

19 August 2021

The Committee Secretary
Senate Legal & Constitutional Affairs Committee
Canberra (via email)

Dear Secretary

It seems that the *Constitution Alteration (Freedom of Expression & Freedom of the Press) Bill 2019*, intended to result in due course in Commonwealth, State & Territory Freedom of Expression & Freedom of the Press Acts, got off to an unfortunate reset this year when Senator Patrick referred it to the committee on 16/6/21 under urgency saying - "Renewed importance in the light of the judgement by Justice Steward regarding the freedom of expression in the High Court of Australia's decision in the matter of *LibertyWorks Inc v. Commonwealth of Australia (2021) HCA18 of 16/6/21 at 249*."

Paragraph 249 is where Justice Steward observes - "it is arguable that the implied freedom" (of communications concerning matters of government & politics which the Court has implied from the Constitution & used in earlier judgements) "does not exist."

Quite what Justice Steward's reservation concerning an implied freedom in those areas has to do with a Bill intending to stop Parliament's from limiting personal & media freedoms of expression was not explained. What is relevant is Justice Steward at paragraph 257 - "Of course, the freedom of speech that is guaranteed by the First Amendment to the Constitution of the United States is not the same as the implied freedom" (in the Australian Constitution). "The former is a personal right; the latter is a limitation on law making." Or Justices Kiefel, Keene & Gleeson at paragraph 44 - "The (implied) freedom operates as a constitutional restriction on legislative power & should not be understood to be a personal right."

Putting aside Senator Patrick's irrelevant invoking of Justice Steward's reservation, it is nonetheless beyond doubt that a majority of Australians would agree to a Constitutional alteration leading to legislation in all of our Parliaments to protect individual freedom of expression & freedom of expression for the press & other media. The resulting laws should not be thought of as nascent 'Bills of Rights' onto which others could be grafted in the future. They will simply preserve the basic human entitlement to freely express oneself within certain, specified, limitations.

Whether or not the present wording of the Bill is up to the task, I leave for experts to decide.

In urging the time is right for Freedom of Expression Acts, I note that the Coalition government & the 45th & 46th Parliaments have been unable to pass a Religious Freedom (or Discrimination) Act which the then Prime Minister promised in early 2018. Surely the numbers are there in the House & the Senate to pass this much less contentious matter?

Over the past year many Australians have seen, often for the first time, what is possible when governments give themselves emergency powers. The need for laws protecting citizen's freedom of expression has seldom been more apparent.

Yours sincerely
Paul Nolan