

bill of rights

The condition upon which God hath given liberty to man is eternal vigilance; which condition if he break, servitude is at once the consequence of his crime, and the punishment of his guilt.

John Philpot Curran,
*Speech on the right of Election of Lord Mayor of
Dublin, 10 July 1790*

political progress. The passage of the Australian Bill of Rights legislation through the Federal Parliament now appears to be assured. At the time of writing, however, the Bills comprised in the legislative passage had not yet passed the Senate.

In view of the stated intention of Opposition Senators to vote against the legislation, the Australian Democrat Senators became the key to its passage through the Senate. The Democrats were keen to strengthen the legislation so that it would apply to State as well as Federal laws, on the basis that most abuses of human rights occur in areas of State responsibilities. They were particularly concerned that the Bill should operate to prevent electoral gerrymanders (*Australian Financial Review*, 13 February 1986). The Democrats proposed that the States should have the option to pass legislation to override the Bill of Rights provided that their governments were democratically elected.

The Legal and Administrative Committee of the ALP Caucus voted 11 to 1 to support the Democrats' amendments. The Attorney-General Mr Bowen was the sole dissenter. However, the Federal Cabinet approved Mr Bowen's approach despite vigorous opposition from the Foreign Minister, Mr Hayden, (whose electorate is in Queensland) and the former Attorney-General, Senator Gareth Evans, (*Sydney Morning Herald*, 18 February 1986).

Having failed to persuade the Federal Government to take a stronger line in relation to State laws, particularly electoral laws, the Democrats stated that they would support

passage of the legislation on receiving from the Prime Minister Mr Hawke a written guarantee that the Government would

- request the Human Rights and Equal Opportunity Commission (HREOC) to hold an inquiry into State electoral laws and
- use its external affairs power to override those laws if they were found to be in breach of the International Covenant on Civil and Political Rights (*Sydney Morning Herald*, 10 March 1986)

The Prime Minister gave the written assurance (*Sydney Morning Herald*, 13 March, 1986). Consequently, the Democrats announced that they would accept the Bill of Rights legislation which would be passed by the Senate (*Canberra Times*, 17 March, 1986).

Members of the Opposition continue to oppose the legislation. The Opposition Leader, Mr Howard, and the Leader of the National Party, Mr Sinclair, have described the Bill of Rights as 'an attack on the States, an attack on parliaments and an attack on the common decency which has guided individual rights in Australia for almost 200 years'. They said that it should be 'torn up, thrown out and left to rot on Canberra's rubbish tips' (*Australian Financial Review*, 27 February 1986).

proposed amendments. The Leader of the Opposition in the Senate, Senator Durack, criticised the Democrats for their decision to allow the legislation through the Senate, particularly in view of Democrat support for Opposition amendments which were passed by the Senate (*Sydney Morning Herald*, 17 March 1986). The proposed amendments included

- applying the Bill of Rights to trade unions and corporations which violate the rights of individuals, and
- doubling to ten the size of the HREOC and giving three part-time seats on the

Commission to the States (*Age*, 14 March 1986).

successful amendment. The Government has accepted an Opposition amendment removing from the HREOC the power to force people to give self-incriminating evidence (*Sydney Morning Herald*, 21 February 1986). The removal of the privilege had been mentioned by the Senate Standing Committee for the Scrutiny of Bills in its Seventeenth Report of 1985 as a possible undue trespass on personal rights and liberties (p13–14; see [1986] *Reform* 16).

continued opposition. Opposition to the legislation by particular community groups continues. Not all of it is rational. Some have expressed a fear that the Bill of Rights will allow homosexual marriage. Yet Article 13 (a) states, under the heading 'Right to marry and to found a family': 'every man and woman of marriageable age has the right to marry a person of the opposite sex and to found a family.' Of this provision South Australian Democrat Senator Haines has said:

Anybody who can tell me how that can be interpreted to allow homosexual marriages has a mind more devious than my own (*Hansard*, Senate, 14 February 1986).

The Law Council of Australia has expressed concern over the powers of the proposed HREOC and the constitutional validity of the Bill of Rights (*Canberra Times*, 11 February 1986). The Council's President, Mr Michael Gill, has expressed the following concerns.

- The Bill might 'fossilise' rights at their existing level.
- The Bill may guarantee rights which may become anachronistic, as in the case of the right to bear arms contained in the Constitution of the United States of America.

- The wide range of functions of the HREOC would make it, in effect, both prosecutor and judge.

