

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

Submission for the Human Rights Inquiry 2016

[REDACTED] 9 March 2016

Dear Sir,

Australia has not fully implemented all of its commitments in international human rights treaties, such as through a constitutional or statutory charter of human rights at the national level.

In fact, Australia is the only Western democratic country in the world with neither a constitutional nor a federal legislative bill of rights, despite strong public support throughout the country for a bill similar to that of Victoria and the Australian Capital Territory, the only state and territory to have a bill of rights.

Opponents consider, *inter alia*, that a bill of rights is non-democratic in that it defends minorities against majority rule and transfers a certain amount of political power to the judiciary. But what opponents see as an inconvenience, proponents consider to be an advantage. Though far from perfect, it seriously reinforces democracy's ability to assure checks and balances among the executive, the legislative and the judiciary.

Justice as it is conceived and practised in Australia today offers at least a guarantee of sorts: that it is protected from the risk of confiscation by a political or religious power seeking its own interest to the detriment of the rest of society.

The caveat to that, of course, is that even democracy can be manipulated and subjugated, as was demonstrated by the rise to power of Adolf Hitler in Germany. He won the approval of the Reichstag, on 23 March 1933, by 441 votes to 84, despite his party's lack of parliamentary majority, for it to "temporarily" delegate, (and subsequently renew), its powers to him, under what became known as the "Enabling Act", granting him dictatorial rule, free from all legislative and constitutional constraints. [1]

The Nazis immediately set up a new People's Court presided over by judges chosen from party officials, the SS and the armed forces which became the most dreaded tribunal in Germany. Its decisions were not subject to appeal. [2]

That is a clear warning. There are lessons to be learned from the method and circumstances which enabled Hitler to suspend the constitutional protection of civil rights and install a dictatorship by democratic means.

It is no longer possible to doubt the imperative necessity, for democratic nations, of a constitutionally-entrenched bill of rights which can neither be revoked nor suspended, even if it means rewriting the constitution and submitting it to the people for approval.

We Australians have been far too complacent about this question of human rights in the past and indifferent far too long to the warning signals which are plain to see if only we accept to pull our head out of the sand and take a good hard look at reality.

According to the latest Lowy Institute poll, only 65% of Australian adults and just 49% of 18-29 year-olds consider that “democracy is preferable to any other kind of government”. [3]

Those who do not see democracy as the preferable form of government consider that :

- “democracy only serves the interests of a few and not the majority of society” (40%)
- “democracy is not working because there is no real difference between the policies of the major parties” (32%) [4]

Though most of us have only a fairly scrappy knowledge of the laws that govern us, we all have an acute sense of justice, innate or acquired, from an early age.

There is no doubt for whom the bell tolls. It clearly sounds the death knell of that legendary egalitarian culture on which our nation was built. It rings out a warning for the privileged few to take their precautions in order to stay at least one step ahead of the clamour of the streets.

So far as our human rights are concerned, the current disenchantment with democracy expressed by so many of our compatriots, considered in relation to Hitler’s demonstration of how easily it can be manipulated and subjugated, does not augur well for the future.

It is against this ominous background that we now find ourselves embarked on what our political leaders describe as a protracted war against terrorism. The unprecedented flurry of 40 new counter-terrorist laws, hastily enacted since the terrorist attacks in the US on 11 September 2001, will necessarily take precedence over any future human rights considerations, despite all the precautions and safeguards designed to attenuate their impact on law-abiding citizens.

Under no circumstances, however, could this justify further procrastination by Australia in instigating the relevant procedures for the adoption of a national constitutionally-entrenched bill of rights. On the contrary, the conditions are probably as favourable today as they ever will be, precisely because our human rights are under special duress due to the restrictions imposed on them by severe counter-terrorist measures.

Every single one of our Western allies participating in the war against terrorism has, without the slightest exception, already adopted a bill of rights. Not only should they consider it not to be a handicap to their efforts, but exactly the opposite. They should consider it to be an extremely valuable asset which clearly distinguishes them from their enemies.

It is the very reason for which both they, and we, are at war and willing to sacrifice our lives: the defence of human rights. That is precisely what the war against terrorist organisations such as the so-called Islamic State and al-Qaeda is all about.

The failure of the Federal government to initiate a constitutional or statutory charter of human rights at the national level leaves Queenslanders particularly vulnerable to the violation of Human Rights due to the fact that Queensland is the only State to have a unicameral legislature. We do not even have the benefit of the modest, "safety net" protection that an Upper House might possibly provide in particularly dire circumstances.

For that reason, I respectfully recommend that Queensland seize this unique opportunity to instigate the relevant democratic procedures for the adoption of a Human Rights Act (HR Act). This would, by no means, preclude the adoption of a badly needed national, constitutionally-entrenched bill of rights at some later date, though, much to my regret, there are no plans to do so in the foreseeable future.

Yours sincerely,

Rodney Crisp

Notes

¹ William L. Shirer : *The Rise and Fall of the Third Reich*, Simon and Schuster, 1960, p. 278
http://www.ebook3000.com/The-Rise-and-Fall-of-the-Third-Reich--A-History-of-Nazi-Germany_214173.html

² Idem, p. 371

³ <http://www.lowyinstitute.org/publications/lowy-institute-poll-2015>

⁴ <http://www.lowyinstitute.org/publications/lowy-institute-poll-2014>

[REDACTED]

[REDACTED]