[2]

The 2006 amending legislation was prompted by the Supreme Court's decision that it was unlawful for the adult parole board to direct Robin Fletcher (a convicted paedophile) to live within the grounds of the Ararat prison after he had completed his sentence. The purpose of the amendment was to 'clarify that the adult parole board may impose residence requirements under an extended supervision order to direct an offender to reside at a place that is located within the perimeter of a prison, whether inside or outside the prison wall, but does not form part of the prison.'[3]

The amendment was 'pushed through' both Houses of Parliament in a single day in the last sitting week before the 2006 election.[4] The bill was characterised as an expression of the Parliament's true intentions in drafting the 2005 legislation: 'it restores the situation the government and all of the community wants to see exist.'[5] During the course of the debate, the Bill was not opposed by any speaker in either House, although some members argued for more drastic

[1] Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 9 (Tim Holding, Minister for Corrections)
[2] Section 16(3)(A)
[3] Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 10 (Tim Holding, Minister for Corrections)
[4] Victoria, *Parliamentary Debates*, Legislative Council, 3 October 2006, 73 (Peter Hall)
[5] Victoria, *Parliamentary Debates*, Legislative Council, 3 October 2006, 73 (Chris Strong)

measures.[6] The arguments presented in favour of the bill focused on the high rate of recidivism among sexual offenders,[7] the need to protect the community,[8] and, somewhat surprisingly, the rehabilitation of offenders.[9]

Some speakers referred to the rights of children and victims of sexual assault. The only substantial mention of the rights of the offender was offered by the Shadow Attorney-General, Mr McIntosh, who expressed concerns about the retrospective effect of the law, particularly in reversing the court's decision on the legality of the order made in relation to Mr Fletcher.[10]

Notwithstanding his concerns, Mr McIntosh concluded that the amendment was necessary 'to effect what the community expected was going to be the case.'[11] The Minister for Corrections attempted to sidestep the retrospectivity issue by reference to the fact that the amendment was merely an expression of the law that Parliament had originally intended to enact – though that law could itself be seen as authorising a retrospective increase of the sentence imposed by a court.[12]

The Act may well be an appropriate response to a real risk. But what is striking is how it was debated in Parliament with scant attention to human rights issues. International human rights treaties recognise a right not to have a heavier penalty imposed than applied at the time that the offence was committed.[13] That

6 See e.g. Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 77 (Dianne Hadden): 'This is another knee-jerk, half-baked bill, and it does not go all the way to protecting the community, which is the primary purpose of the Serious Sex Offenders Monitoring Act.'

7 'This changes in this bill are a reaffirmation of the Bracks government's commitment to ensuring the highest levels of safety for Victorians while minimising the risk of recidivism by serious sex offenders.' Victoria, *Parliamentary Debates*, Legislative Council, 3 October 2006, 75 (Jenny Mikakos); 'I understand there is a high rate of recidivism amongst paedophiles. That is probably one of the more revolting offences that one can think of and is the reason we are moved to pass this sort of draconian legislation.' Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 54 (Andrew McIntosh)

8 '…if the only practical solution to protect the community was to keep an offender in the precincts of a jail, then so be it, that should be the position.' Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 55 (Andrew McIntosh)

9 'These purposes are to protect the community and promote the offender's rehabilitation, care and treatment.' Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 10 (Tim Holding, Minister for Corrections); 'It will ensure that offenders who are subject to extended supervision orders can be properly rehabilitated and receive the treatment and supervision they require to allow them someday to re-enter society.' Victoria, *Parliamentary Debates*, Legislative Council, 3 October 2006, 75 (Jenny Mikakos)

10 Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 55 (Andrew McIntosh):

> 'Have no doubt what we are doing here. If a person has been to court, no matter if it happens to be someone as reprehensible as Mr Fletcher, that person has been to court and has had his rights declared, just as it is the right of any citizen to go to court to have those rights vindicated or declared by the court.
>
> Notwithstanding that right being declared, we are introducing a piece of legislation that will deliberately quash those rights that have been declared by a court. It is a significant step and should not go without some sort of comment today.'

11 Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 55 (Andrew McIntosh)

12 'In a sense the legislation does not so much deprive someone of a previously existing right, although it deprives them of a right as declared by the Supreme Court, as assert the legal situation that the government thought existed anyway -- that is, the right of the adult parole board to validly enact that as a condition of an extended supervision order. That is the reason why we have made this retrospective.' Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 56 (Tim Holding, Minister for Corrections)

13 ICCPR Article 15; ECHR Article 7.

right is also recognised in the Victorian Charter of Human Rights and Responsibilities which comes into force next year.[14] Only one member mentioned this issue, asserting that in the circumstances of Mr Fletcher, the extended supervision order did not constitute an additional penalty.[15] The human rights of offenders, particularly notorious offenders, will always struggle for traction in political debate – particularly in the run-up to an election. But a commitment to human rights requires attention to the human rights of all – *especially* the unpopular and the marginalised. Explaining how and why this Bill was a justified limitation of human rights is as important in demonstrating a commitment to human rights as enacting a human rights Charter.

B Law Enforcement Legislation Amendment (Public Safety) Act 2005 *(NSW)*

The Law Enforcement Legislation Amendment (Public Safety) Act 2005 (NSW) was debated and passed by the NSW Parliament as a response to the violence of the Cronulla riots.[16] It was said to be necessary to increase police powers to enable them to 'prevent or defuse a large-scale public disorder'.[17] The bill contained provisions that gave the police powers to institute roadblocks and lockdowns.[18] It also authorised police officers to impose emergency closures of licensed premises,[19] establish emergency alcohol-free zones;[20] increased the maximum penalties for the offences of assault,[21] riot[22] and affray[23] and created presumptions against bail for a number of public disorder offences.[24]

There was virtually no opposition to the passage of this legislation, particularly in the Legislative Assembly. Indeed, the majority of opposition MPs seemed to think that the bill did not go far enough.[25] The measures recom-

14 Section 27(2).

15 Victoria, *Parliamentary Debates*, Legislative Assembly, 3 October 2006, 56 (Mr Perera).

16 See, eg, New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20632–3 (Barry Collier), New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20621 (Morris Iemma); New South Wales, *Parliamentary Debates*, Legislative Council, 15 December 2005, 20582 (John Della Bosca); New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20628 (Frank Sartor), 20622 (Morris Iemma), 20626 (Carl Scully).