The Council proposes that the HREOC's decision-making function should be vested in either the courts or another tribunal, such as the Administrative Appeals Tribunal.

The Confederation of Australian Industry has objected to the Bill on the following grounds:

- use of the external affairs power, which threatens to weaken federalism;
- selective (and biased) nature of the rights specified;
- discretion given to the HREOC to determine 'rights'; and
- the powers of investigation, determination and recommendation vested in the HREOC without provision for counsel or appeal (*Australian Financial Review*, 13 February 1986).

The Australian Episcopal Conference has issued a statement re-iterating that the Bishops are not satisfied with the Bill of Rights in its present form (*Catholic Weekly*, 19 March 1986). The Bishops 'consider that the Bill should include express and specific protection for all living human beings, whether born or unborn'. The Australian Federation of Right to Life Associations is requesting such an amendment together with an amendment to forbid the death sentence, if it were ever re-introduced, from being imposed on persons below 18 years of age or pregnant women. The latter provision is found in Clause 5 of Article 6 of the International Covenant on Civil and Political Rights. Article 6 deals with the right to life.

correspondence. Shortly before his untimely death which is noted elsewhere in this issue, Senator Alan Missen wrote to *Reform* concerning the article on the Bill of Rights and the HREOC in the January issue of *Reform*. Senator Missen made two points. Our article said (at p16): '[t]he Federal Opposition

is strongly opposed to the powers of the Commission as it is to the Bill of Rights legislation as a whole'. Senator Missen strongly emphasised that just because the Coalition Parties' contribution to debate in the House of Representatives had been dominated by elements opposed to the Bill of Rights legislation in general and the powers of the HREOC in particular, the statements made in the House should not be accepted 'as necessarily showing policy'. In fact, Senator Missen pointed out that there is no Opposition policy dictating opposition to the powers of the Commission or the continued existence of the present Human Rights Commission. Secondly, reference was made to the Report of the Senate Standing Committee on Constitutional and Legal Affairs. Senator Missen emphasised that the report was 'an Exposure Draft on various aspects of human rights enforcement including the possibility of a "Bill of Rights" and also the possibility of updating the existing Human Rights Commission'. Senator Missen pointed out '[t]here are *no recommendations* in the Committee Report'. We are happy to acknowledge this point. In its report, the Committee defined its role as seeking 'to aid the Senate in particular and the community in general by noting some of the major questions involved and making suggestions as to a preferred resolution of some of these questions' (para.1.1).

victoria. The Victorian Attorney-General, Mr Kennan, has expressed strong support for the Federal Bill of Rights (*Age*, 11 December 1985). He said that the Bill would enable a peaceful co-existence with State legislation to protect human rights. The Legal and Constitutional Committee of the Victorian Parliament has issued a Discussion Paper entitled *A Bill of Rights for Victoria? Some Issues*. The Paper contains no recommendations. Its purpose is to promote community discussion of the protection of human rights in Victoria. The matters relevant to the Committee's reference are discussed under the following headings.

- Are human rights adequately protected in Victoria?
- Would a Bill of Rights improve the protection of human rights in Victoria at an acceptable cost?
- What should be the form and content of a Victorian Bill of Rights?

united kingdom. In a previous article on the Bill of Rights ([1986] *Reform* 12) it was pointed out that the United Kingdom has, since 1966, allowed individuals to petition the European Court of Human Rights under the European Convention on Human Rights. An interesting new development has been reported in *The Economist* (14 December 1985). The House of Lords has approved a human rights bill introduced by Lord Broxbourne, formerly a leading Conservative MP, who was supported by Lord Scarman. The Bill would incorporate into English and Scottish law those rights protected by the European Convention, much of which was drafted by British lawyers. The article makes the point that, since there is no British constitutional court, the Commission and Court in Strasbourg deal with more cases from Britain than anywhere else. The Broxbourne-Scaman Bill would enable Britons to use the Convention to challenge government decisions in British courts. Prime Minister Margaret Thatcher opposes the Bill. However, it is favoured by the Liberal/Social Democratic Party Alliance, some younger Labour MP's and many Conservative MP's.

arbitration in victoria

Seriously friends, Melbourne is unique from the spiritual point of view. It's the only place on earth where the visitor from abroad can close his eyes and wonder if there really is life before death.

Barry Humphries

a focal point. The last edition of *Reform* carried an item about establishment of the Commercial Arbitration Centre in New South Wales ([1986] *Reform* 28). In fact the New South Wales developments were preceded somewhat by establishment in Victoria of the Australian Centre for International Commercial Arbitration in 1985. The Aus-