



*In Support of a Human Rights Charter for
Australia*

February 2009

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Preamble

Telstra acknowledges that the views in this submission are not necessarily those of its 1.4 million shareholders or its employees. This submission does not purport to speak for any of them as individuals. Indeed, Telstra’s shareholders and employees hold a very wide range of views on many matters and whilst some very strongly support this submission, others are equally opposed to its existence and its contents. All those with views are encouraged to make submissions and participate in this important debate.

This submission has been lodged as part of Telstra’s ongoing participation in the debate on regulation and the removal of rights which have affected its business.

It is also submitted as part of a belief that good corporate citizenship includes a responsibility to participate in the life of the nation. Far from being a topic that ought to be “off-limits” to corporations, the submission is based on a view that corporations, like individuals, are affected by the level of human rights protection and other important matters that affect the political, economic and social environment in which businesses make investments, run their operations, serve their customers, employ staff, pay taxes and seek to grow the wealth of their shareholders.

Indeed, corporations should be encouraged to bring their perspectives to these debates given that economic and political human rights are the cornerstone of a free enterprise society and fundamental to the role that corporations play in the lives of all Australians.

The key point of Telstra’s submission is that where legislation removes basic rights, it should be done deliberately and expressly by Parliament. Whilst no system is perfect, a legislated Charter of Rights would create the mechanisms for this to occur. The wellbeing of

shareholders, employees and customers would thus be improved by the greater governmental accountability that would result.

Executive Summary

Telstra Corporation Limited (“**Telstra**”) makes this contribution to the debate on a National Bill of Rights Charter (“**Charter**”) in the belief that: firstly and undeniably, human rights are worth protecting; and secondly, Australians would benefit from a Charter to provide greater clarity about the protection of human rights in Australia.

Human rights in Australia

There can be little doubt that Australians believe they *already* enjoy many rights and freedoms. These include: the right to a jury trial in criminal matters; the right to not incriminate oneself by answering questions that are posed by authorities; the right to privacy; the right to not be tortured or subjected to slavery; the right to not be discriminated against on the basis of race, gender, or sexual preference; the right to lead a life with dignity; freedom of speech and religious worship; freedom to participate in peaceful demonstrations; freedom from retrospective punishment; the right not to have their property acquired by the Government other than on “just terms”; the right to not be imprisoned without charge; governmental support for a minimum standard of living; and the right to vote.

However, in recent years, many of these rights have been limited or removed in certain situations or for some members of the population, and there is no guarantee that these rights will not be further eroded in years to come. These rights exist when created or at least are not impinged upon by legislation. Conversely, legislation can remove such rights or may encroach upon them.

With the notable exception of Victoria and the Australian Capital Territory, these freedoms are not articulated in any Charter. Rather, these rights and freedoms exist by convention, by Constitutional implication; and reflect reliance upon the doctrine of responsible government for human rights protection, as augmented by the courts under the common law. Telstra, however, considers that these measures are inadequate for protecting human rights in Australia. Human rights are better protected by a Charter than by the vagaries of responsible government.

Telstra recognises that opponents of a Charter may argue that, taken together, the existing set of protections is sufficient for protecting human rights. Telstra’s view, however, is that human rights, like the machinery of government established by the Constitution, deserve entrenchment in an underpinning document. Such rights are too important to be left to the mercy of the Legislature and to the government of the day.

Telstra's interest in a human rights Charter

It goes without saying that *human rights* are the rights of human beings. Some human rights – such as the protection of individual's economic rights - *prima facie* may seem at odds with the economic interests of corporations. However, this appearance stems from a failure to appreciate that the owners, managers, employees, customers and other stakeholders who represent or interact with “the corporation” are themselves individuals whose lives and livelihoods are directly affected by the rights and obligations of the corporation as a “corporate citizen”.

Large and small companies, whether shareholder-based, family-centred, multinationals, NGOs or organisations established for charitable purposes, occupy a core part of most democratic economies, including Australia. In Australia and elsewhere, such organisations are often involved (sometimes publicly, sometimes privately) in: standing up for the rights of the oppressed; correcting injustices; trumpeting opposition to government oppression; and exposing corruption. Companies reflect the combined interests of individuals; and, for the most part, individuals support the protection of each others' rights. Not only do corporations therefore play an integral role in protecting and promoting human rights values, there is nothing particularly remarkable about corporations (including an organisation like Telstra) contributing to discussion about a human rights framework.

