Bill of rights debate clouded by fog of war

Opinion
Edward Santow

Reform can be a dirty business. And the debate about whether Australia should enact a Human Rights Act is getting very dirty,very quickly.

The government’s response to the National Human Rights Consultation’s recommendation that an HRA be introduced is, apparently, coming soon.

Australia’s democracy is at no imminent risk of crumbling into dictatorship, but human rights protections are far from perfect. There are two main concerns about an HRA: its impact on religious freedom and a fear that it would transfer power from parliament to the courts. My research leads me to support an HRA, though I would be happy for the debate to be won or lost on these issues.

The problem is that a fog of misinformation is descending over the debate, and this is inhibiting sensible discussion of the issues. It suggests that by following three simple rules, those opposing a reform can win by default.

Rule 1: Exaggerate the dangers; suggest that if the reform goes ahead, the sky will fall in. The residual doubt can make supporting the reform the riskier option.

Take, for example, the suggestion that an HRA will lead to a “flood of litigation”. In places like Victoria, which has an HRA, the flood simply hasn’t arrived. Statistics show very clearly only a small increase in litigation resulting from an HRA.

Rule 2: Play down support for the reform irrespective of the available data.

Former NSW premier Bob Carr recently said that the consultation showed “the overwhelming lack of support” for an HRA. In fact, the committee received over 40,000 submissions - more than any other public inquiry in Australia’s history, and 83 per cent favoured an HRA. To test this result, and to counteract a fear that this figure might have been skewed by campaigns run in favour of an HRA (by GetUp! and Amnesty International) and against an HRA (by the Australian Christian Lobby), the committee commissioned independent opinion polling: 57 per cent of those polled supported an HRA, and only 14 per cent were opposed. The polling is consistent with independent polling over the past decade.

A variant of Rule 2 is to paint reform advocates as dangerous radicals. In truth, the HRA received strong support from many sectors of the community, including business (with Telstra writing a major submission in favour). The main opposition came from the religious community but it was itself split on this issue, with some (like the Uniting Church) favouring an HRA, and others (like Cardinal George Pell) opposed.

Rule 3: Suggest that the reform is already dead, the idea being to create a self-fulfilling prophecy. Mid-way through the consultation process, Bob Carr predicted that it was “pretty near inconceivable” that Frank Brennan would propose an HRA, labelling it a “dead parrot”. This was wrong. Now he says Brennan’s proposed HRA will be defeated by cabinet. That remains to be seen.

Unquestionably, an HRA would represent a major reform to Australian governance and it should not be embarked on lightly. But it is also clear that good policy making should have at its foundation the careful weighing of competing arguments based on real evidence. We must ensure that the fog of political warfare does not cloud this vital debate.

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