17 New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20621 (Morris Iemma). See also New South Wales, *Parliamentary Debates*, Legislative Council, 15 December 2005, 20582 (John Della Bosca); New South Wales, *Parliamentary Debates*, Legislative Council, 15 December 2005, 20584 (Duncan Gay). New South Wales, *Parliamentary Debates*, Legislative Council, 15 December 2005, 20589 (Fred Nile). See also New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20626 (Carl Scully), 20621-2 (Morris Iemma), 20625 (Carl Scully); New South Wales, *Parliamentary Debates*, Legislative Council, 15 December 2005, 20583 (John Della Bosca).

18 Law Enforcement Legislation Amendment (Public Safety) Bill 2005 (NSW) sch 1, ss 87I–87L.

19 Law Enforcement Legislation Amendment (Public Safety) Bill 2005 (NSW) sch 1, s 87B(1).

20 Law Enforcement Legislation Amendment (Public Safety) Bill 2005 (NSW) sch 1, s 87C(1).

21 Law Enforcement Legislation Amendment (Public Safety) Bill 2005 (NSW) sch 2, s 59A.

22 Law Enforcement Legislation Amendment (Public Safety) Bill 2005 (NSW) sch 2, s 93B.

23 Law Enforcement Legislation Amendment (Public Safety) Bill 2005 (NSW) sch 2, s 93C.

24 Law Enforcement Legislation Amendment (Public Safety) Bill 2005 (NSW) sch 3, s 8D.

25 New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20623 (Peter Debnam); New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20630 (Andrew Stoner).

mended by the opposition included: boosting polices numbers to deal with ethnic crimes,[26] requiring everyone in a special zone produce their identity upon demand by the police,[27] the introduction of standard non-parole periods for riot and affray and laws targeting gang leaders.[28]

Some dissent was voiced by minority parties in the Legislative Council. The Greens party voiced concerns regarding both the speed at which the bill was being passed and its extension of police powers: 'The bill is an ill-conceived and knee-jerk response. It is more about public relations than reality.'[29] The Democrats also questioned the necessity of the bill.[30]

There was very little discussion of the rights impact of this bill. Although the police minister, Carl Scully, did acknowledge potential civil liberties concerns in general terms, he argued that the bill struck the appropriate balance between civil liberties and the protection of the community. He referred to oversight by the Ombudsman, the bill's sunset provision and the limitation on the number of police that can exercise these powers, as elements of this balance.[31] Democrats member, Dr Arthur Chesterfield-Evans noted the potential of the enhanced police powers to violate civil liberties, however, he did not discuss the rights impact of these provisions in any detail.[32] Greens member, Ian Cohen, was the only member to identify specific human rights that would be (or might be) infringed by the bill.[33]

As with the Victorian Act, this Act may well be an appropriate response to a real problem. But again, the attention given to human rights issues does not appear to be proportionate in its specificity and depth to the seriousness of those issues.

II Australian Parliaments and the Protection of Human Rights

Is that something we should expect? Why should proportionate attention to human rights be something that we expect of Australian Parliaments?

26 New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20623–4 (Peter Debnam).
27 New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20626–7 (Andrew Tink).
28 New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20627 (Andrew Tink).
29 New South Wales, *Parliamentary Debates*, Legislative Council, 15 December 2005, 20586 (Lee Rhiannon).
30 New South Wales, *Parliamentary Debates*, Legislative Council, 15 December 2005, 20591 (Dr Arthur Chesterfield-Evans).
31 New South Wales, *Parliamentary Debates*, Legislative Assembly, 15 December 2005, 20626 (Carl Scully).
32 New South Wales, *Parliamentary Debates*, Legislative Council, 15 December 2005, 20593 (Dr Arthur Chesterfield-Evans).
33 New South Wales, *Parliamentary Debates*, Legislative Council, 15 December 2005, 20602 (Ian Cohen).

A *Human Rights Matter to Australians*

Human rights are a standard that ordinary Australians believe to be relevant in judging Australian society and its constitutional arrangements.

In one study carried out by Mike Salvaris, respondents were asked to rate the importance of various indicators of what makes a good society. The indicators ranked most highly were the observance of high standards in public life, equal and fair treatment under law and that 'basic human rights of all citizens [are] strongly protected'.[34] When asked what were the most important things that should be in the *Australian Constitution*, the most highly ranked answer was that the *Constitution* should 'define and guarantee the basic human rights of all Australian citizens'.[35] They also thought that the *Constitution* should protect right to public health and education and the right to an electoral system in which votes are weighted equally.

A survey conducted by Brian Galligan and Ian McAllister in 1991 (some years ago now) also found strong popular support for an Australian bill of rights entrenched in the *Constitution*. This support was associated with a significant degree of popular concern that rights are not well protected in Australia.[36] This survey also found a sharp divergence between the popular views and those held by legal and political elites. 54% of Australians felt that their rights *were not* well protected against unfair government action whereas significant proportions of lawyers and legislators felt that rights *were* well protected (65% and 79% respectively).[37] A majority of legislators also believed that parliament, rather than the courts, should retain responsibility for rights protection.[38]

A recent survey conducted by Amnesty International revealed that Australians greatly value human rights but have a poor understanding of the extent to which their rights are protected under Australian law. 95 per cent of those surveyed stated they considered rights to be important or very important.[39] (61% mistakenly believed Australia has a Bill or Charter of Rights.)

B *Parliaments Are Important to the Overall Protection of Human Rights*

How then should Australian institutions give effect to this desire to protect human rights?

We already have a rich suite of institutions and mechanisms for protecting human rights. These include:

[34] Mike Salvaris, *Community and Social Indicators: How Citizens Can Measure Progress* (2000) Institute for Social Research, 32, 36 <http://web.archive.org/web/20040306083953/http://www.sisr.net/programcsp/published/com_socind.PDF> at 4 July 2005 (copy on file with authors).

