

Dump the Charter Now

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There are some questions that just answer themselves. Should Collingwood be abolished? Are babies cute? Is Andrew Wilkie just a touch odd?

Victoria's newish Baillieu government is now facing once of these great "Der!" moments of its own. What to do with Labor's much-vaunted Charter of Rights and Freedoms, which is hanging around the Coalition like a drunken uncle who refuses to leave a Christmas party?

The kind answer in both cases is to put it out of its misery. But Attorney-General Robert Clark has been stuck with the task of presiding over a formal review of the Charter. For a lawyer with impeccable Liberal instincts, this must be as valuable an exercise as conducting a Royal Commission into the value of Rap music.

A distinct touch of reality needs to intrude into this debate. The Charter has its supporters and its arguments. Good and noble people are prepared to die - or at least complain endlessly - for it. But it is not an ordinary piece of legislation.

The Charter is a key Labor monument, like the Eight Hour Day memorial or Bob Hawke's ego. It was erected on Victoria's highest legislative hill as a perpetual reminder that Labor's view of the Victorian constitutional process was the only view, and would change only when Jeff Kennett joined the Greens.

That view contradicts every notion in the Liberal constitutional handbook. It holds that parliaments are unreliable and politicians downright untrustworthy. Only unelected, Charter-wielding judges may be relied upon to protect the liberties of the people.

There are more things wrong with this theory than post-modern motor mechanics. But note the beauty of Labor's tactics.

The Liberals may have won government, but with it comes the Charter, and its whole payload of rights and values, straight from the Labor discussion groups of Parkville. For years, Labor has been doing its best to inoculate the public service and the judiciary with exactly these "neutral" values.

Now the Liberals face a choice that might have had Solomon reaching for his smelling salts. Either they gird up their gonads and confront the grim necessity of repealing or amending a piece of legislation disingenuously stamped with "rights" all over it.

Or they simply accept that Labor has successfully planted the philosophical equivalent of a dirty bomb permanently in the middle of Victorian public administration.

To make matters even worse, as a matter of legislative history, Attorney-General Clark is stuck with terms for an initial review that seem to ask whether the Charter is positively sublime, or merely scrumptious.

The result is that every Charter-groupie in and outside the State, from Get-Up to the Millipede Protection Society, will unleash a deluge of chain submissions celebrating the Charter. Sceptics will view the processes with the distant derision it deserves, resulting in a "consultation" as meaningful as a Gold Logie personality vote.

Since the demise of Fearless Leader Kennett, the Victorian Liberal Party has not always been known for its backbone. Indeed, sea slugs have sometimes been rejected for pre-selection as a just a little too unbending.

But this is one of those awful times when a government has to face reality and look it at least fleetingly in the eye.

Does Ted Baillieu really propose to preside over a State whose political and legal culture is programmed to "Labor"? Is he going to wait until things start to go wrong, and Charter guerrillas from the law and the public service start using its provisions to ambush the stragglers?

There is really only one answer to what is fundamentally a political, not a legal question. The Charter should go the way of all transient monuments to a particular government's ascendancy, from the colossi of Ramesses to number plate slogans.

There are various ways of effecting this, depending upon taste and testosterone. The simplest approach would be to consign the Charter to the dustbin of history by repealing it. Not only would this solve Victoria's immediate problem, but it would constitute a crushing blow to the whole rights industry that is works frenetically to colonize Australian law.

Alternatively, kinder hearts might simply leave the Charter itself in place, but remove any role for enforcement by the judiciary. After all, Charter proponents have always said that its main benefit was educational, rather than legal. Let it educate to its heart's content, or at least until it expires of terminal irrelevance.

Either way, make sure real human rights are really protected, by whatever means necessary. But let's not confuse rights with politics.

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