

National Human Rights Consultation Submission

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Submission Text:

Australia does not need a Human Rights Charter. The human rights of citizens in Australia are already protected, and creating a charter will only make these rights more susceptible to social engineering and to a judiciary that is unelected and unaccountable to the public.

Codifying basic rights would allow unelected, unrepresented judiciary members to make decisions that define our most basic freedoms. In deciding cases brought on the basis of charter breaches, judges would inevitably rule on the substance of citizens' fundamental rights. As contemporary values inform the nature of human rights, judges would not necessarily be constrained by precedent and rule of law, but rather form an opinion based upon 'public policy' -- in essence, what the judge thinks has priority in society. Yet, isn't this the domain of the elected and representative legislature, not the courts? Parliament is, after all, the one best positioned to understand the values of its electors! Such a situation would irrevocably compromise the Constitutional separation of powers that prevents exercise of absolute power by any one arm of government!

The parliamentary process also leaves charter rights open to determination by minority groups, many of whom are supportive of 'rights' that are, at best, controversial in the wider community. Inclusion of 'rights' that may only be recognised as such by a minority group would effectively force acknowledgement from individuals, sacrificing individual freedom of expression to appease political groups. Conflict between 'group rights' and 'individual rights' makes this area highly unsuited for legislation and adjudication, the operation of both being predicated upon consistency and integrity.

Human rights are not protected by bills or charters. They are protected through the separation of powers within a legal system and by the principle of legality. The ability for citizens to question government actions and vote them out prevents the State from encroaching upon basic freedoms. When these elements are present, society is stable. When they are absent, no amount of paperwork will prevent corruption and abuse of power.