[35] Mike Salvaris, 'Making Our Own Paths to the Future: Strategies for Citizenship, Democracy and Progress in WA' (Paper presented at WA 2029 Conference, Perth, November 2004).

[36] Brian Galligan and Ian McAllister, 'Citizen and Elite Attitudes Towards an Australian Bill of Rights' in Brian Galligan and Charles Sampford (eds), *Rethinking Human Rights* (1997) 144, 145.

[37] Ibid 147.

[38] Ibid 145–7.

[39] Roy Morgan Research, 'Anti-Terrorism Legislation Community Survey' (Paper prepared for Amnesty International, Queensland, 10 August 2006) 5.

- Anti-discrimination legislation enforced by equal opportunity commissions and tribunals at national, state and territory levels
- Freedom of information legislation that ensures that citizens and others have access to information about government conduct that breaches human rights
- Ombudsmen
- A free press and active civil society

None of these mechanisms is perfect; all can be improved. But today my focus is on Australian Parliaments.

Legislatures perform several distinct functions:

- They are representative bodies providing a mechanism by which citizens participate in public affairs and government
- They are forums in which governments can be held accountable for their conduct.
- They debate, amend and enact legislative proposals that become laws.

In discharging each of these functions they can affect the enjoyment of human rights.

My particular focus is on this last, law-making, function. This is because of its significant and direct effect on human rights. The laws that Australian Parliaments enact are regularly enforced and its human rights impact is felt by citizens and others. Moreover, unlike other institutions, legislatures are able to be proactive in seeking to protect rights rather than having to wait for a violation of rights to take place. The best rights-protection *prevents* abuses of rights rather than redresses, annuls or punishes violations.

Parliaments also have a wider range of options open to them in pursuing the protection of rights than do courts. While a court or tribunal may find that workplace discrimination on the basis of sex is unlawful, it cannot set up an investigation into systemic causes of discrimination against women, nor fund non-discrimination education programmes for employers, nor create advertising campaigns to encourage girls to enter non-traditional employment for women, nor provide for better child-care facilities. When and how legislatures do so affects the law that is enacted and operates within the State.

There is another reason to focus on legislatures when considering human rights. Human rights are inherently controversial. Everyone has a stake in that controversy and an equal right to participate in it. Human rights should therefore be the subject of democratic deliberation in legislatures rather than legal-technocratic assessment by courts. Take freedom of speech for example. Almost all Australians would agree that freedom of speech is a good thing and a basic right in a democratic country. Almost all would agree that Parliaments should not unreasonably limit freedom of speech. And yet there is intense disagreement about how that principle should be applied. One recent example is legislation prohibiting religious vilification. Proponents of such legislation, including the Victorian government, regard it as entirely consistent with freedom of speech – a limitation of the right that is justified by the need to protect freedom of religion and the right of victims of vilification to participate on equal terms in society.

Opponents, including many religious groups, are equally strongly of the view that the legislation is harmful and unjustified.

Some of these disagreements reflect factual disagreements: for example, about the *effects* of vilification. Others reflect disagreements about *values*: how important religious freedom is, for example. And these disagreements extend right across the domain of human rights, even in relation to rights that some people regard as absolute and that are identified as such in international law – some people argue that torture is never justified and is always a breach of human rights; others argue that it can sometimes be justified.

It is quite possible that in each case there is no fact of the matter, no single right answer, or at least no right answer that we can identify unequivocally. Disagreement is an inevitable part of life and politics; consensus is rare. It is best that disagreements be resolved by institutions that represent (however imperfectly) the people rather than by non-representative institutions (such as courts) when we have no reason to believe that those institutions would be any better at identifying the right answer to these disagreements.

III How the Legislative Process Considers the Human Rights Implications of Legislative Proposals

It is therefore important to know how Parliaments consider human rights issues and how often Parliaments enact laws that affect human rights. Is the parliamentary treatment of the two Acts that I described at the beginning of this lecture typical?

A *Pre-Legislative Scrutiny*

First we need to take a step back and look at how legislation comes to the Parliament. Most often, of course, policy is developed in government departments, put in legislative form by the Office of Parliamentary Counsel and its analogues, approved by Cabinet at the policy and/or legislation stage, and then introduced into the Parliament by the government.

At present in Australia, there are very few mechanisms that enable systematic consideration of human rights issues during the policy development and approval process. Only in a handful of jurisdictions is there any legislative requirement that officials or ministers consider rights issues at the policy formation or approval stages, at least in relation to primary legislation.[40]

- For example, at Commonwealth level, Cabinet approval *is* required for any significant policy proposal that is politically sensitive or involves significant expenditure or revenue changes.[41] But policy proposals that have a human rights impact are *not* singled out for detailed Cabinet consideration. Outside the ACT, and from next year Victoria, and to some limited extent

[40] In relation to secondary legislation, drafters in some states are required to take rights issues into account: see, eg, *Subordinate Legislation Act 1994* (Vic) ss 21(1)(f)–(g). Cf *Legislative Instruments Act 2003* (Cth) ss 16–17.

[41] Department of the Prime Minister and Cabinet, *Commonwealth Legislation Handbook* (1999, updated as of May 2000) [4.5].

Queensland there is no human rights parallel to the Regulatory Impact Statement process required for laws affecting competition and business.

- At Commonwealth level again, there are limited requirements for consultation within government (not publicly), on rights issues at the legislative drafting stage; but not at the earlier policy formation stage when it would be more useful.[42] For example, the Commonwealth Legislation Handbook requires that the Attorney-General's Department 'be consulted on proposed provisions that may be inconsistent with, or contrary to, an international instrument relating to human rights' and notes specifically the *International Covenant on Civil and Political Rights*[43] and the 'instruments dealing with discrimination on the ground of sex, race or national or ethnic origin' as set out in the Schedules to domestic legislation.[44] But as is clear from this description, the requirement is limited in scope and does not erect a formal human rights hurdle that all legislative proposals must clear.
- Ministers can ask HREOC to examine Bills to ascertain whether they would be inconsistent with human rights but this intervention is ad hoc and requires the initiative of government. (HREOC can, of course within the limits of its resources, make submissions to government and Parliament about Bills.)

