

# National Human Rights Consultation Submission

AGWW-7MU7F8

**Name:** David Pennington

**Submission Text:**

The Chairman,  
Australian Human Rights Commission,  
Dear Sir,

I am writing to submit my views on the discussion and deliberations of the Committee chaired by Fr Frank Brennan on whether Australia should adopt a Bill of Rights, such as exists in the US, in the UN Charter, and elsewhere.

Firstly, contrary to popular belief, the Australian Constitution already enshrines one of the cardinal rights of humans, the right to freedom of worship. That is expounded in Section 116.

In view of recent trends to marginalise certain minority groups of a different religious persuasion on the grounds of potential terrorist connections, and the introduction of excessively restrictive laws using the excuse of national security, Section 116 becomes all the more important to limit the excesses of government in these areas.

It is therefore imperative that Section 116 is not tampered with in any way. By that I mean that it should not be modified, nor excised, nor translocated into a separate Bill of Rights.

In fact, it is my view that a Bill of Rights should ONLY be enacted as it is in the US Constitution, as Amendments to the Constitution. The protection afforded by this manoeuvre would be that the people themselves would decide this, preferably by Referendum. As the fate of the monarchy and the Republican debate may also enter into this equation, and possibly obfuscate the issue, it would be best to allow this a separate life.

Further amendments to the Constitution could be added as further sections, perhaps appended to Section 116, which is the current part of the Constitution guaranteeing a fundamental Human Right.

An examination of the history of Section 116 is salient. During the 1890s when the Constitutional conventions were being run around Australia, there was a strong move to include as part of the Constitution a statement that "we are a Christian Nation". All manner of discrimination and abuse of rights would have flowed from such an inclusion. Fortunately for human rights, not only was that sectarian issue defeated, but groups as disparate as humanists, atheists, Jews and Seventh-day Adventists combined to urge the adoption of a section whose wording echoes the famous First Amendment of the US Constitution.

As Christ famously stated, we should "render unto Caesar the things that are Caesar's, and unto God the things that are God's". This is the very basis of the notion of separation of church and state, and it was stated by the only real Head of the Christian Church.

In recent times there has been increasing urging from the papacy to break down this wall of separation, arguing on moral grounds and grounds of expediency, even of environmentalism. This would be a most unsound policy to adopt, with the potential for far-reaching sectarian exploitation, favouritism and even persecution, something which the papacy has never officially deserted.

For example, in his Letter, Dies Domini, (largely drafted by Benedict before his papal election), Pope John Paul II stated "Therefore, also in the particular circumstances of our own time, Christians will naturally strive

to ensure that civil legislation respects their duty to keep Sunday holy." This kind of civil legislation, such as will be enforced by the Croatian parliament in January 2009, cuts across the rights of freedom to open a business at certain times and conduct trade freely, as well as enshrining in law a respect for one religion above another.

In Australia, that would be in contravention of Section 116, notwithstanding that there are several state laws concerning Sunday trading and the like which have never been challenged constitutionally.

Finally, one has to ask the question (there is no personal rebuff intended here, and notwithstanding the previously declared disinterest of Fr Brennan), 'Is it appropriate to appoint as the Chairman of a committee examining human rights an ordained priest of one particular religion, when the Head of that religion has already expressed an open opposition to separation of church and state, and to the promotion of civil law to enshrine a day of worship?'

In view of the fact that freedom of worship is considered one of those basic rights stated in the UN Declaration of Human Rights, and that a bias might be perceived in such a committee by way of its chair, should not the Chair consider and declare a conflict of interest and stand down?

Sincerely,

David Pennington