

Review Article

Australia's Efforts to Promote and Protect Human Rights, Joint Committee on Foreign Affairs, Defence and Trade of the Commonwealth Parliament, (Australian Government Printer, November 1994), pp i-xl + 1-333

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The very last sentence of this Report claims that "Parliament, the expression of the democratic will, is the body most suited to the oversighting, the preservation and the enhancement of rights in Australia". One may disagree with this statement on the basis that it is rather an independent judiciary that is most able and willing to protect the rights of minorities, and allow unpopular causes to function against the potential tyranny of the majority. However, there is little doubt that Parliament should have some role in the protection and promotion of human rights in Australia. The Joint Federal Parliamentary Committee on Foreign Affairs, Defence and Trade have now produced their second Report² (the 'Report') as part of Parliament's contribution to the advancement of human rights in Australia.

The Report is divided into 13 Chapters. The introductory Chapter stresses the importance of human rights and outlines developments since the publication of the sub-committee's first Report, the most important being the June 1993 World Conference on Human Rights in Vienna. Chapter 2 then proceeds to examine the United Nation's role in human rights, including an analysis of the bodies that are responsible for human rights concerns, and how these bodies are funded. Key issues regarding the main human rights conventions to which Australia is a party are discussed, including the necessity of the existing reservations to the conventions, their domestic implementation, and whether or not Australia has complied with its reporting obligations. Included in this Chapter are some useful tables on the status of the most important international human rights conventions (Table 2.1, at p 32) and the status of the Australia Reports to the requisite Committees (Table 2.2, at p 34). This latter table indicates that in most instances our reporting obligations have not been taken seriously as many of our reports are well overdue. Unfortunately, this does not appear to have bothered the sub-committee too much — no account of the delays are provided, not do the relevant Departments appear to have been called to account.

Chapter 3 is pivotal to the whole Report. It examines the Australia human rights framework, and looks at some of the central issues in the protection of human rights in Australia. There is much public ignorance in relation to many of these issues. Examples of such issues include: which Departments have responsibility for compliance with and the implementation of the international human rights treaties

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² The First Report had exactly the same title, and was published in December 1992.

Australia has ratified; the role and functions of the Commonwealth/State Standing Committee on Treaties; and the now very politicised issue of what part Federal and State parliaments should play in the ratification of Treaties. Other important issues, such as the role of the Human Rights and Equal Opportunity Commission ('HREOC') and the perennial question of whether Australia should enact its own domestic Bill of Rights, are dealt with in a rather perfunctory manner. In relation to the Bill of Rights, the sub-committee simply recommends "that the Government establish an inquiry into the desirability of developing a Bill of Rights for Australia" (No 18, at p 61). The lack of specific recommendations in this Chapter is disappointing given the fundamental importance of many of these issues.

Another criticism of this Chapter is that more consideration should have been provided of the importance of human rights education at all levels of Australian society. This is particularly so in the training of professionals, as evidenced by the poor state of human rights teaching in legal education. Human rights or civil liberties courses are at best an optional subject in some law schools, rather than being seen as of central importance, and therefore compulsory, for future lawyers' education. Greater awareness, respect and understanding of human rights can only be generated when the powerful professions in the community ensure that human rights is not seen as peripheral to their training.

Chapters 4 and 5 draw the link between Australia domestic policies and human rights overseas. Whereas Chapter 4 examines the issues of how Australia can promote human rights overseas using its aid and trade policies, Chapter 5 looks towards how Australia peacekeeping can do so. Quite clearly, aid, trade and peacekeeping forces can be used as a form of pressure on receiving countries to improve their human rights record. The Report correctly makes the point that every situation is different, and may involve different tactics to be applied, depending on the receiving country, the personalities involved, and the facts of the particular circumstance. There is a very useful recommendation (No 20, at p 72) that there should be a human rights impact statement on all proposed development assistance by the Australian Institute Development Assistance Bureau.

Chapters 6 to 11 examine the human rights situation of various categories of people who traditionally have suffered from human rights problems. These are Aboriginal people, women, children, workers and asylum seekers. The Chapters consist of a confusing mixture which explores possible human rights problems in Australia and those overseas. The pattern of these Chapters seems to be that where the Australia position is considered satisfactory, such as with women, children (except for some juvenile justice issues) and workers, then the primary focus of the Chapter is on international issues. On the other hand, where there are significant problems in Australia, such as with Australian Aboriginals and asylum seekers, the main focus is on the Australian situation. In the case of Aboriginal human rights problems, the sub-committee decided to visit some remote Aboriginal settlements in the Northern Territory, finding out at first hand their problems in relation to health, water, sewage, housing and education. Not surprisingly, the Committee found that third

world conditions existed in these settlements, and this reiterated “the extent of the gap between theory and practice” (p 121).