In short, as a New South Wales Parliamentary Committee observed, 'Legislation is prepared within bureaucracies without any measurement against human rights standards'.[45]

B *Legislative Scrutiny*

When Bills reach the Parliament there is some human rights scrutiny but it is ad hoc and unsystematic and as a result is highly variable in its scope and intensity.

As part of our project, research fellow Leanne McKay analysed the human rights profile of the Bills introduced into several Australian parliaments over a three year period (2001-2003). Today I'll sketch some of results of our initial analysis of the data for the Commonwealth Parliament.

First, it is important to note that the overwhelming majority of the Bills introduced in each of these years did not limit rights contained in the ICCPR and did not set out to protect rights contained in the ICCPR. (We did not attempt to judge

[42] The government also rejected Democrat amendments to the Legislative Instruments Bill 2003 (Cth) that would have required rule-makers to undertake appropriate consultations with experts and affected persons when proposed *delegated* legislation would affect human rights, civil liberties, the environment and other interests of the community: Commonwealth, *Parliamentary Debates*, House of Representatives, 3 December 2003, 23 647–9 (Philip Ruddock, Attorney-General). The *Legislative Instruments Act 2003* (Cth) as enacted does not *require* consultation but only *recommends* it; second, it only does so when delegated legislation would affect business or restrict competition: see *Legislative Instruments Act 2003* (Cth) ss 17–19.

[43] Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976) ('*ICCPR*').

[44] Department of the Prime Minister and Cabinet, above note 41, [6.34].

[45] Standing Committee on Law and Justice, Legislative Council, Parliament of New South Wales, *A NSW Bill of Rights* (2001) 115.

whether the limits were justified – just whether the rights were engaged or protected.) Around 10 to 15% of Bills in any year burdened ICCPR rights; about the same number protected ICCPR rights. Some Bills of course limited some rights and protected others (e.g. the Racial and Religious Hatred Bill 2003 and the Sexuality Anti-Vilification Bill 2003).

		Burden human rights		**Protect human rights**		**Burden and protect human rights**	
	Bills consid-ered	Consid-ered	Enacted	Consid-ered	Enacted	Consid-ered	Enacted
2001[46]	179	15	10	13	2	9	7
2002	259	24	19	17	13	6	6
2003	184	24	15	14	2	8	3

What one would hope for is that

1. legislators accept that human rights constrain legitimate political action
2. legislators consider a broad range of rights implications of legislative proposals – not just a narrow set of human rights
3. legislators consider the rights implications of the specific provisions of legislative proposals – not just the rights implications of the broad legislative policy
4. legislators consider the evidence that is relevant to deciding whether limitations on rights are justified

and in short give attention to human rights issues that is proportionate to gravity of those issues. It would be a mistake to expect this of any one aspect of the parliamentary process. But it seems a reasonable thing to expect of the process as a whole.

Our study has revealed that human rights issues are considered to some extent by Explanatory Memoranda, Scrutiny Committee Reports and parliamentary debate in one-half to two-thirds of the cases in which legislative proposals burden ICCPR rights:

	Bills that burden human rights – issue noted in:			
	Explanatory Memorandum	Scrutiny Committee Report	Minister's Response to Scrutiny Report	Parliamentary Debate
2001 **(24)**	14	16	0	10

[46] The figures in this table are indicative – we have yet to review the data and finalise the figures.

2002 **(30)**	20	19	3	17
2003 **(32)**	15	17	1	23

The Senate Scrutiny of Bills Committee is the prototype for several Australian state parliamentary Committees that consider some rights implications of legislative proposals. It considers (among other things) whether Bills trespass unduly on personal rights and liberties. It comments on one-half to two-thirds of the ICCPR issues raised by legislative proposals. It, and to an even greater extent its counterpart delegated legislation committee, are sometimes able to secure amendments to legislation to better secure protection of some rights and liberties.[47] But its approach is narrowly focussed on civil liberties issues and its coverage is far from complete. Consider two examples from 2003.

- The Protection of Australian Flags (Desecration of the Flag) Bill 2003 was introduced by Mrs Draper as a Private Member's bill. The Scrutiny of Bills Committee summarized the effects of this Bill: 'The bill applies criminal sanctions against a person who desecrates or otherwise dishonours or, without legal authority, burns, mutilates or otherwise destroys the Australian National Flag or an Australian Ensign.' The Bill clearly engages the right to freedom of expression and there is room to debate whether it is a justified limit on that right. Similar debates have taken place in other countries, including the USA and New Zealand. But the Scrutiny of Bills committee expressly declined to comment on the Bill.[48]

  Now, there might have been good reasons for not reporting on this Bill. The Committee has limited resources, both time and human capital. It might make a strategic decision not to report at length on a private member's Bill that has limited chances of obtaining time for debate and more limited chances of being passed. Nonetheless, it is striking that there isn't even a one sentence report of the kind commonly made, drawing the restriction on freedom of expression to the attention of the Senate for its consideration.
- Another striking example is the ASIO Legislation Amendment Bill 2003 which (among other things) required persons in relation to whom a questioning warrant under s 34D of the *Australian Security Intelligence Organisation Act* 1979 (Cth) was issued to surrender their passport[49] and prohibited them from leaving Australia.[50] This engages the right to freedom of movement under international human rights law. The Scrutiny of Bills Committee commented on a strict liability provision in the Bill but did not

47 As a Senate Procedural Information Bulletin recently noted: 'The contribution of committees to amending bills is not always acknowledged, particularly when amendments are made in the House of Representatives, and is not always obvious. Often amendments arise from committee reports without the precise wording recommended by the committees being adopted.' (No 206 for the Sitting Period 9-19 October 2006, 20 October 2006.)

