

National Human Rights Consultation Submission

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Submission Text:

Our human rights are the basic rights and freedoms to which we are all entitled. The question that needs answering in the debate on whether to establish a bill or charter of rights is the one of who should be held accountable for protecting our human rights?

In a democracy such as Australia's, parliamentarians are elected by the people and accountable to the people at election time. One of parliament's primary tasks is to protect people's rights.

Supporters of a charter of rights claim the vast majority of Australians want one. The News South Wales Council for Civil Liberties cites a national survey of 1522 people by the Australian National University in 1991-92 that found 70.6% of Australians want a bill of rights. But how was the question framed? What was the context that was put forward before the questions were asked? On the surface, the arguments for a charter of rights sound convincing and people who don't want one are framed as being somehow 'morally bankrupt'. But when you dig just a little beneath the surface, the superficial arguments for a charter of rights are quickly exposed.

It's no surprise that those pushing hardest for a charter of rights also stand to gain the most – lawyers, judges and political activists who want to socially engineer a 'better society'. Any charter of rights will inevitably lead to litigation. This is because it will be deliberately drafted in such vague language that only litigation will be able to determine the ambit of people's rights.

A charter of rights will enable unelected and unaccountable judges to pass judgments that conflict with the nation's laws. Public pressure stirred up by the legal profession and activists would make it very difficult for politicians to ignore such judgments, for while judges are not formally declaring laws invalid, they are, in a practical sense, morally destroying the authority of parliament. This has already happened in Canada. Judgments force politicians to act to suit one small group of people at the expense of the majority. Such a transfer of power from the elected representatives of the people to the unelected judiciary weakens Australia's democracy.

Some might say that in the face of parliamentary legislation that discriminates against minorities, judges are the only ones able to stand above the fray and act impartially to protect the rights of minorities? But judges aren't acting impartially on these matters. They act according to their own rationale. Judges are unelected and their views when passing judgment on matters that haven't been considered by parliament are therefore undemocratic.

Parliament is the champion of the rights of Australians. We elect politicians to protect our rights. Independent statutory authorities acting at both Federal and State level work on an institutional level to keep our politicians honest. The media's role is also crucial – exposing government malfeasance and influencing public opinion.

The Australian people place a great deal of trust in our politicians to look beyond groups with a narrow self-interest; political operatives, PR people and their clients looking to benefit themselves at the expense of many. We trust our politicians to protect the interests of the vast majority of our people whose vested interest lies in the government passing laws that make it as easy as possible for businesses to make money for their shareholders, in the process creating jobs and wealth for Australia and providing governments with the resources, through taxes, to help

improve everyone's living standards.

The role of judges is separate and distinct. They jail criminals under the country's existing laws, passed by politicians. It is not their role to try, through moral suasion, to change the laws of the country to suit their own views.

None of what I say may influence your views. But even politicians who have implemented charters of rights in their own countries are now voicing their frustration with the way judges are interpreting the law to suit their own ends.

This includes the British Justice Secretary Jack Straw who publicly stated in December 2008 how frustrated he was with the way judges have interpreted the British Government's Human Rights Act.

In the UK, this act has stopped the Government from deporting terrorists, stopped police from identifying murderers on the run and allowed prisoners to demand and receive huge damages for being denied illegal drugs in jail.

While Australia may have laws that some perceive to be unjust, implementing a charter of rights, with protections that need to be defined and enforced through litigation, is not the answer.

The best long-term approach to balancing our rights and obligations is to maintain the separation of power between parliament and the courts, supported by strong institutional governance.

The introduction of a charter of rights would be a retrograde step and Australia would regret it for generations to come.

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