Hence, Telstra believes that corporations - *large and small* - share a common interest with individuals in *promoting* and enshrining human rights. Corporations, like individuals, value administrative accountability and fair and impartial judicial and administrative “due process”. Such due process promotes good governance and improves quality of decisions; this benefits not just individuals and corporations but also *governments*. Due process allows a person (or corporation) to respond to adverse decisions (including those affecting property rights) and to do so vigorously if necessary. By bolstering *transparent* decision-making, due process acts as a legal counterweight to regulatory or government excesses – which benefits individuals, companies and ultimately executive and administrative decision-makers.

As a corporation in the public eye, with the largest shareholder base in Australia and with thousands of employees, Telstra also takes a keen interest in freedom of expression. The Australian media *regularly* comment about Telstra. Telstra appreciates that *everyone* is entitled to talk about Telstra. At the same time, Telstra values *its* rights to express its views and contribute to public discourse on a range of socio-political matters, not always limited to the telecommunications industry.

More generally, Telstra values freedom of religious expression; freedom of sexual orientation; and for people to lawfully associate with friends, people and colleagues of their choice. Cultural, sexual, religious and racial diversity are touchstones of any corporation's healthy employment culture – and Telstra consciously promotes such diversity amongst its own staff.

Yet, while many Australian laws and policies reflect established human rights principles (including rights established under international laws and Conventions), and many such policies are *also* enshrined in Australian legislation, there typically is no explicit Constitutional or statutory recognition of such rights and freedoms in Australia. For example, freedom of expression is an implied right relating to *political* matters and arises only insofar as legislation is *not* reasonably adapted to its intended purpose. Such protection arguably also does not apply to *executive* or administrative decision-making. Telstra, however, also values human rights that extend beyond free speech, such as principles reflecting fairness, equality before the law, the right to peaceable demonstration, privacy, protection of one's reputation and the right to not be subject to arbitrary arrest or detention. Telstra accordingly sees value in a Charter that is underpinned by respect for the dignity of ordinary human beings.

A Charter as a yardstick to good governmental decision-making

Telstra considers there would be great value to all Australians in enshrining the freedoms that are currently implied by convention, common practice or otherwise in a Charter. Without such a Charter, Commonwealth and State Governments may circumscribe such rights through legislative change without intending to do so, as a result of a failure to assess the implications of the relevant law from a human rights perspective.

Further, and equally importantly, a *good* Charter can become a valuable yardstick to both guide and evaluate governmental decision-making. Put differently, a Charter's value can extend beyond the immediacy of its text and the cycles of changing governments, to engender a culture in the governmental sphere characterised by healthy administrative accountability and transparency.

In this context, Telstra considers itself well-qualified to contribute to public debate about a Charter for Australia.

Australian human rights on the international stage

Australia is the only modern democracy in the world without a national Bill of Rights. Naturally, this fact alone does not *require* Australia to introduce a Bill of Rights. For example, *if* Australia had an impeccable human rights record, such evidence might indicate

not only that Australia did not need a Charter but that the *lack* of a Charter may even be preferable to having one.

In 2000, the (then) Prime Minister Howard described Australia's human rights record as "quite magnificent".¹ Despite this claim by Australia's former Prime Minister, there have been several well-publicised infringements of human rights in Australia, including amongst them, the incarceration of children in immigration detention facilities. The available data suggests that Australia's human rights record does *not* compare overwhelmingly favourably with other countries. For example, since 1990, the UN Human Rights Committee ("UNHRC") has found seventeen separate human rights violations in Australia under the International Covenant on Civil and Political Rights ("ICCPR").² Others have lamented the lack of parliamentary scrutiny or accountability in relation to abuses of human rights in Australia.³ This evidence suggests that an Australian Charter is at least worth serious debate.

Is responsible government sufficient to protect human rights in Australia?

Rather than being protected by any Commonwealth Charter, and though there is human rights legislation in the Australian Capital Territory and Victoria, human rights in Australia are, for the most part, protected by a combination of responsible government and the common law.