48 Alert Digest Number 10 of 2003.

49 ASIO Legislation Amendment Bill 2003 (Cth) s 34JC(1).

50 ASIO Legislation Amendment Bill 2003 (Cth) s 34JD(1).

mention the freedom of movement issue.[51] Government and Opposition speakers addressed a discrimination issue (potentially longer questioning periods when an interpreter was used)[52] but only a Greens member noted the freedom of movement issue, relying on published comments by an international law academic.[53] The Committees analysis of civil liberties and parliamentary and judicial control of administration is a strength; but it leave significant gaps in coverage of even civil and political rights, let alone economic, social and cultural human rights.

Later in this lecture I will suggest how the work of scrutiny committees might be re-oriented to deal with human rights issues more broadly and more robustly.

Sometimes rights issues are engaged at multiple stages in the parliamentary process. The Australian Protective Service Amendment Bill 2003 burdens several ICCPR rights (including arts 17, 9(1), 10(1) and 21) in the course conferring additional powers on protective service officers (to request personal identification details and information; to stop, detain and search certain persons for security purposes, and to seize things found during such a search). The Explanatory Memorandum argued that the burdens were justified as striking the appropriate balance between security and rights and freedoms. The Scrutiny Committee's Alert Digest noted issues about the search and seizure provisions and asked the Minister whether the its guidelines had been taken into account. The Minister responded that those guidelines had been taken into account. The Committee later reported on amendments made in the House of Representatives that removed limitations on the APS powers and narrowed the grounds on which a person could assert that they had a reasonable excuse for failing to provide information to an APS Officer. The Senate Legal and Constitutional Legislation Committee considered the extent of the powers conferred by the Bill fairly closely and concluded that they were justified. The Library's Bills Digest noted the lack of limits on length of detention for purposes of a search and the absence of a limit on detention times. There was substantial discussion of rights implications of the Bill in the course of parliamentary debate. The progress of this Bill provides a useful case study of the strengths and weaknesses of parliamentary human rights scrutiny.

- Parliament has a rich set of existing processes for considering human rights issues – committees, correspondence with Ministers, parliamentary deliberation and so on. They can act expeditiously, even in response to amendments, to provide an initial assessment of some rights-impacts of Bills.
- However, as I have already noted, the Scrutiny Committee's approach is relatively narrowly self-defined and relatively low-key. It focuses on a particular set of civil liberty issues, especially those in which it has devel-

51 Alert Digest No. 16 of 2003.

52 Commonwealth, Parliamentary Debates, House of Representatives, 2 December 2003, 23484 (Philip Ruddock); Commonwealth, Parliamentary Debates, House of Representatives, 2 December 2003, 23464–6 (Robert McClelland).

53 Commonwealth, Parliamentary Debates, House of Representatives, 2 December 2003, 23470–1 (Michael Organ), referring to the statements made by Associate Professor Donald Rothwell in Cynthia Banham, 'ASIO Grillings Will Breach Civil Rights, Warns Expert', *Sydney Morning Herald* (Sydney) 27 November 2003.

oped its own standards (including search and seizure). It rarely expresses a concluded view on Bills – instead referring matters to the Senate for consideration and not expressing a clear position as to whether a Bill trespasses unduly on rights and freedoms. It seems that this limited approach, both to scope and recommendations, is necessary to preserve the Committee's capacity to reach agreement on Bills and to report in a timely fashion.

- Moreover, the impact of scrutiny – though often asserted – can be hard to identify. Recall the Victorian Bill that I outlined at the outset of this lecture, the Victorian Serious Offenders Monitoring Bill. It was the subject of an excellent report by the existing parliamentary scrutiny committee[54] that identified the serious human rights issues with the Bill. The Victorian report was a remarkable achievement given the limited time available – the Committee managed to complete it and have it tabled in time for debate in the Legislative Council. However, it was not mentioned in debate, even by the members of the Committee. (The NSW Committee was not able to report until after the Bill was passed.)
- The Legal and Constitutional Legislation Committee's approach to Bills appears to be influenced by number and tenor of the submissions it receives. Human rights oriented submissions inflect the reports it makes. Contrast the report on this Bill with the Committee's reports on terrorism legislation. But even there the Committee rarely expresses its own reasoning and conclusions *in the language of human rights*. The Senate Legal and Constitutional Legislation Committee's 2005 report on the *Provisions of the Anti-Terrorism Bill (No. 2) 2005* provides a useful illustration.[55]

At present, in short, human rights issues are considered in a largely unsystematic fashion at early stages of the policy process in most Australian jurisdictions, presenting the risk that decisions about how to pursue policy objectives are taken without adequate analysis of their human rights implications. Parliamentary analysis is also largely unsystematic, with limited contributions by scrutiny committees and specialised committees like the Senate Legal and Constitutional Committee.

IV REFORM

Fortunately, there is a great deal that can be done to improve the capacity of Australian Parliaments to protect human rights. Today I highlight five initiatives that have already been taken in the UK and the ACT and that will shortly commence in Victoria. Parliaments can:

1. agree and articulate a set of rights

[54] See Legislation Review Committee, Parliament of New South Wales, *Legislation Review Digest: No 1 of 2006* [29] and Scrutiny of Acts and Regulations Committee, Parliament of Victoria, *Alert Digest No 12 of 2006*, Wednesday, 4 October 2006. Full disclosure: I made a brief submission to the Victorian Committee but the Committee's report is far more wide ranging than that submission.

[55] Legal and Constitutional Legislation Committee, Senate, Parliament of Australia, *Provisions of the Anti-Terrorism Bill (No 2)* (November 2005).

2. identify a clear and robust role for scrutiny committees
3. provide adequate resources for scrutiny committees
4. require government to prepare pre-legislative human rights impact analysis
5. require ministers to provide reasoned statements about the human rights impact of legislation

These iniatives retain the Australian parliamentary tradition and ensure that rights issues are first addressed by democratic institutions. They should be adopted by all Australian Parliaments.

