

# National Human Rights Consultation

## Submission from Lawry Herron

My **short answers** to the questions posed for you are:

- **Which human rights (including corresponding responsibilities) should be protected and promoted?**

At least the rights set out in the International Covenant on Civil and Political Rights, which Australia by ratification of the Covenant has undertaken under international law “to ensure to all individuals within its territory”.

- **Are these human rights currently sufficiently protected and promoted?**

No, neither sufficiently protected nor sufficiently promoted.

- **How could Australia better protect and promote human rights?**

By prompt adoption by the federal parliament of an Act establishing a Charter of Rights (and duties/responsibilities) as shall be recommended by you in your Committee report.

For my **long answers** I refer you in the first place to the report, entitled *The National Human Rights Consultation: Engaging in the Debate* prepared by the Human Rights Law Resource Centre -

[http://www.hrlrc.org.au/files/HJMZRQ63E9/HRLRC\\_The\\_National\\_Human\\_Rights\\_Consultation\\_Engaging\\_in\\_the\\_Debate.pdf](http://www.hrlrc.org.au/files/HJMZRQ63E9/HRLRC_The_National_Human_Rights_Consultation_Engaging_in_the_Debate.pdf)

I adopt and endorse for myself *mutatis mutandis* the discussion in the report in favour of a legislated Charter. I am not persuaded by and I do not endorse the discussion in the report against a Charter.

My preferences, in priority order, are:

1. An enforceable “bill” of rights entrenched in the Constitution following referendum. I recognise that this is practically unachievable.
2. A Charter adopted by parliament with rights that ground causes of action justiciable by courts as in Canada.
  - There is no prejudice to parliamentary ‘sovereignty’: what parliament has done it can undo; the relevant enactment can be amended in the same way it was made; if parliament is offended by a judicial interpretation it can clarify its intention legislatively.
  - I discount arguments in terms of lawyers’ picnic, unelected judges, etc as overblown arguments of belief, mostly pushed, whether out of self-interest or ignorance, by narrow sectional interest groups and not reflective of overall objective experience in other jurisdictions.
  - The benefits of enforceability in securing universality and accountability outweigh the claimed detriments.
  - Arguments of unconstitutionality made against the dialogue model do not apply to this model.

3. The so-called “dialogue” model as in the ACT and Victoria, a softly softly approach using declarations of incompatibility.
  - This approach can be educative and to some extent a restraint on legislators and administrators but where the rubber hits the road it is too weak and ineffectual to really protect rights effectively: declarations would be all too easily ignored.
  - It would nevertheless be better than nothing if it is all that can be achieved (provided always that it would be constitutional).

In parallel with the Charter, perhaps provided for in it as a monitoring and review body, there needs to be a parliamentary committee on human rights compliance. It is vital that politicians be drawn into the human rights system and part of the role of this committee would be to enhance the role of parliamentarians in regard to human rights policy, administration and education.

The AHRC would continue to have a strong role, as canvassed in the HRLRC report:

It is important that there are (sic) procedures in place to monitor the implementation of any Federal Charter, particularly the impact on the three arms of government (ie, the legislature (Parliament), the judiciary (courts) and the executive (ministers and their departments)) and on the community. Information about the number, type and merit of complaints made about breaches of human rights would be important in assessing whether and how a Federal Charter could be amended, or its implementation modified. A central, independent body, such as the Australian Human Rights Commission (**AHRC**) (formerly the Human Rights and Equal Opportunity Commission (**HREOC**)), could be charged with collating and publishing information on complaints, including their nature, number, source, the body complained of and how the complaints were handled and resolved.

Derogations are the ‘small print’ of human rights instruments. The scope of derogations from rights is a crucial matter. They should be narrowly defined, and strictly interpreted, whether as express limitations for specific rights as in the ICCPR or in a general clause as in the Victorian Charter. Not to do this is to leave looseness and loopholes through which governments eventually will drive the proverbial bus, witness ‘anti-terrorism’ legislation made post-9/11.

The Committee will have noted that the provisions of the ICCPR shall extend to all parts of federal States without any limitations or exceptions – Article 50.

A modicum of what one hopes to achieve by a Charter can and should be achieved, in parallel with a Charter, by more open government. As I submitted to the 2020 Forum, I want to see:

Really open government – especially, all government information, including Cabinet papers, should as of right be routinely available within 7 days on request once it is 14 days old from its date of creation.

- Concluded government (including agencies) contracts shall not contain commercial-in-confidence provisions
- All information of general public interest shall routinely be available free online
- Limited categories, very strictly defined, of genuinely national security material, may be withheld for strictly defined periods not exceeding five years.

I appreciate that the draft bill being proposed by Senator John Faulker if adopted – and not then white-anted from the inside like the existing FOI Act - will be an important step towards open government and the public's right to know.

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