The doctrine of responsible government stipulates that politicians – the elected members of the Government and, in particular, *Ministers* – are responsible for executive decision-making. Trusted with protecting the interests of citizens and under the theoretical pain of political dismissal if they neglect citizens' rights, Australia's human rights protections are in the hands of elected members of Parliament and only as robust as the political sanctions that their party may or may not choose to impose upon them. The judicial decision-making process may, if the political process has required it, still have a role, but there are a number of examples where appeal rights have been reduced or removed in the name of efficiency in order to counter alleged "gaming of the system" by the non governmental party.

It follows that arguments in support of, or against, the introduction of a Commonwealth Charter tend to hinge on whether human rights are *adequately* protected by a combination of responsible government and case law. Furthermore, it is implicit in the reasoning of those

¹ See John Howard, 18 February 2000, ABC FM, <http://www.abc.net.au/am/stories/s101290.htm>, website accessed 29 July 2008.

² See NSW Council for Civil Liberties, http://www.nswccl.org.au/issues/hr_violations.php, website accessed 29 July 2008.

³ See Susan Ryan (2008), *OPINE*: The case for a Bill of Rights, Labor Herald 23 May 2008, <http://eherald.alp.org.au/articles/0508/magopine23-01.php>, website accessed 29 July 2008.

who argue that responsible government is the preferable methodology for protecting human rights, that elected politicians will be accountable for shortfalls in human rights protections.

Seen in this light, responsible government is a soft foundation upon which to rest the protection of human rights. As noted by former High Court Chief Justice Sir Anthony Mason:

“the common law system, supplemented as it presently is by statutes designed to protect particular rights, does not protect fundamental rights as comprehensively as do constitutional guarantees and conventions on human rights ... the common law is not as invincible a safeguard against violations of fundamental rights as it was once thought to be.”⁴

Similarly, though using stronger language, former Australian Human Rights Commissioner, Brian Burdekin has said -

“It is beyond question that our current legal system is seriously inadequate in protecting many of the rights of the most vulnerable and disadvantaged groups in our community”.⁵

There are several reasons why responsible government offers inadequate protection for human rights.

First, in all but the most extreme circumstances and then typically only when Ministers are *personally* involved in executive decision-making, the doctrine of responsible government rarely results in Ministers taking *personal* responsibility for government excesses. For the most part, Ministers tend to be sufficiently far removed from the consequences of their Departments’ actions to allow Ministers to avoid accountability for decisions affecting the rights of citizens.

Second, responsible government is, in essence, a negative entitlement in relation to human rights. Rather than protecting anyone’s rights, it implicitly stipulates that Ministers must be wary of any direct association with executive decision-making affecting peoples’ basic entitlements. Elected members of Parliament also have strong *disincentives* to take accountability for executive decision-making and, conversely, face even stronger incentives to distance themselves from responsibility for breaches of human rights.

⁴ See Sir Anthony Mason, ‘The Role of a Constitutional Court in a Federation: A Comparison of the Australian and the United States Experience’ (1986) *16 Federal Law Review* 1, 12, cited in George Williams (2006), ‘Critique and Comment The Victorian Charter of Human Rights and Responsibilities: Origins and Scope’, Melbourne University Law Review, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/MULR/2006/27.html?query=^charter>, website accessed 29 July 2008.

⁵ See Brian Burdekin, ‘Foreword’, in Philip Alston (ed), *Towards an Australian Bill of Rights* (1994), v, v, cited in George Williams (2006), ‘Critique and Comment The Victorian Charter of Human Rights and Responsibilities: Origins and Scope’, Melbourne University Law Review, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/MULR/2006/27.html?query=^charter>, website accessed 29 July 2008.

Third, put simply, protecting human rights by reference to an election cycle is an indirect, vague and slow method of redress for those concerned with human rights protections, let alone the victims of human rights abuses. The more responsive but equally unsatisfactory notion of responsibility to Parliaments – the slim convention of ministerial responsibility - is also no substitute for clearly articulated, enshrined, human rights protections.

Fourth, executive and departmental decisions can affect peoples' lives, sometimes profoundly. Yet, responsible government offers relatively little explicit guidance to citizens about what *kinds* of basic human values are worthy of protection. It is naïve to expect that political accountability to an electorate (or more broadly the nation) serves as any kind of guarantee of the rights of one or more individuals.