A *Agree and Articulate a Set of Rights*

The first, and perhaps most important step, is for the Parliament to agree on a set of human rights against which it wishes to assess legislation. This need not involve enacting a Human Rights Act or Charter of Human Rights and Responsibilities. The Parliament, its Houses jointly or separately or even a single committee could agree on such a list. The Senate Regulations and Ordinances Committee and Scrutiny of Bills Committee have gone a small way towards this position. They already flesh out their generic mandate to consider whether delegated legislation and Bills 'trespass unduly on personal rights and liberties' by publishing lists of issues that they focus on in applying that mandate. They could go further and shift away from a relatively narrow 'civil liberties' conception of rights and liberties.[56] In principle, they could decide to base their scrutiny on the rights contained in the ICCPR, the ICESCR, the CERD and so on, or any subset of these. The advantage of doing so would be threefold.

- First, such a list of rights would allow for *systematic* analysis of rights issues. The current approach, although immensely valuable on its own terms, is rather unfocussed and ad hoc.
- Secondly, it would allow for a *broader-ranging* analysis of rights issues. The current approach, which emphasises civil liberties and parliamentary control of administration, focuses on a very narrow range of human rights issues.
- Thirdly, it would give the committees an *external reference point* in the international and overseas comparative jurisprudence on the treaties and national rights instruments based on those treaties.

B *Resources for Scrutiny Committees*

If Scrutiny Committees are to take on a human rights scrutiny role that is broader than their current role, they will need more resources, including appropriate (internal or external) expert advisers.

Our interviews with Scrutiny Committee members reveals that the resource that they find hardest to secure already is time. Effective scrutiny requires time for analysis and deliberation. It also requires that the results of scrutiny be available to the Parliament for the substantive debate on the Bill. Particularly in

[56] See Carolyn Evans and Simon Evans, 'Scrutiny Committees and Parliamentary Conceptions of Human Rights' [2006] *Public Law* 785.

State Parliaments, legislation is introduced into the Parliament and comes on for debate after a short adjournment with only the most limited opportunity for the Committee's secretariat and advisers to analyse the Bill, for the Committee to deliberate and finalise its report.[57]

C *Identify a Clear and Robust Role for for Scrutiny Committees*

It would be important for scrutiny committees to retain their focus on informing Parliament about rights issues. One of the risks of committee scrutiny under human rights acts (and even under non-statutory lists of rights) is that the process becomes over-legalised, such that the committee in effect gives its prediction of what the courts would do if they had the power to consider whether legislation breaches human rights. Parliament should be informed about how courts might react. But Parliament should retain an autonomous role to make its own assessment about the scope of human rights and what limitations on human rights are justified. Although some legislation breaches human rights clearly and beyond any dispute, and other legislation does not, most legislation that engages human rights raises contestable human rights issues on which minds may legitimately differ. For the reasons I gave earlier, Parliament should have at least a coordinate role in resolving these issues.

The example of the UK Parliament's Joint Committee on Human Rights, about which I will say more later, shows that it is possible for a scrutiny committee operating within a human rights framework to be more robust in its comments on Bills than the current Australian scrutiny committee practice. At least until recently – and it should be acknowledged that there have been changes recently – the JCHR was able to operate in a largely non-partisan fashion, presenting unanimous reports on legislation *even where it went beyond commenting on the likely response of the Strasbourg court to Bills*. Its recent report on the Armed Services Bill opens:

> For a major Government Bill with a number of provisions which engage human rights, in relation to some of which there is relevant and recent Strasbourg case-law, we find it unacceptable that we are once again in the position of having to criticise the wholly inadequate consideration of human rights matters contained in a set of Explanatory Notes. We have no doubt that the human rights compatibility of the Bill's provisions has been under extended and detailed consideration within the Government, and the unwillingness of the Government to provide any explanation of this consideration in support of its statement of compatibility makes our task of scrutinising the legislation on behalf of both Houses of Parliament considerably more protracted. This weakens the ability of Parliament to call the Executive to account in a timely way during the passage of the Bill.

Its comments on the Asylum and Immigration (Treatment of Claimants, etc.) Bill identified clauses that it regarded as being unjustified limitations on human

[57] Some Committees have been hamstrung by restrictions on meeting during sitting hours and restrictions on reporting after a Bill has been enacted. For the most part, these restrictions have been lifted.

rights and clauses that it was not persuaded constituted justified limitations on human rights.[58] These positive statements about human rights compatibility run the risk of replacing coordinate human rights scrutiny with legal crystal ball gazing but they have the considerable merit of identifying a clear framework for the Parliament as a whole to consider legislation: does the Bill limit human rights in a manner that is justified as an effective and proportionate means of achieving the Bill's substantive objectives.

D *Pre-legislative Human Rights Impact Analysis*

The Executive government should integrate analysis of the human rights impact of proposals into its policy and legislative development framework in the same way that it (attempts) to integrate analysis of economic and competition impacts of proposals. This could have two positive effects. Government proposals would be developed within a human rights framework, rather than shoehorned or spun into compliance when the proposal comes to Parliament. And the Parliament would have the benefit of a considered (albeit government-centered) analysis of the human rights impact of proposals to inform its deliberations.

These processes are most developed in the ACT (although the Queensland processes under the *Legislative Standards Act 1992* (Qld) are worth noting) but as with parliamentary scrutiny it is important to ensure that the analysis goes beyond vetting by legal officers and also incorporates serious attention to the policy dimension and the possibility of the non-judicial branches of government disagreeing with judicial interpretations of rights.

E *Require Ministers to Provide Reasoned Statements about the Human Rights Impact of Legislation*

Ministers should be required to take responsibility for the human rights impact of their legislative proposals by making a reasoned statement as to why their legislation is consistent with human rights or why any inconsistency is justified. Ministers are already required to give some such statements in the UK, New Zealand and the ACT; from 1 January 2007 Victorian Ministers must provided *reasoned* statements.[59] These statements are a basic element of ministerial responsibility in a human rights framework.

V CASE STUDY: THE UK JCHR ON ANTI-TERRORISM LEGISLATION

Most of these institutional reforms have already been adopted and tested in the UK under the *Human Rights Act 1998* (UK).

