

8 February 2009

National Human Rights Consultation Secretariat
Attorney-General's Department
Central Office
Robert Garran Offices
National Circuit
BARTON ACT 2600

Dear Father Brennan, Ms Kostakidis, Mr Palmer and Ms Williams,

Congratulations on your appointment to this independent committee. Having been a member of the Independent Committee to review the Australian Citizenship Test last year I appreciate the work you have ahead of you and the time it takes to review all submissions.

To that end I will keep my submission brief, concentrating on my own specialty, “citizenship”, and issues relevant to my expertise that may assist you in your deliberations.

Before making my specific points, let me say that I am in favour of a legislative bill of rights. I believe it has value in creating an awareness both in Parliament and, more importantly, in Government of human rights that need protection. There is also the educative value it will have for the broader community in inculcating the importance of human rights protection.

Who should be protected by a legislative bill of rights?

I am firmly of the view that a legislative bill of rights should reflect, as the terms of reference state, “a commitment that is based on the belief in the fundamental equality of all persons.”

The term used is “persons” not citizens.

This is deliberate because a person’s nationality or citizenship status should not impact on their fundamental human rights.

This means that such a bill should be expressed to protect all persons within the jurisdiction of the Courts, including all people residing in Australia who are subject to its laws, and all people outside Australia (mainly its citizens) who are also bound by Australian law that applies to them extra-territorially.

Are there particular rights that can be the preserve of citizens?

I acknowledge that there are some rights in the International Convention on Civil and Political Rights (ICCPR) that are expressed to be the preserve of citizens of a country.

In my book *Australian Citizenship law in Context* (2002) (pp 179-180) I set out that Article 25 of the ICCPR is an exception to the general rule of equal application to all persons, in that

it applies to citizens only. It enshrines the right to take part in public affairs, the right to vote and the right of access to public service.

That said, in protecting those rights as rights of citizens, it doesn't prevent a Parliament from determining to enlarge the group that is entitled to those rights.

For instance, in Australia, many local governments allow all rate payers voting rights regardless of their citizenship status. Moreover, some public service jobs in Australia allow permanent residents to work in the public service. Moreover, in New Zealand, permanent residents who have lived in NZ for more than a year are entitled to vote in national elections.

Ultimately it is for the Parliament of the day to enlarge the group entitled to those public affairs style of rights, but a legislative bill of rights should set, as a minimum, the protection of those rights to citizens. It should also be made clear that they don't have to be the sole preserve of citizens.

Other citizenship rights that need protection?

In addition to those public affairs rights referred to above, I am of the view that a legislative bill of rights also should declare an Australian citizen's right to:

- Residence in his/her country of citizenship
- Due process/natural justice in any decision to deprive that person of his/her citizenship

These rights are not clearly or firmly protected in Australia's legislative framework.

This is best illustrated through the High Court decision of *Re MIMIA; Ex parte Ame* [\[2005\] HCA 36](#), (2005) 222 CLR 439.

Without going into the details of the case, the decision made clear that it is possible to deny Australian citizens entry into Australia and it is possible to deprive Australian citizens from any due process or natural justice in depriving them of Australian citizenship.

I am firmly of the view that Australian citizens should have the right of residence in their country of citizenship and a right to natural justice in any decision considering depriving them of their citizenship, due to the significance of citizenship status in aspects such as voting rights and freedom of movement in and out of the country.

I hope this submission is of assistance to the Committee. I will be happy to answer any questions related to your inquiry.

Yours sincerely,

Kim Rubenstein

Professor and Director