Fifth, responsible government does not establish any clear signposts for *defining* human rights. It has nothing to say, for example, about the importance of laws *not* operating retrospectively; nor about peoples' right to live peaceably, to express their views confidently; or to be equal before the law.

Sixth, though adhering to principles of responsible government, Parliaments and Cabinets may make decisions affecting individuals for populist reasons without due consideration to enduring human rights principles. Legislative and executive decisions based on a particular prevailing political climate may trample upon basic rights and entitlements. Indeed, it is in times of fear and uncertainty when this is most likely to occur – at the very time when the existence and enforcement of human rights is in fact most critical. A Charter, in contrast, can stand independent of populist values and can reflect more lasting rights and principles.

Are elected politicians preferable to unelected judges and would a Charter result in increased levels of litigation?

The notion of a Charter may connote active, if not aggressive, pursuit of self-interest by litigants, with increased involvement of lawyers in pursuing human rights claims in courts. Concerned that a Charter will lead to ever-increasing numbers of lawyers representing self-interested litigants (with decisions about human rights made by unelected members of the judiciary rather than elected politicians), one may even hear the expression 'lawyers' picnic' used to describe Bills or Charters of Rights.

This, however, is to both misunderstand the nature of human rights, and to misapprehend the purposes and legal effect of a Charter of the type Telstra would support. It is regrettably rare that Charters (or Bills of Rights) are described as what they are - a last resort for the underprivileged, the disadvantaged, the marginalised and poor, to be pointed to when basic human dignity is denied.

Those who oppose Charters nevertheless sometimes argue that a Human Rights Charter would transfer decision-making away from elected members of parliament to unelected members of the judiciary. For example, in April 2008, former NSW Bob Carr, a well-known opponent of a Bill of Rights, claimed that:

“A menu of abstractions - that is, any attempt to list rights - wrenches from the cabinet table and the legislature and delivers to the courtroom things that ought to be determined by governments”.⁶

Catholic Archbishop of Sydney, Cardinal George Pell claims there are advantages in politicians (rather than lawyers) being responsible for human rights protections, contending that:

Politicians have one very great advantage over lawyers, and especially those lawyers who are appointed to be judges. They regularly have to account for their decisions and actions to the electorate, to ourselves, the voters who have to live within the provisions of their legislation. This remains as one of the great safeguards of freedom and justice in a democratic society. It is strange indeed that some are now claiming that this safeguard is not enough and our rights will only be secure when they are entrusted to unelected judges who are accountable only to the constitution and the law which they themselves interpret and administer.

It is instructive on this point to note that Zimbabwe has a constitutional bill of rights, which among other things protects rights to personal liberty, freedom of conscience and expression, and freedom of assembly, association and movement ...”⁷

Cardinal Pell seems to accept that Australians do have some rights and that these are appropriate for protecting human rights and should not be changed. *If* Australian politicians are accountable to the electorate, however, then this is the result of voters having an entrenched right – namely, the right to vote. Furthermore, no-one seriously questions whether functioning responsible government is critical to Australia’s well-being. Yet it is surely an open question whether the “rights” established in 1901 are all Australians will ever need. For reasons already set out in this submission, responsible government is an important but not necessarily complete foundation upon which to rest human rights protections. Unlike Zimbabwe, Australia is also in the fortunate position of having a stable system of responsible

⁶ Bob Carr (2008), *OPINE: Resist the zealots*, Labor Herald 28 April 2008, <http://eherald.alp.org.au/articles/0408/magopine28-01.php>, website accessed 29 July 2008.

⁷ Cardinal George Pell (2008), *Four Fictions – An Argument against a Charter of Rights*, http://www.sydney.catholic.org.au/Archbishop/Addresses/2008429_1560.shtml, website accessed 29 July 2008.

government and need not be distracted by the relative weighting given to rights as opposed to responsible government.

There are two further reasons why Mr Carr's and Cardinal Pell's contentions are unsupportable. First, their arguments misconceive the way various legislative 'charters' already operate under Australian law. People wishing to protect their "rights" under Australian law – for example, under the antidiscrimination laws - invariably require assistance from expert lawyers. Judges, *not* politicians, weigh up the relevant evidence and make the binding decisions.