As in most Western countries, a great deal of antiterrorism legislation has been enacted in the UK since 11 September 2001, starting with the *Anti-Terrorism,*

[58] In its Fifth Report of Session 2003–04.

[59] *Human Rights Act 1998* (UK) s 19; *Bill of Rights Act 1990* (NZ) 2 7; *Human Rights Act 2004* (ACT) s 37; *Charter of Human Rights and Responsibilities Act 2006* (Vic) s 28.

Crime and Security Bill 2001 which was introduced on 12 November 2001.[60] Four days later, the Joint Committee on Human Rights presented its first report on the Bill. It commented that fulfilling its mandate required that it give priority to the protection of human rights in circumstances where they are most likely to come under pressure from (state and public) demands to address security concerns.[61] The JCHR found that 'the balance between freedom and security in the Bill … [had] not always been struck in the right place' despite the government's best attempts.[62] It recommended against using the threat of terrorism to increase the powers of the state in a manner that compromised the rights and liberties of individuals.[63]

It presented a second report on the Bill on 5 December 2001 while it was being considered by the House of Lords. It again commended the willingness of the government to engage in a dialogue regarding the human rights implications of the Bill but expressed concern about the speed at which the legislation was being passed.[64] It concluded that the bill was likely to have a significant impact on rights and although it praised the improvements that had been made (or promised) to safeguard human rights, it argued that several provisions in the bill had not been adequately justified;[65] including derogation from art 5 of the ECHR;[66] possibility of indefinite detention incompatible with art 5(4) of the ECHR;[67] disclosure of information between agencies in possible violation of art 8 of ECHR.[68] The Bill was eventually enacted, but with significant amendments including the introduction of a sunset clause over the provisions concerned with indefinite detention,[69] the creation of a committee of Privy Councillors to review the legislation two years it was enacted[70] and a narrower definition of what constitutes a terrorist suspect.[71]

In 2004, the JCHR reported on the large body of antiterrorism legislation which had been enacted by then. It noted that long term derogations from human rights obligations have a corrosive effect on the culture of respect for human rights and recommended that, if the threat from international terrorism was to

60 For a survey, see ***.
61 JCHR, Second Report of the 2001–02 Session, *Anti-Terrorism, Crime and Security Bill*, HL37/HC372, [2].
62 JCHR, Second Report of the 2001–02 Session, *Anti-Terrorism, Crime and Security Bill*, HL37/HC372, [78] (emphasis removed).
63 JCHR, Second Report of the 2001–02 Session, *Anti-Terrorism, Crime and Security Bill*, HL37/HC372, [5], [76].
64 JCHR, Fifth Report of the 2001–02 Session, *Anti-Terrorism, Crime and Security Bill*, HL51/HC420, [2].
65 JCHR, Fifth Report of the 2001–02 Session, *Anti-Terrorism, Crime and Security Bill*, HL51/HC420, [32].
66 JCHR, Fifth Report of the 2001–02 Session, *Anti-Terrorism, Crime and Security Bill*, HL51/HC420, [4]–[6].
67 JCHR, Fifth Report of the 2001–02 Session, *Anti-Terrorism, Crime and Security Bill*, HL51/HC420, [15].
68 JCHR, Fifth Report of the 2001–02 Session, *Anti-Terrorism, Crime and Security Bill*, HL51/HC420, [24].
69 *Anti Terrorism, Crime and Security Act 2001* (UK) s 29(1).
70 *Anti Terrorism, Crime and Security Act 2001* (UK) s 122.
71 *Anti Terrorism, Crime and Security Act 2001* (UK) s 21.

continue for the foreseeable future, an alternative way must be found to deal with that threat. It argued that the public and parliamentary debate about terrorism should take place within a human rights framework and that human rights law provides the framework within which the balance between the right to security and right to liberty must be struck. In particular, it invited government to consider ways it could increase the independent democratic scrutiny of its claims about the level of the threat from international terrorism so as to enable Parliament to reach a better-informed assessment of whether the measures were strictly required by the exigencies of the situation. Finally, it noted its concern about provisions of the 2001 Act that targeted only non-nationals and the disproportionate impact of the use of Terrorism Act powers on the Muslim community.

These concerns were brought home by the decision of the House of Lords in the Belmarsh Prisoners case.[72] This landmark case was brought by nine non-nationals who had been indefinitely detained under section 23 of the *Anti Terrorism, Crime and Security Act 2001* (UK) for being suspected terrorists. The non-nationals argued that the indefinite detention permitted by section 23 of the Act represented an impermissible derogation from article 5 of the ECHR and a contravention of the non-derogable, non-discrimination principle in article 14 of the ECHR. The House of Lords concluded that the derogation from the ECHR was not shown to be justified and that the provisions authorising their detention discriminated against non-UK nationals in a way that was not compatible with the ECHR.[73]

The government's response again demonstrated the capacity of the JCHR to make difference to parliamentary consideration of human rights. In January 2005, Baroness Scotland of Asthal, the Minister of State, Home Affairs made a statement about the government's intentions.[74] The government proposed to replace the powers in Part 4 of the Anti-Terrorism, Crime and Security Act 2001 with a new scheme of orders applicable to all suspected terrorists, irrespective or whether they are British or foreign nationals. The Bill would be designed to meet the Law Lords' criticism that the previous legislation was both disproportionate and discriminatory. In outlining the government's proposal, Baroness Scotland of Asthal paid respect to the work the JCHR had done on reviewing the provisions in Part 4.[75]

[72] *A(FC) and others v Secretary of State for the Home Department* [2005] 2 AC 68. See the symposium edition in volume 68(4) *Modern Law Review*: '*A v Secretary of State for Home Department*: Introduction' (2005) 68(4) *Modern Law Review* 654; Tom R Hickman, 'Between Human Rights and the Rule of Law: Indefinite Detention and Derogation Model of Constitutionalism' (2005) 68(4) *Modern Law Review* 658; Stephen Tierney, 'Determining the State of Exception: What Role for Parliament and the Courts?' (2005) 68(4) *Modern Law Review* 668; David Dyzenhaus, 'An Unfortunate Outburst of Anglo-Saxon Parochialism' (2005) 68(4) *Modern Law Review* 673; Janet L Hiebert, 'Parliamentary Review of Terrorism Measures' (2005) 68(4) *Modern Law Review* 676.