The final two Chapters, entitled “Civil and Political Rights” and “Minority Rights and Self-Determination” respectively, consist of an analysis of a myriad of claims made to the Committee concerning alleged human rights abuses and persecution of minorities in various parts of the world. The sub-committee admits that: “this report can only deal with situations which have been the subject of direct representations to the inquiry” (at p 193) and later: “it is difficult from the distance of Australia and without the capacity to make a thoroughgoing investigation of claims and counter-claims to decide where the balance of the truth lies” (at p 216). Despite these admissions, the Report attempts to make intelligent comments concerning the situation in many of the world’s most intractable problem areas, such as the Middle East, the Balkans, Sri Lanka, East Timor, Tibet and Bougainville. The recommendations flowing from these Chapters, although numerous, are very general in nature mainly due to the limited information available to the sub-committee.

It would seem to the writer that it would have been preferable if the Report had confined itself to Australian human rights issues. It is true that it is often difficult to delineate between international human rights questions and Australian questions. Clearly there is considerable overlap, and where international questions do intersect with internal Australian human rights issue, such as questions concerning trade, aid, co-operation, peacekeeping (Chapters 4 and 5), the international Conventions and their mechanism for scrutiny, these issues are appropriate to be included in the Report. However, purely international questions, such as those dealt with in Chapters 12 and 13, and many of the international questions found in Chapters 8, 9 and 10, are best omitted from consideration. The sub-committee does not have the resources and expertise to adequately deal with these issues, nor is it able to engage in any independent fact-finding as it is dependant on the information contained in submissions made to it. It seems far preferable to the writer that these purely international issues be dealt with by an appropriate body within the Department of Foreign Affairs and Trade. This Department has the resources and the diplomats on the ground in most of the countries under consideration, and thus should be able to produce greater objectivity and comprehensiveness in the assessment of human rights overseas than a system of simply relying on submissions from the public.

One of the recommendations in the Report (No 14, at p 50) advocates that the sub-committee be constituted in the future as a separate and permanent joint committee of the parliament. One can legitimately ask what a parliamentary committee could possibly add to the growing number of organisations, bodies and individuals concerned with human rights issues in Australia. These include the judiciary, our legislatures who have passed a variety of piecemeal legislation on a broad range of human rights issues, and the executive bodies created by this legislation, such as Equal Opportunity Commissions, Ombudsmen, and HREOC. Furthermore, there are also non-government organisations and individuals who continue to exert pressure on governments wherever human rights are abused, international bodies which have been recently empowered to scrutinise Australian compliance with its

international obligations³, such as the Human Rights Committee and the Committee on the Rights of the Child, and in some jurisdictions parliamentary committees⁴ have been specifically set up in order to scrutinise Acts and Regulations for potential human rights infringements prior to their enactment by parliament.

Possible justifications for a permanent human rights committee of the Parliament are firstly, that it is useful to have an agent of the Parliament overview human rights protection in Australia, and secondly, that having Federal Parliamentarians, who are close to the centre of power in Australia, involved with and being made aware of human rights issues is intrinsically beneficial. The sub-committee itself struck upon a possible third justification — the educational effects of such a committee, believing that it: “has played a significant part in raising the debate at a parliamentary and public level on the Australian Government’s policies on human rights” (p 49).

For the government to justify the resources required for a permanent committee, there would need to be a clearer delineation between the role of such a committee and the role of HREOC. The present sub-committee and HREOC are both charged with drawing attention to human rights problems in Australia, both can gain publicity and educate on human rights issues, investigate individual human rights complaints, write Reports and pressure governments into taking action, whereas neither can actually make any binding decisions in individual cases.⁵ A clearer delineation between the two would have HREOC responsible for investigating individual cases within Australia (and hopefully being able to make binding decisions where necessary), while any future committee would have more of an overview function, focusing on the types of issues found in Chapter 3 of the Report, and perhaps more on the connection between internal human rights issues and overseas issues such as trade, aid, relations with overseas governments, and peacekeeping.

However, the most important deciding factor in justifying a separate and permanent parliamentary committee would be the quality and usefulness of its Reports. While the present Report is short on specific recommendations, it does provide a valuable overview of human rights issues under the United Nations system and in Australia. It also contains some useful Tables, and Chapter 3 is a genuine attempt to come to grips with some of the central issues in relation to the protection of human rights in the Australian Federal system.

The Report’s major problem, however, is that while many of its recommendations are well intended, they consist of too many broadly drafted motherhood statements, rather than detailed and concrete proposals to improve human rights in Australia. This is not surprising given that much of the analysis in the Report is superficial. For example, the complex and important issue surrounding racial vilification laws are

³ For a list of Treaties Australia has ratified see Table 2.1 at pp 32/3 of the Report.

⁴ The Scrutiny of Bills and Regulations Committee (Victoria) and the Senate Committee on the Scrutiny of Bills (Commonwealth).

⁵ This is now true for HREOC following the decision in *Brandy v Human Rights and Equal Opportunity Commission* (1995) 69 ALJR 191; 127 ALR 1.

dealt with in less than two pages (p 24-25), and only three paragraphs are devoted to one of the most important human rights problems in Australia — the level of domestic violence (p 139-140).

All the above criticisms do not detract from the fact that the Report has captured in the one document most of the issues relating to human rights in Australia in a compact and easily understandable form. Given the multitude and complexity of the issues, and the limited resources of the sub-committee, this is no small achievement.

