

Submission number AGWW-7RLDH7

I am proposing that Australia needs a national non constitutional charter of human rights to protect, respect, promote and fulfill human rights. In Australia a charter of human rights would become an instrumental apparatus to define our rights and the direction of Australia as a nation, protect our rights from erosion by the whims of government and bureaucracy and would bring Human Rights of Australians into a national and international spotlight.

Australia is seen to be a fair and equitable society based on a foundation of mateship and a fair go for all. But often a “fair go for your mates” only extends to those we see as equal or as the status quo- and often that means white Anglo males aged 18-60 years of age. If you are female, poor, Muslim, have a disability or mental illness are homeless or in detention then there is little legislation to protect you in Australia and what exists is interpreted and applied in piecemeal fashion.

Australians have a proud history of celebrating the freedoms fought for and won by those that fell in World War 1 and 2 yet those values have never been legislated for. These values are given a constant media hype and are promoted by the government. A bill of rights could be used in to uphold those values won by ordinary Australians sacrificing their lives for all Australians to enjoy.

#### **Current rights protections -**

Currently we have little to no consistent national rights protection, our rights are subject to abuses, specific groups suffer rights abuses and disadvantage due to policy and practice of the current government and policy that is passed without the scrutiny of a human rights framework.

We are the only democratic western country without a nation a charter or bill of rights and we are breaching the very laws that we as a nation are signatories to and helped draft. Of the current state of Australian rights protection vs. the covenant on civil and political rights and others George Williams states that *“When Australia ratified these covenants we agreed to make them part of our domestic law ... neither covenant has been enacted in full by federal parliament which leaves Australia in breach of international law.”*<sup>1</sup>

Our current human rights instruments of the constitution, the common law and anti-discrimination laws are not enough. It has even been said that by living in a democratic society that democracy in itself is enough of a human rights protection. Tell that to the hundreds of thousands of disempowered Australian citizens who do not have the right to vote or are marginalized and powerless, suffering obscene human rights abuses and living in poverty in this country. Democracy is doing little for them.

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<sup>1</sup> Williams, 2007 p15

Many Australians believe that the Australian constitution and the government will protect us. The government still passes racist and discriminatory laws and enforces and regulates poor practices within their agencies. These government instruments and agencies further disempower and disadvantage many Australians through their bureaucracy and treatment of people from minority groups. Think about your last interactions with Centerlink or any other government agency.

The constitution is focused on the rights of the states and the sovereignty of government. The constitution was founded on racism and the ability to limit the freedoms of people based on colour and has not progressed since it was written. Constitutional protection and common law rights are limited to the interpretation of judges and can be changed by the whims of politicians. Other rights are merely implied and not legislated.

Many rights in Australia are “implied rights” - those that the government gives us via the constitution and democratic process – i.e. the right to vote (as long as you don’t have a disability, are in jail) the right to free speech, the right to some forms of privacy (covered by some privacy laws) occur in a democratic society providing you fit the status quo. However *“implied rights” do not provide a foundation or protection for those rights as secure and explicit as they would be in a constitutionally or legislatively protected bill of rights.*<sup>2</sup>

The problem with current anti discrimination legislation laws is that they require an onus of proof of discrimination on the individual that believes they have suffered discrimination. They take a very legal approach and are not accessible for the very people they are meant to protect. An individual has to engage with legal instruments and processes which for marginalized, poor people with disabilities who have extremely limited resources, understanding and capacity is a frightening process. Individuals may not even be aware they have rights and have been discriminated against. Redress for some discriminatory laws or actions may require perusal to the high courts or even the UN, a virtual impossibility for most people.

A proactive charter of rights ensures that laws are fair, focused and are proactive from their conception to implementation. Laws that are consistent with a human rights framework and approach enacted under the gaze of a charter of rights can have a positive impact on public policy and direct service provision in government agencies who are a large sphere of influence on the lives of people with disabilities.

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<sup>2</sup> (McHugh, 2007)

## **Rights to be protected and promoted -**

All rights as set out in the UN Declaration of Human Rights should be given equal weight and consideration. Civic and political rights are important, but of little value if they are not enjoyed mutually with economic, cultural and social rights. The right to vote and the right to life means little if a person does not have access to clean water, housing and basic health care.

