

1986.8. Human Rights in Victoria

Submitted 29 July 1986 to the Legal & Constitutional Committee, Parliament of Victoria. Published: Victorian Humanist, (A) Sept. 1986: 2 – 3; and (B) July 1987: 12 (A) V.H. Sept. 1986

TO THE LEGAL & CONSTITUTIONAL COMMITTEE, PARLIAMENT OF VICTORIA

This Committee invited the HSV to make a submission on the Discussion Papers: No. 2 “Are Human Rights Adequately Protected in Victoria?” and No. 3 “Freedom of Expression in Victoria”. At our monthly discussion group, selected issues regarded as of specific concern were debated and the prevailing views recorded, We thank Donald Thomson for his help in formulating this submission.

General

The Society welcomes the opportunity of making suggestions regarding that a Bill of Rights be enacted in Victoria. As a secular humanist group, we wish to comment specifically upon various questions raised in Discussion Papers Nos. 2 & 3, issued March and April 1986 respectively. The following recommendations were formulated at a members' discussion group.

Paper No. 2

Section B2 (d) Omission Causing Death

It is recommended that medical intervention to save or prolong life be not mandatory or required by law if the patient has indicated that such intervention is not wanted in certain circumstances, and that those circumstances exist: and that failure in such case on the part of medical staff to intervene be not deemed an offence.

Section B2 (f) Abortion

It is recommended that abortion should be legally available on demand by the patient, after proper counselling, and with medical advice and assistance.

Section B2 (i) Suicide

It is recommended that aiding and abetting another person to commit suicide, when that person is of a sound mind and aware of the latter act, be *not* deemed an indictable offence. It is further recommended that such aiding and abetting not be permissible if carried out by a person or by persons with vested interests in the death of the person committing suicide.

Section B2 (j) “Mercy Killing”

It is recommended that there be no criminal sanction against any actions taken, or omitted to be taken, which have as their object the cessation of pain and suffering in the case of illness or injury of an incurable and irremediable kind. The Society believes that human beings are no less in need, in such cases, of compassion as are the other animals, and that maintenance of a mere form of organic “life” in such circumstances is unjustifiable cruelty.

Section B2 (l) Death Penalty

A majority of members recommended that the death penalty be abolished.

Section C1 *Peaceful Assembly*

It is recommended that a basic right of peaceful assembly be established by statute. It is realised that such right will have to be set about by various conditions of a possibly restrictive or conditional kind; but it is felt that it is better to have a positive statement of the right legislation rather than that all legislation (as it appears at present) should be phrased so as to derogate the common law assumption.

Paper No. 3

Section C2 *Blasphemy*

It [is] recommended that the law relating to blasphemy be rescinded. The Society believes it is contrary to the constitutional separation of church and state in Australia, and a survival of mediaeval attempts to impose conformity in matters of religion by force. We regard the law of blasphemy as a penalty on free speech and opinion.

Section C3 *Sedition*

It is recommended that the law relating to sedition be closely reviewed and, if found to be out-dated or over-restrictive in modern society, revised or rescinded accordingly. It is conceded that "real" sedition could exist and should be subject to penalty; but it is felt that, as it stands, it is too liable to abuse by government or other authorities, and too restrictive of public discussion, e.g. via the media.

Section 4(d) *Fortune Telling*

It is recommended that, in view of the proliferation of charlatans and the regrettably common gullibility of the population, the present legislative prohibitions and restrictions on fortune telling be maintained and even strengthened. In the Society's debate on this question, reference was made to the curious position of ministers of religion, mostly salaried, forecasting the fortunes, here and allegedly hereafter, of those of their congregations who obeyed their injunctions or otherwise. It is felt that perhaps sauce for the commercial goose should be no less applicable for the reverend gander.

Section D2 *Obscenity*

It is recommended that the definition of obscenity, such as it is, should specifically be extended to cover depictions of violence by any means; the Society feels that violence has far worse effects on its viewers than sex. In the latter respect it is felt that police are not generally competent to judge what is, or is not, obscene and that their powers in such matters should not include definitive opinion.

Section D2 (b) ii *Soliciting*

It is felt that soliciting by or between adults of 18 years or over should not be deemed an offence, unless it is constituted [*sic*] also an actual nuisance, e.g. by pestering, by not accepting a refusal.

Section D4 (b) *Contraceptives*

It is recommended that the advertising, display and sale of such contraceptives as are likely to prevent the transmission of sexually transmissible diseases and unwanted pregnancies be unrestricted by law. Further, as it is not the function of legislation to control a community's morals, the sale of any other contraceptive device, which is not proved to be physically dangerous, should not be inhibited by law.

A Bill of Rights for Victoria

The Humanist Society is eagerly in favour of the extension and security of human rights. But it is recommended that any proposed Bill of Rights be drafted, published at large in printed form, and not thereafter be enacted for a period of five years so as to permit both further public discussion and some indication of the probable acceptance when proclaimed

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Defining/Protecting Human Rights

A Report to Parliament In July 1986 our Society made a submission to the Legal and Constitutional Committee of the Victorian Parliament, which was examining the need for a Bill of Rights for Victorians, The Committee has now reported:

SUMMARY

The Legal and Constitutional Committee has studied a number of options to better protect human rights, including a Bill of Rights for Victoria. It received a large number of submissions, and heard numerous witnesses over a period of twelve months.

The Committee proposes that the most appropriate course for Victoria is to strengthen the role of Parliament as the ultimate guardian of human rights and freedoms. Responsibility for protecting human rights should be vested in Parliament rather than in a Bill of Rights. The Committee's proposal has two parts. The first is for the enactment of a Victorian Declaration of Rights and Freedoms to be located in the Victorian Constitution. Unlike a Bill of Rights, this Declaration would not be enforceable through the courts. It would not present an opportunity for endless litigation, or constitute a challenge to the authority of the democratically elected Parliament. On the contrary, the Declaration would act as a beacon to Parliament in terms of the rights and freedoms which it should seek to protect, and would remind Parliament of its responsibilities in this regard.

The second part of the Committee's proposal involves conferring "watchdog" [text missing] a Parliamentary Committee. Most importantly, this Committee would [text missing] scrutinize all bills introduced into the Parliament by reference to the Declaration, and to report to Parliament as to whether those bills had unacceptable implications in terms of human rights. This "scrutiny of bills" function would ensure that Parliament would be properly alerted to human rights issues arising in the legislation which came before it. Under the proposal contained in this Report, the Parliamentary Committee would also have certain functions in relation to existing Acts, subordinate legislation, aspects of the common law and areas of executive action.

The Committee is confident that Victorians will welcome a Declaration of Rights and Freedoms to support Parliament in its role as guardian of human rights. In part the recommendations included:

Recommendation 1 (p.55)

The Committee therefore recommends that the government, in order to better protect the civil and political rights of disadvantaged Victorians, should :

- i. take steps to ensure that non-English speakers are not disadvantaged when dealing with the police, the courts and government departments;
- ii. publicize as widely as possible, in several languages, any statement of rights or other human rights initiative which it may adopt;
- iii. urgently review the resources of the Legal Aid Commission and the Aboriginal Legal Aid Service with a view to determining the adequacy or otherwise of legal advice and representation to disadvantaged Victorians, especially Aborigines, non-English speakers and those in country areas. The Report was endorsed by the all-party Committee by 11 votes to 1.

Humanists will be happy with the outcome.