

GENERAL

Human rights Act ?hands judges power?

AMANDA BANKS

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The State Governments controversial plans for a human rights Act will shift decision-making power from Parliament to the courts and expose laws to greater influence by the judiciary, according to Labor backbencher Ben Wyatt.

Mr Wyatt, a former lawyer, predicts a human rights Act will be given elevated status above ordinary legislation and says debate over the Act should take into account the concerns of leading constitutional expert Greg Craven, who fears that the Act could be used to challenge key laws and social policies.

Mr Wyatt said while a State Act would work to create a "human rights culture" in government and the public service, Federal legislation would have been preferable and WA should debate the proposal in the context of its potentially significant ramifications.

"Human rights Acts traditionally always sit rather awkwardly in Westminster-style democracies because historically, parliamentary sovereignty has reigned supreme," he said.

"It may not be a bad thing. But regardless of whether you like a human rights Act or you dont, the discussion needs to be had and people need to be aware that if one comes in, then there will be an increased role for the courts to go into areas that have traditionally been the domain of parliaments. Its not just a normal piece of law. This will have a quasi-higher status."

Mr Wyatt, who has lodged a written submission with the Government-appointed committee which is investigating an Act, said the proposed laws would give the WA Supreme Court broad powers to consider international precedent.

"That is a very broad power of interpretation," Mr Wyatt said. "You are importing common law from other parts of the world."

The Labor MP said while the draft Act was designed to ensure courts were not given the power to strike down laws, the legislation would create other avenues for the judiciary to interpret the law.

"The court will look at other ways, if they dont like a piece of legislation or they think its incompatible, they will look at other ways than simply referring it back to Parliament," he said. "This will more greatly empower judges to interpret law."

In his written submission, Mr Wyatt said the judiciary in New Zealand had adopted a "bullish" approach to their power under a similar human rights Act and had interpreted legislation to ensure it complied with the protection rights in the Act.

He said the New Zealand Court of Appeal had "not been shy" in adopting a liberal approach to applying the Act, ruling that civil action could be launched for breaches of rights despite the legislation specifically excluding judicial remedies.

"This has enormous significance in relation to the role of the courts and Parliamentary sovereignty, particularly if the WA Supreme Court takes a similar position in respect . . . of the WA draft Bill," Mr Wyatts submission states.

The consultation committee investigating the Act, which is headed by Fred Chaney and has received more than 300 submissions, is scheduled to report to Attorney-General Jim McGinty.