In addition to the rights contained within the Un Declaration of Human Rights I propose a specific clause for people with disabilities. This is because people with disabilities are one of the most vulnerable groups in our community and suffer some of the worst breaches of human rights abuses in the country. These breaches are often hidden from the public and committed by the very organisations and people designed to support them.

According to the ABS one in 5 people has a disability. Many people will suffer some form of disability over their lifespan through accident, illness or ageing. Access to basic services to meet their needs is a struggle let alone surviving within a society that is rife with prejudiced, belittling attitudes and blatant discrimination, barriers to access and ill treatment.

To have the right to life means little if it is not a quality, valued life. People with disabilities must have the right to participation and freedom of movement. People with disabilities need equal recognition before the law, right to liberty and security, right to be safe from cruel unusual and degrading treatment or punishment. This is something that people with disabilities suffer directly by act and often indirectly by omission from poor policy, design and implementation. Humiliation adds tenfold to the degradation people with disabilities suffer in the community when they are already at immense disadvantage.

I propose that people with disabilities need their own specific clause in any human rights protection instrument. Part of this clause reflects the views of the much respected Human Rights lawyer and commentator Jeffery Robertson QC

It would read as thus;

1. *People with disabilities regardless of their abilities should have choices equal to others in their community and shall in particular have;*

*The right to choose their place of residence and where and with whom they choose to live to the same extent as others.*

*Access to a range of in house residential and other community support services including personal assistance necessary to prevent isolation in the community.*

*Access on an equal basis and in a way that is responsive to their needs, to community services and facilities that are made available to the general population.*<sup>ii3</sup>

I have added 2 additional clauses of my own;

The right to vote and for voting papers to be presented by an independent impartial assistant or in a format that is accessible including for information to be presented in Auslan for those who experience deafness/profound hearing loss.

For children with disabilities to attend the child care, kindergartens, schools and further education and training institutions of their choosing with adequate and appropriate support provided as a fundamental right.

It is crucial to the furthering the rights of people with disabilities that a charter can address a power imbalance within government institutions and encourage people with disabilities to step forward. A charter also allows for the further recognition of the fact that people with disabilities are equally human and have rights the same as others in society. This fundamental fact is still often denied to people with disabilities.

### **How we can enhance the human rights of Australians-**

Is it absolutely essential prior to enshrining our rights in a charter that we have basic education programs run throughout Australia which can be taught in all languages (including accessible language for people with disabilities or those with hearing impairment) to people young and old. Mainstream society often sees rights campaigns as something that is left to lobby or minority groups and are not aware what their rights are or how they work in society.

Australians are very ignorant about our own democratic process and general political concepts such as divisions of state and federal power and the various roles of government and the judiciary. Australian democratic process should be taught within a national curriculum framework from a young age in schools and continued throughout the education system. Article 26 of the UN Declaration of Human Rights specifies that everyone has the right to education and that all nations must promote education regarding the UN and human rights- this is not something that is currently done well, if at all in this country.

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<sup>3</sup> Robertson 2009, p204.

Australians are misguided about what their rights are and are misinformed about the processes involved with rights and their regulation under law. There is a public paranoia of judges and unelected officials or laws that are seen to be pushed through by interest groups.

Australia needs a strong regulatory federal body such as the Human Rights Commission to actively oversee our rights and adjudicate in issues such as incompatible laws handed down by government. They would also be responsible for determining compensation for those who have suffered gross injustices and rights under a charter of rights.

In conclusion – an Australian charter of human rights would ensure that laws and practices were consistent in government agencies, enhancing the rights of people with a disability and vulnerable others in the community. Better education and a strong Human Rights body is required as part of the implementation process. Current piecemeal laws and constitutional protections are not enough. As a progressive, wealthy nation we must have a human rights charter to move forward on the international human rights stage in the 21<sup>st</sup> century, away from our racist intolerant past. Then we can legislate for the values held true by our ancestors that sacrificed themselves for the rights of our citizens.

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<sup>i</sup> Williams, George 2007 p15 A charter of rights for Australia, University of NSW press.

<sup>ii</sup> *McHugh, Michael AO P 9 "Does Australia need a bill of rights" NSW bar association*

<sup>iii</sup> Robertson, Jeffery 2009 , *The Statute of liberty, How Australians can take their rights back*, Vintage publishing.