

Working charters open door to better governance

Evidence from the ACT counters popular concerns about a federal bill of rights, writes
Hilary Charlesworth

The ALP's draft national platform, to be debated at the party's conference this weekend, commits the Labor Party to introducing a national charter of human rights and responsibilities. While certain to provoke controversy, it would improve the quality of Australian governance.

The proposed charter is modest

by international standards. Unlike the US Bill of Rights, it would not be able to be used to invalidate legislation. It would require that government entities act consistently with human rights, unless they are specifically directed otherwise by legislation.

Across the Australian political spectrum there is suspicion of all forms of charters or bills of rights. One argument is there is no need to increase human rights protections as our record is fine. However, there remain significant concerns, such as the treatment of asylum seekers, indigenous people and those with mental illness. Two other common

arguments are that a bill of rights would shift power away from elected parliament or create a lawyers' picnic. Local evidence suggests otherwise.

Australia's first bill of rights, the ACT's Human Rights Act, came into force on July 1, 2004. After almost three years, research data shows the act has had relatively little effect in the courts, but considerable influence on the workings of government.

This is consistent with the goal of the legislation, which is to promote a discussion about human rights between the legislature, the executive and the judiciary, but

leave the final say to parliament.

The fear that a bill of rights would create unmeritorious legal claims has not been borne out in the ACT. There has been cautious use of the act in courts and tribunals. No ACT legislation has yet been declared incompatible with human rights.

The act has had a more marked impact on the ACT Legislative Assembly. Its scrutiny of bills committee must consider the human rights implications of draft legislation and it has taken the task seriously, proposing amendments to ensure laws are compatible. There has also been greater debate on human rights.

Of course, three years does not

provide conclusive evidence about the effect of these laws and Victoria's experience, after adopting a Charter of Human Rights from the start of this year, will be instructive.

But the ACT legislation has encouraged parliament to think through the human rights implications of its policies and activities. A national charter would require the federal government to follow a similar course.

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