Second, State and Commonwealth laws in Australia already give lawyers and judges the task of searching legislation for legal meaning, and applying such reasoning in the courts. A Charter of Rights would therefore not *transfer* rights and responsibilities from elected politicians to unelected members of the judiciary. Rather, it would remain for the Legislatures to enact laws, amend laws and, if faced with a court ruling that is politically undesirable, to pass laws to overturn the ruling of a court. In addition, absent Constitutional amendment, which is not being proposed, each legislature will be able to amend the relevant Charter.

What could be gained by introducing a Charter?

Protections for the weak and marginalised

Human rights laws are perhaps better described as 'basic entitlements' rather than "rights". Aiming to protect citizens from unreasonable *interference* with basic ways of living, a Charter would seek to protect *ways of behaving* considered elementary to living - for example, to not be capriciously arrested; to have one's reputation protected; to peaceably worship (or not worship) one's own god; and to be entitled to protection of personal information. Seen in this way, human rights laws, and specifically, a Charter, are more like templates for defining human dignity than legal instruments for promoting self-interest.

In general terms, those most susceptible to potential human rights abuses are those who are also most *unlikely* to understand how to protect themselves from human rights abuses. A Charter with simply enunciated principles may accordingly be *particularly* valuable for the marginalised, the uneducated, and the less financially powerful, by being accessible and comprehensible to the ordinary citizen.

The accessibility of such information may be acutely important during a time of increasing globalisation, with greater movement of people between countries, such as is the case in the 21st Century. Due in large part to globalisation, Australia is increasingly likely to attract

overseas visitors as well as longer-term residents who are originally citizens of other countries. These visitors will include not only the well-educated and the wealthy, but also the weak and the poor. Viewed in this way, those needing human rights protections are increasingly likely to be those who are most unfamiliar with how to go about claiming such protections in a foreign country.

A readily understandable Charter would go some way to allow *all* residents of Australia, whether permanent residents, or visitors (and visiting professionals), an understanding of these basic rights.

What is more, in this international context, Australia's human rights framework is likely to be subject to increasing levels of scrutiny from Australia's trading partners and its geographic neighbours. Australia currently stands apart from the United States, European Union, Canada, New Zealand and the United Kingdom as not having a Charter or Bill of Human Rights. As hinted, this is not, *of itself*, enough to indicate that Australia needs a Human Rights Charter – indeed, as stated earlier, Catholic Archbishop of Sydney, Cardinal George Pell, has noted that Zimbabwe, not known for protecting human rights, has its own Human Rights Bill.⁸ Equally though, it is also clear that many citizens of Zimbabwe have put themselves in great peril by actively campaigning for their rights and freedoms to be returned.

Yet, there is evidence to suggest that Australia could do better to protect human rights. Decisions at the highest levels of the judiciary suggest a need for Australia to have stronger human rights protections. For example, as recently as 1998, in a split decision, the High Court of Australia did not resolve whether section 51(xxvi) of the Constitution could *still* be invoked to enact laws discriminating against people based on race.⁹ More recently, though agonising over the decisions, and describing the applicants' circumstances as "tragic", a majority of the High Court upheld laws that condemned the applicant asylum seekers to indefinite detention.¹⁰

Simplicity versus complexity

Australia's Constitution contains almost no explicit human rights protections – and those rights that *are* constitutionally protected are more often than not implied than explicit. For

⁸ Cardinal George Pell (2008), *Four Fictions – An Argument against a Charter of Rights*, http://www.sydney.catholic.org.au/Archbishop/Addresses/2008429_1560.shtml, website accessed 29 July 2008.

⁹ See *Katinyeri v Commonwealth* (1998) 195 CLR 337, cited in cited in George Williams (2006), 'Critique and Comment The Victorian Charter of Human Rights and Responsibilities: Origins and Scope', Melbourne University Law Review, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/MULR/2006/27.html?query=^charter>, website accessed 29 July 2008.

¹⁰ See *Minister for Immigration and Multicultural and Indigenous Affairs v Al Khafaji* [2004] HCA 38 and *Al-Kateb v Godwin* [2004] HCA 37.

example, any Constitutional right to free speech is not really a right at all – it is an implied limitation on the enforceability of otherwise valid legislation, derived from principles of responsible government, and allowing the courts to constrain the operation of legislation that is not reasonably adapted to its intended purpose and which unreasonably restricts *political* speech. Explaining the operation of the implied freedom in these terms, reveals something of the complexity of this area of law – ironically, legal language describing free speech protections may be inaccessible to the layperson.

