

Submission to Inquiry into the Human Rights (Parliamentary Scrutiny) Bill 2010

My submission can be very brief. It is based on my experience as Minister for Justice and Chairman of the Senate Scrutiny of Bills Committee.

I understand the policy decision made by the Government, but the resulting definition of “human rights” which affects the range of functions of the Committee and the necessary scope of the declaration of compatibility, is far too narrow. It becomes a simple exercise of attempting to ensure that Australia fulfils those obligations to which it has agreed by way of treaty, and which are incorporated into Australian law.

This leaves the mandate of the Senate Scrutiny of Bills Committee (“... trespass unduly on personal rights and liberties”) much more able to allow parliamentarians to scrutinise legislation for compatibility with Human Rights. So the proposed committee will end up having a quite minor role in parliament’s scrutiny of legislation. Would it not be better to have the one committee covering this area of concern?

The Committee may consider that it is not authorised to go behind the policy decision underlying the Bill. However, if it were minded to do so I offer the following formula which would enable the Parliament to more evidently fulfil the promise in the Title of the Bill.

I would change the definition of “human rights” to cover personal rights and liberties recognised or expressed under the Australian Constitution, in the Common Law, in statutes of the Parliament, or in treaties ratified by the Government of Australia and incorporated into law.

This has the merit of being politically uncontroversial in that it refers to the sources of law with which we are familiar. And it is ambulatory: able to encompass any changes made by the electorate in referenda, by the judiciary expounding Constitutional and Common Law, by the Parliament passing legislation, or by the Government ratifying treaties incorporated into law.

Such a formula would allow the Committee to perform a task much more in keeping with a simple reading of its functions as outlined in the Bill.

Michael Tate

30 June 2010