[73] *A(FC) and others v Secretary of State for the Home Department* [2005] 2 AC 68 [43], [68] (Lord Bingham).

[74] UK, *Parliamentary Debates*, House of Lords, 26 January 2005, col 1267-1271.

[75] UK, *Parliamentary Debates*, House of Lords, 26 January 2005, col 1267.

The Prevention of Terrorism Bill 2005 was introduced on 22 February 2005. The orders under which the Belmarsh Detainees were held would expire on what 14 March 2005 so there was some urgency in passing the Bill.[76] Once again the JCHR reported very quickly on an extremely complex piece of legislation. Its first report was tabled on 25 February 2005. It observed that in light of the tight time frame the report was intended to 'provide a first indication for Members of human rights issues arising at the earliest opportunity'.[77] It welcomed some of the initiatives in the Bill but remained concerned about the human rights implications of some of the measures: the necessity for 'derogating control orders'; the lack of prior judicial involvement in orders depriving of liberty; the use of a special advocate procedure in deprivation of liberty cases; the limited judicial control of non derogating control orders; the open ended discretion to impose obligations on persons subject to control orders.[78] The JCHR indicated that it envisaged that 'more detailed scrutiny of the Bill's provisions [would] follow in a further report, to be published in time to inform debate before the Bill ha[d] completed its passage through Parliament'.[79]

This initial report clearly informed debate in the Lords. Several members referred to the comments of the Committee.[80] The government tabled amendments addressing some of the JCHR's concerns on 2 March 2005. Again, the JCHR reported in a matter of days, on 4 March 2005.[81] And once again the JCHR commented on '[t]he rapid progress of the Bill through Parliament' which 'has made it impossible for us to scrutinise the Bill comprehensively for human rights compatibility in time to inform debate in Parliament'.[82] The Lords applied some 42 amendments to the Bill to give effect to the JCHR's recommendations, including a provision that the judiciary, not Secretary of State, possess the power to make control orders, a provision raising the standard of proof required to obtain a control order to the civil standard of proof and the inclusion of a sunset clause. The Commons rejected the majority of these amendments, made significant modifications to those they did accept and insisted on other amendments; the Lords did likewise. Eventually the Bill was passed on 10 March 2005 after the House of Commons agreed to a 12 month sunset clause.[83]

76 Janet L Hiebert, 'Parliamentary Review of Terrorism Measures' (2005) 68(4) *Modern Law Review* 676, 678.

77 Ibid.

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79 Ibid.

80 See, eg, United Kingdom, *Parliamentary Debates*, House of Lords, 1 March 2005, col 131 (Lord Thomas of Gresford); United Kingdom, *Parliamentary Debates*, House of Lords, 1 March 2005, col 134 (The Lord Bishop of Worcester); United Kingdom, *Parliamentary Debates*, House of Lords, 1 March 2005, col 143, 146, 454 (Lord Plant of Highfield); United Kingdom *Parliamentary Debates*, House of Lords, 1 March 2005, col 158 (Baroness Falkner of Margravine); United Kingdom, *Parliamentary Debates*, House of Lords, 1 March 2005, col 184 (Lord Clinton-Davis).

81 JCHR, Tenth Report of the 2004–05 Session, *Prevention of Terrorism Bill: Preliminary Report*, HL68/HC334.

82 Ibid ***.

83 *Prevention of Terrorism Act 2005* (UK) s 13.

VI CONCLUSIONS

Clearly the UK Human Rights Act process is no panacea and its Australian analogues will be no different. Governments will still insist that their legislation is urgent and that scrutiny must be truncated to ensure passage of the legislation. It will still be difficult to gain traction for the human rights of the most disadvantaged and reviled. Human rights analysis will demand time of members who are already hard-pressed to meet their existing legislative, committee, party and constituency responsibilities. It will also demand resources for expert advisers and committee staff. And a government with the numbers can push through legislation or threaten, as the UK government did, to repeal parts of the Human Rights Act.[84]

As the UK case study shows, a parliament human rights process structured around a human rights act *can* provide a framework of analysis that is developed and applied consistently over a number of years and provide a moral and political reference point to argue for human rights respecting legislation. But more is required. A human rights Act does not of itself create a culture of human rights – an attitude among legislators, commentators and citizens that the range of legitimate political action is constrained by human rights. This is obviously true in overseas jurisdictions that have had human rights legislation or constitutional provisions for many years. It is no less true in Australian jurisdictions that have adopted human rights Acts. Recall the example that I gave at the outset – the Victorian *Serious Sex Offenders Monitoring (Amendment) Act 2006*. Of course it was debated in October 2006 before the Victorian Charter comes formally into effect on 1 January 2007. But there was precious little evidence of culture of human rights, or even an atmosphere conducive to the development of a culture of human rights, in that debate.

The struggle to achieve human rights is not won with the passage of a human rights Act. Ultimately the success a human right Act depends on parliamentarians and governments taking rights seriously as a constraint on government action; on governments providing the resources that are necessary for timely and effective scrutiny; and on Parliaments resisting the instinct to defer to the courts as the sole authoritative interpreters of human rights. In other words, the success of these Act depends on their human rights values becoming part of political culture. Legislators are politicians and respond to the issues that their constituents regard as important. While human rights are not a widespread concern of constituents, human rights impact statements, scrutiny committee reports and Ministerial statements of compatibility are 'just another [set of] inputs to juggle'. The challenge of human rights will remain a challenge for all of us.

[84] Prime Minister's News Conference, 5 August 2005, http://www.pm.gov.uk/output/Page8041.asp; BBC News, 'Blair 'to amend human rights law'', 16 May 2006, http://news.bbc.co.uk/2/hi/uk_news/4770231.stm.