Just as there is no general right to free speech in Australia, nor is there any Constitutional right to something as elementary as peaceable association with colleagues, friends, or loved ones. Nowhere in the Constitution is there any protection from slavery or servitude. Nor is there any Constitutional right to equality before the law without discrimination. Even the Constitutional right to freedom of (and from) religion is a *negative* right (under section 116 of the Constitution): the Constitution constrains the Commonwealth Government (though not the States) from making laws *for* certain purposes, including laws establishing religion and for imposing religious observance.

Furthermore, invoking the limited Constitutional protections in Australia is not straightforward. It involves understanding potentially disparate and inconsistent legislation and common law principles amongst the Australian States, Territories and Commonwealth - laws which may be inaccessible for the vulnerable, the uneducated and the weak. Even the best trained lawyers will generally find it easier to identify human rights principles in a single document rather than the forensic process of statutory interpretation and *stare decisis*. The task of understanding and asserting human rights protections may also be particularly difficult for the non-legally trained, the poor, and the socially vulnerable – those, in other words, most susceptible to human rights abuses.

A Charter may distil human rights norms from potentially complex legislation and case law and make the law understandable to laypeople.

It might be contended that Australian human rights protections are adequately expressed in legislation and there is no need for underpinning rights. That is, Parliaments adequately protect human rights through legislation like equal opportunity laws and antidiscrimination Acts. Even if one accepts that these human rights *are* sufficiently protected by Parliament (which Telstra does not accept), a Charter is likely to have the qualities of accessibility and clarity – attributes that multiple legislatures simply cannot provide to everyday Australians. A Charter may thus serve an educative function, making human rights laws accessible to ordinary people and bringing an apprehension of human rights protections into the domain of

the non-specialist human rights expert. This can also be economically efficient: by promoting respect for human dignity independently of court-based rights-enforcement and reducing incentives to litigate, a Charter can generate respect and adherence to human rights values *without* the need for reliance upon judicial decisions.

Indirect benefits

A Human Rights Charter can have indirect and unseen benefits. Being a template for executive and administrative decision-making, *particularly over time*, a Human Rights Charter can establish clear principles of what are, and are not, acceptable decisions affecting human dignity and freedom. The unseen benefits of a Charter may positively affect areas as diverse as health, employment, peaceable demonstrations, education and law enforcement. It could be the difference, for example, between police *knowing* that a suspect has a right to be presumed innocent (and having a right to a fair trial) and the police *believing* (yet still doubting) that the suspect has those rights. A Charter – enshrining principles like that of a presumption against arbitrary arrest – could qualitatively change the way police powers of arrest are applied to residents of Australia (including, perhaps, with respect to visiting medical practitioners).

Likewise, for the homeless, the disadvantaged, and the immigrant fleeing from persecution, Australian cultural norms could be defined by reference to simple principles reflecting human worth rather than a mishmash of case law and legislation. A Charter could also have significant and broader implications such as giving greater confidence to those now reshaping regressive government policies such as might otherwise result in small children being kept in immigration detention facilities.

A Charter could also redress Australia’s current Constitutional position with respect to Australia’s original inhabitants. The Australian Constitution was founded on what may now be regarded as racist foundations. Section 51(xxvi), the races power, originally enabled the Commonwealth Parliament to make laws with respect to “the people of any race, other than the aboriginal race in any state, for whom it is deemed necessary to make special laws”.¹¹ Furthermore, Section 127 provided that “in reckoning the numbers of people of the Commonwealth, or of a State or other part of the Commonwealth, aboriginal natives shall not be counted”.¹²

¹¹ George Williams (2006), ‘Critique and Comment The Victorian Charter of Human Rights and Responsibilities: Origins and Scope’, Melbourne University Law Review, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/MULR/2006/27.html?query=^charter>, website accessed 29 July 2008

¹² George Williams (2006), ‘Critique and Comment The Victorian Charter of Human Rights and Responsibilities: Origins and Scope’, Melbourne University Law Review, <http://www.austlii.edu.au/cgi-bin/sinodisp/au/journals/MULR/2006/27.html?query=^charter>, website accessed 29 July 2008

