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Committee Director
Standing Committee on Law and Justice
Legislative Council
Parliament House
Macquarie St
Sydney NSW 2000

Dear Sir

NSW Bill of Rights Inquiry

I enclose as my submission to this Inquiry a copy of my book *A Bill of Rights for Australia* (UNSW Press, 2000). You might also find useful my other recent book *Human Rights under the Australian Constitution* (Oxford University Press, 1999) (not enclosed), which contains a comprehensive treatment of the role of the High Court in the interpretation of the few existing rights in the Australian Constitution.

The NSW Parliament should enact a Bill of Rights similar to that passed in New Zealand in 1990 and the United Kingdom in 1998. This would be a Bill of Rights in the form of an Act of Parliament rather than a change to the NSW Constitution. Such an approach would avoid the transfer of ultimate sovereignty from Parliament to the courts.

It is entirely appropriate that NSW should be the first jurisdiction in Australia to enact a Bill of Rights, even before the Federal Parliament. This occurred in Canada, where Bills of Rights operate simultaneously at the Federal and Provincial level, and where the Bills of Rights enacted in Alberta and Quebec preceded the Canadian Charter of Rights and Freedoms 1982. In Australia, there is no constitutional impediment to Bills of Rights operating both at the Federal and State level. This already occurs in several analogous contexts, such as in regard to anti-discrimination legislation.

A Bill of Rights need not establish the judiciary as the final arbiter of important social, economic and political questions. The Bill should be entrenched so as to prevail over other inconsistent legislation passed by the NSW Parliament, and should in this sense be enforceable in the courts. However, Parliament ought to be given the option, as found in the Canadian Charter of Rights and Freedoms, to expressly override any of the rights listed in the instrument (or indeed a court's interpretation of those rights).

This would raise the override as a political issue, and would require strong public justification. Through the media and the committee system of the NSW Parliament, this would produce an ongoing dialogue between Parliament, the courts and the people. My view is that a Bill of Rights is primarily important because it offers a means of improving scrutiny of such issues within the political process itself. Rather than merely establishing legal rules, the aim would be to foster a culture of liberty, including a tolerance and respect of difference.

The rights listed in any Bill of Rights should be carefully and narrowly confined. The end result should be a statute recognising and protecting core rights, such as the right to vote and a freedom from racial discrimination, while being subject to repeal or amendment (and hence refinement and development) by Parliament.

Yours sincerely

George Williams
Barrister
Senior Lecturer in Constitutional Law