

**Day Two of Public Hearings**  
**Session: The political case in Australia**

**Presentation from the Hon Susan Ryan AO, Former Senator, ACT**

The case is this:

1- it should be done: it is needed; given the extent of documented human rights violations, it is necessary to better protect vulnerable people that the commonwealth parliament uses its powers to enact a Human Rights law

-2 – it can be done: the commonwealth has the capacity: there are no constitutional obstacles

- 3- the politics are positive: given the overwhelming community support for such protection, there are no political obstacles

Turning to 1

All federal members of parliament are morally obligated to act in the interests of the community. The Australian Labor Party has many policy commitments to that end as I expect have the Liberal party and minor parties.

Every Member of Parliament understands this reality: either deliberately, or unintentionally, commonwealth laws and their implementation often hurt the rights of individuals.

As a consequence of the lack of a specific legal human rights instrument, this hurt is greater.

Individuals are entitled to better protection against violations of their rights by the state. If the government doesn't do this, no one else can. This need gets to the basis of responsible government.

It will be overwhelmingly clear to the consultation panel that violations occur.

Human rights violations have occurred more frequently as our communities become more complex; for example, as a consequence of anti terror laws passed without the checks and balances of a statutory charter of rights, or as a consequence of structural changes in the delivery of government services, especially the growth of outsourcing to the private sector of services affecting the weakest in our midst.

While we all would benefit from statutory protection of those traditional rights taken for granted in Australia, the more frequent and serious violations affect the most vulnerable.

The panel has received many evidence- based submissions concerning abuse by the state of the rights of

-the mentally ill

-the disabled

- indigenous Australians
- minority religious groups especially Muslims
- old people in nursing homes
- children
- the homeless.

The necessity of improving these peoples' unprotected circumstances constitutes the political case for legal rights protection.

A failure to use its legislative power to protect these people would constitute a massive failure of duty by the parliament.

There is a view that the existing elements of our democracy: the parliament, a free press, the rule of law, the common law together provide adequate protection, and thus no specific human rights law is needed.

This view can only be sustained by those who discount the evidence of intense human suffering that precedes the correction of human rights damage, correction that might result from public agitation and belated parliamentary scrutiny.

The children who were held for years behind barbed wire in immigration detention were permanently damaged. As were the adults about whom it was decided, by the High Court that the law condemning them to indefinite detention could not, in the absence of a human rights act, be struck down in any part on legal grounds.

It has sometimes been the case that following media exposure, scandalous violations of the dignity and well being of the very old may have been restrained by the authorities. That crucial pause between the violations and the restraint will have been too long for some, who suffered terribly and in some cases died while waiting for their circumstances to be addressed.

Those who point to instances where some violations have in the long term been corrected as evidence that our existing legal and political arrangements are satisfactory, should consider the uselessness of action after the event in the recent tragic case of Mr Ward.

Mr Ward, an aboriginal elder in Western Australia, while being transported, in custody for a minor offence, a distance of 360km from Laverton to Kalgoorlie, died in the most appalling circumstances imaginable. He was literally cooked to death. The section of the vehicle in which he died so atrociously had no air conditioning, was made of metal, and reached a cauldron like temperature of 50 degrees. He was abandoned to this locked section of the vehicle and given no attention for a period of four hours. Those in charge of him never checked on his condition though they must have been fully aware that he was exposed to potentially fatal dehydration and heat stroke. Dehydration led to his death, and his desperate condition was aggravated by horrendous burns on his body from contact with the overheated metal floor of the vehicle.

Those in charge of Mr Ward, employees of a private security company hired by the WA Department of Corrective Services, carried out their task with a horrendous lack of humanity or even common sense.

They were unconstrained, their employer was unconstrained, and the employing government department was unconstrained by any statutory requirement to consider the basic human rights of Mr Ward. No such law currently exists to protect the Mr Wards in our midst.

Let us consider how our current laws and institutions, so smugly trumpeted as adequate by critics of a human rights act, failed Mr Ward.

Thanks to the ABC 4 Corners program we know:

- the dangerous, life threatening condition of the vehicles was long known to the relevant department
- it was certainly known to the responsible minister who reported on air that she was unable to secure from cabinet funding for safer services
- the WA parliament did nothing in relation to these lethally unsatisfactory services

The media did eventually bring this case to public attention, but after Mr Ward's shocking death.

If a human rights act had been in place, each of these failures would have been mitigated and the final tragedy averted.

At this point I won't enter into a discussion about the division between state and commonwealth responsibilities. The panel will know that following the comprehensive public inquiry and report on human rights protection in WA by the honourable Fred Chaney, the WA government at the time expressed a favourable view towards a state based human rights act but decided to wait to see the extent of the hoped for new commonwealth law before considering state legislation as recommended by Chaney.

2. It can be done.

I refer the Panel to the model draft bill, a human rights act for Australia, known as the "new matilda" model, submitted by the hraac as its submission.

This draft has been available for public comment and input since 2005. We refined the draft to take account of relevant input and in particular to reflect the landmark agreement at a recent meeting of constitutional experts convened by Catherine Branson, President of the ahrc. That meeting, which included former high court judges Michael McHugh and Sir Anthony Mason, after addressing constitutional issues that had been raised regarding the new matilda model, concluded unanimously that:

A Human Rights Act for Australia can be drafted that would be constitutionally valid. A government setting out to draft such a bill would have a number of models available, of which the new matilda model is one particularly robust example.

This model puts into statute the already existing Australian obligations that derive from Australia's ratification of the major UN human rights instruments. These have been listed in numerous submissions to the panel, so in summary I am referring to the ICCPR and the ICESCR, other major instruments covering women, race, refugees, children, torture and the disabled.

The process is familiar and time honoured in Australia. For example, after ratifying the UN convention on the elimination of all forms of discrimination against women, the Hawke government enacted the Sex Discrimination Act 1984. After 25 years, the only changes made to this Act by parliament have been to extend its coverage.

On the politics of this measure, although opposition at the time was extensive and fanatical, the Hawke Keating governments won four more elections, and no conservative government has attempted to abolish the act.

We consider a human rights act necessary to improve parliament's protection of human rights. While committees can do valuable work, without a law the work of a human rights committee would be ineffective.

The other important outcome of a human rights act would be to ensure that those implementing laws, public authorities and those acting on their behalf develop a human rights culture.

The role of the courts in our model is to interpret laws in keeping with legislated human rights, and where this is not possible, to reach a finding of inconsistency. Such a finding should trigger a review of the inconsistent law by parliament. Only parliament can make, change or abolish laws. The sovereignty of parliament is maintained and its participation in human rights matters is strengthened.

So, it can be done.

3, the electoral politics: relevant recent surveys which have been made available to the panel show that the vast majority support such a law.

Why would any informed citizen not want this protection?

Why would any politician refuse it?

Historically Labor governments, especially since the Universal Declaration of Human rights 1948 have supported internationally agreed human rights initiatives.

Our current Prime Minister Kevin Rudd frequently expresses his support for human rights and his hopes of increasing Australia's role in the UN, the global protector of rights.

A Human Rights Act should attract all party support. Liberals traditionally concerned with the rights of the individual should welcome it, as should minority parties keen to assist the marginalised.

In summary:

We need it, it can be done, and the community wants it.

The panel has a uniquely important task in reporting on these matters to government. You have the chance to contribute to a major reform that will benefit all in Australia, now and in the future. You have my best wishes in this historic work.