Less than one hundred years ago Australian Aboriginals were *forcibly* removed from their families, under laws authorized by the Commonwealth and the States, without Constitutional redress. Australia's indigenous residents still have: rates of mortality higher than non-indigenous citizens; poorer overall levels of education; and higher rates of disease and incarceration than non-indigenous residents. It is an indictment on Australia's legal heritage that not only do Australia's original residents experience poorer quality of life than Australia's non-indigenous residents, they also live under a Constitutional framework founded on racist principles. While the racist provisions of the Constitution have been excised (by referenda), the Constitution still does not explicitly recognize any right to racial equality. A Charter, reflecting principles of respect for people of every race and colour, could enshrine basic levels of respect for people of all races, including, importantly, for Australia's indigenous residents.

What kinds of rights should be protected?

Two important considerations remain finally to be addressed.

First, what *kinds* of rights are sufficiently important to warrant protection in Australia? (Related to this question is how Australia can ensure any possible Charter does not entrench faddish interests and protects key human rights acknowledged as having universal significance).

While Telstra does not wish to be prescriptive about the rights and interests that may be enshrined in any Charter (believing this is better left to consultation), Telstra believes that the United Nations ("UN") *Universal Declaration of Human Rights* (1948) is a useful touchstone for considering human rights' protections. In place for sixty years, the UN Declaration enshrines *enduring* human rights which transcend temporal limitations.

On a matter of detail, it will be important for policy makers to address any legal interplay between the limited range of rights enshrined in Australia's Constitution (including those rights that are implied) and the terms of any Charter. More specifically, though human rights legislation in Victoria and the ACT has been effective for only a relatively short time, that legislation has been in place long enough for the Commonwealth to consider the efficacy of incorporating all or part of the terms of those pieces of legislation into a national framework. Other human rights legislation - including the United Kingdom Human Rights Act ("UK

HRA”) – provides a further source of learning, from which Australia may possibly draw in formulating the terms of any Charter.¹³

Second, give the wide range of interests at stake, how is it possible to secure agreement on the terms of any Charter? Known for its fruitful interaction with a wide range of community interests, the consultative model adopted by the Victorian Human Rights Committee (“**Committee**”) when developing the Victorian Human Rights Charter, is widely acknowledged as a good one. By talking with Australians, spending time with them, and listening to them, the Committee empowered its constituency. Even those who ultimately did not agree with all the terms of the Victorian Charter nevertheless considered themselves to have had a say in its development.

This kind of consultation takes time, but Telstra believes that the development of a Charter should be neither rushed nor hurriedly drafted. An outward reaching, consultative process – one that deals with people at the grass roots level rather than from the halls of bureaucracy – will best serve Australians. Consensus, or something approaching it, cannot be achieved without patient discussions with stakeholders.

Conclusion

Human rights advocacy is not limited to academics and interest groups. As one of Australia’s largest companies, an employer of thousands of Australians and a provider of telecommunications services to most Australians, Telstra is keenly interested in the human rights of Australians (and visitors) and believes it and other commercial organisations should contribute to this important area of public policy.

Given the highly regulated nature of much of its business, Telstra is particularly interested in values such as due process and free speech. It sees great worth in a Charter that is capable of engendering a culture in the governmental sphere characterised by administrative accountability and transparency. Yet, Telstra’s interests are not limited to such matters. Telstra also values the human rights of its staff and its customers – its policies accordingly engender respect for the individual and gender and racial equality. It also respects the rights of Australia’s original inhabitants as foundational contributors to Australia’s cultural identity. Telstra, moreover, vigilantly adheres to legislation that is reflective of human rights, such as anti-discrimination and privacy legislation.

¹³ In evaluating evaluation of the first five years of the UK HRA, the Department of Constitutional Affairs concluded that human rights had exerted a “powerful”, “positive and beneficial” impact on the development and delivery of public policy and services.

As set out in this submission, Telstra is generally concerned with a respect for human dignity, including peoples' entitlements to be treated fairly; and to be valued *for* being human beings. Telstra considers that a Charter could do much to improve the protection of human rights in Australia. Apart from being accessible to the non-elite, a Charter could bring greater scrutiny to bear on some of the temptations of political expediency that can reduce the higher ideals of responsible government. It would also help to educate future generations about the kinds of human rights protections that should be available to all people, irrespective of their gender, wealth, race, class or education.