

## **Day Three of Public Hearings**

### **Session: Parliamentary scrutiny – the view from the Hill**

#### **Summary of remarks by Rev Fr the Hon Michael Tate AO**

Speaking of the UK Human Rights Act, both Lord Bingham and Murray Hunt extolled its main virtue as changing the culture at the beginning of the parliamentary process. They played down the significance of any judicial activity in relation to the legislation (as did Profs Charlesworth and Williams re the ACT and Vic legislation).

In Australia, we have had 26 years of changing the culture at the beginning of the Federal parliamentary process through the activity of the Senate Scrutiny of Bills Committee. Already, Parliamentary Counsel approaches a department to ask whether a Minister wants to persevere in legislatively implementing a Cabinet decision by use of a provision which will almost certainly cause the Committee to alert the Senate to its view that the provision “unduly trespasses on personal rights and liberties”.

That process, already effective, could be strengthened by statutorily requiring the relevant Minister (1) to provide a statement of compatibility, or of incompatibility with reasons, in the Second Reading speech, and (2) to respond to any “Alert” before the passage of the legislation the subject of the observation.

I say “observation” but of course it amounts to a “Declaration of Incompatibility” by the Scrutiny of Bills Committee. Expand the criterion “unduly trespasses on personal rights and liberties” to cover the elements or sources of a Charter of Rights and one has a ready made, proven, democratically accountable mechanism for continuing to change the culture at the parliamentary level.

(I imagine the same could be done with the Senate Regulations and Ordinances Committee to cover its field of concern.)

The drafting of a statutory Charter of Rights would not be straightforward. It could take years to get through the Senate (if at all). Better a description of the sources of the human rights already recognised in our Commonwealth legal system, such as:

Every person within the jurisdiction of Australia possesses those 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.

The Scrutiny of Bills Committee could be required to compile a list of those rights which it considers to be found in the sources mentioned and to table them in the Senate at least twice a year and indeed whenever a change in the list is precipitated by parliamentary, executive or judicial activity.

At the end of five years of such publication, in the light of experience, such a list could be elevated to the status of a Statutory Charter of Rights. I believe that by then parliamentarians would be much more accustomed to such an inventory, and habituated to the process of ministerial and committee declarations of compatibility and incompatibility.

After five years I would predict a much greater chance of bipartisan, indeed multi-party and independent support for a Statutory Charter than could be hoped for at the present time.