

# National Human Rights Consultation Submission

AGWW-7QQ7UX

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**Submission Text:**

2 April 2009  
National Human Rights Consultation Secretariat  
Attorney-General's Department  
Central Office  
Robert Garran Offices  
National Circuit  
BARTON ACT 2600  
Attention: Father Frank Brennan SJ, The Chairman

Dear Sir

This is a personal submission to oppose a "Legislated Bill of Rights" (LBR)

The objections are put in "Bullet Point" form for brevity and readability but I would be happy to provide substantiating evidence, material etc. I add that I would support completely any "Bill of Rights" which had passed through the Australian Constitutional process, and been approved by the Australian voters in the requisite manner. (State by State, and a majority of the overall vote.)

1. Adequate Judicial Processes

Australia already has adequate judicial processes at State, Federal and National level with other commissions, bureaucracies, etc. specifically charged with the preservation of all "Human Rights". There is no evidence that these processes are inadequate overall although the area of the Rights of Victims of Crimes is somewhat neglected. Australia, most importantly, has a FREE MEDIA, which has the ability both on a wholesale and retail (internet) basis to air all opinions and grievances.

2. Politicians are elected, the Judiciary is selected and cannot be dismissed

There is no reason to believe even more judicial (unelected) power will be beneficial. We have a constitution which allows for free elections, and the separation of powers. Let us continue to use that, rather than give power to unelected officials of any type, including judges who cannot be removed until they are seventy.

3. Legislated Human Rights Legislation (HRL) Threatens Free Media and Free Speech

The experience in Canada and the UK (similar constitutional histories to Australia) is that so called Human Rights legislation has been and can be used to stifle, threaten and cajole free opinions. The same sequence has happened in Victoria. Similarly there is a resolution before the United Nations which essentially threatens free speech and free opinion in the matter of a specific religion. Religion is merely politics continued by other means in many cases, (or the reverse) this would threaten the only realistic defence most citizens have a free media, in a free democracy. (Refer Christopher Hitchens.) Further there is no evidence to suggest that judges are good at theology. Any encouragement to the shutting down of free speech merely perpetrates the pattern of violence that lead to the killings of a number of publishers of a boring novel called "Satanic Verses".

4. Legislated Human Rights Legislation Would be Divisive

The evidence in Canada and elsewhere is that HRL actually promotes internal strife rather than solving it and the same appears to be the case in the United Kingdom. This is underlined by the comments of longtime Minister Jack Straw.

5. Legislated HRL Would Politicise to a Further Degree the Judiciary

Currently the judiciary seem very sensitive to external criticism (and can of course use contempt of court to stop free speech). If there is a voted constitutional Bill of Rights then politicisation of the judiciary would occur but it would be at the behest of the majority. If legislated (imposed) HRL is introduced the politicisation will be more significant as it will be seen as lawyers imposing their will on the voting public, without authorization via the constitution.

5. Legislated HRL Would Hold Back Economic Development and Investment

At no time since 1933 has Australia needed economic investment more than in 2009. Properly, there are processes and legislative requirements for processing such transactions and these are in place, (whether for industrial, mining, property, infrastructure, etc.) if yet another platform is given to unproductive lawyers to delay approved investment, the economy will suffer substantially over time.

6. Legislated HRL Will Prevent/Delay the Prosecution of Criminal Violence

The nature of crime in Australian cities is changing to the Mexican, South American, Northern Irish and other global models where violence, criminality, drugs, religion and politics are closely intertwined. If criminal defence lawyers are allowed yet another platform to get their violent clients freed, there is a substantial danger to the peaceful population. Columbia, Mexico, Chechenya, Lebanon, are lessons for everybody and not by any means the worst. Legislated HRL would clearly assist this trend, the logic of which is for the population to seek justice directly, and that everybody has to be a member of a "gang".

7. Legislated HRL will add to the Contradiction of the Laws

There are a number of jurisdictions (the Philippines for example) where there are so many laws that there is almost always a conflict. Australia may not yet be in that situation (but examples of Privacy, DOCS, etc.) suggest we are moving that way. Clearly a legislated HRL would accelerate this contradiction trend. In the end of course the reductio ad absurdum way of conflicting laws is lawlessness.

8. Legislated HRL will not improve Australia's global standing

A suggestion has been made that legislated HRL is necessary for Australia to get rotating membership of the UN Security Council in 2013. The rotating membership is not worth a row of beans except to a few diplomats (the money would be better spent drilling fresh water wells in Africa). However, given that top billing at the UN is given to such wonderful free fair countries as Russia, PRC; Libya; Iran; Syria; Myanmar, Sudan etc. it is hard to believe anybody could seriously hold this opinion.

9. Legislated HRL Would Threaten The External Security of Australia

Drugs and terrorism are rife globally and they easily tear down the structures of politics and the laws. UK Prime Minister Gordon Brown estimates there are fifty major terrorists' plots on foot against the UK in Pakistan at any one time. Mexico has had fifty thousand drug related deaths

in the past twelve months. Clearly any reduction in vigilance or further obstructions put in the way of the Australian intelligence and security services would substantially increase the threat of violence in Australia generated overseas. Australia is an open

society and it cannot take that risk. Pakistan is unfortunately not the only country where extreme violence is being generated by Terrorism, nor is Mexico the only country terrorised by Drug Cartels. The security of resident Australians should be of paramount importance.

In conclusion, if there is a case for Human Rights legislation, it should be put to the Australian people in a Referendum and if it is passed in the required manner, it will no doubt be an object of wisdom. Legislated HRL on the other hand is an imposed structure which is likely unconstitutional and of no benefit to anybody except to puff up a number of wealthy lawyers. It is a detriment to free media, to free speech, to social harmony, to the internal and external security of citizens and it will necessarily politicize the judiciary. I very much hope that if the Committee finds a reason to support the concept it recommends that its findings be put forward as a Constitutional amendment, and does not on any account recommend legislation.

Yours sincerely  
Richard Mews