



## BILL OF NO RIGHTS

The recent decision by the Victorian Civil and Administrative Tribunal to refuse women-only advertisements from a travel company highlights the inherent flaws and pitfalls of human rights bills and charters.

Erin Maitland, a former tour guide who wants to market men-free holidays to women, was refused exemption from Equal Opportunity legislation in Victoria. The Human Rights and Equal Opportunity Commission opposed her application, arguing that granting an exemption would breach the Victorian Charter of Human Rights.

Apparently the Tribunal was concerned that allowing the company to discriminate between men and women would breach the human rights of men. Quite how they would be seriously disadvantaged by this is not immediately clear. There are hundreds if not thousands of tourism companies that market holidays to every corner of the globe for men and women. One tourism company that offers tours exclusively to women isn't going to stop Aussie blokes from having an enjoyable holiday.

I'm not the first to be bewildered by this decision, but it is not VCAT or any other court that is at fault here. It is the bizarre patchwork of so-called human rights legislation which arguably does more to undermine individual rights than protect them.

The Victorian Charter of Human Rights and Responsibilities was passed in 2006 by the then Bracks Government in an effort to 'protect' the human rights of Victorians. As Attorney-General Rob Hulls said at the time, the Bill is "one simple but historic document that articulates our freedoms, rights and responsibilities."

Apparently those freedoms do not include freedom of association. Individuals should be free to associate – and not associate – with whomever they want. There would be nothing wrong (or illegal) about a group of women booking a holiday together, so what's wrong with a travel company selling women pre-designed itineraries and a tour guide?

The Rudd Government is currently considering implementing a Bill of Rights on a national level. Attorney-General Robert McClelland set up the Brennan committee in 2008 to inquire into options for the introduction of a Bill of Rights.

One of the arguments put forward by many proponents of a Bill of Rights is that most western nations have some statutory protection of rights, and Australia is one of a few that does not.

Aside from the glaring weakness of any argument that relies on the "everyone else is doing it" thesis, the experience of other jurisdictions with such legislation provides a litany of examples of failure, misuse and unintended consequences.

The clearest and most frequently cited are from the United States. Few Australians would want or accept the widespread availability of firearms for citizens that exists in the US.

Indeed, the Howard Government in 1996 severely restricted the rights of firearm owners following the Port Arthur massacre. Whatever your view of the 1996 legislation, it was clear that it had overwhelming community support, and in a democracy, that community support usually translates to political support for legislative action by the Parliament. But if we had enacted a bill of rights at Federation, it's quite likely that we too would have enshrined a "right to bear arms" as they have in the United States, and the Howard Government would have been hamstrung in its effort to control firearms.

It's quite likely that our founders also would have enshrined many of the other policies that were overwhelmingly popular at the time, including the White Australia policy, the right to vote for adult males only and tariff protection for Australian industry.

Thankfully, they didn't, and as community attitudes have evolved we have abandoned policies like these. Given the massive changes in community attitudes in the last 100 years, it is reasonable to expect that the next 100 years will see further changes. A Bill of Rights enacted today is simply this generation imposing our views and values on generations that are yet to come.

The United Kingdom offers further examples which should encourage caution when approaching a Bill of Rights. Felicity McMahon, in a chapter from the excellent *Don't Leave us with the Bill: The Case Against an Australian Bill of Rights* edited by Julian Leaser, cites a shocking example of the unintended consequences of the UK Charter of Human Rights.

In 1999 the UK Parliament enacted laws to protect victims of rape from being cross-examined on their sexual history, due to widespread community concern about subjecting them to this traumatic experience. Yet the law was found to be in conflict with the provision of the Charter which promises "the right to a fair trial."

It's not even clear that a Bill or Charter of Rights is an effective way of protecting rights. The fundamental rights enshrined in the United States from its formation offered little comfort or assistance to the men and women who were kept as slaves until 1850.

Today in the United Kingdom, it fails to prevent the storage of every phone call, text message and website visited by law abiding citizens for the use of more than 600 Government agencies as diverse as the Police, Ambulance service and the Financial Services Authority. It was most recently used by a local council to pursue a man who dared prune a tree without a permit.

So when Australians are asked to consider a proposal from the Rudd Government to "protect" their rights by introducing a Bill or Charter of Rights, they should think very carefully indeed.

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