

National Human Rights Consultation Submission

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Submission Text:

Arguments against a Bill of Rights

Rights are already well protected in Australia. A Bill of Rights of Rights is unnecessary in light of the protection given through our independent judges administering common-law principles which safeguard individuals' rights and freedoms. The existing approach of developing, as the need arises, specific Acts which precisely define the operation of specific rights is preferable to laying down a grand scheme of generally expressed and potentially ambiguous rights.

Our political system itself is the best protector of rights. Australian democracy has appropriate checks and balances in place.

A Bill of Rights could frustrate government business. Legislation dealing with pressing problems or introducing progressive social or economic programs could be challenged if it appeared to impair the rights of an individual. The administration of laws would become more burdensome as the grounds for challenging administrative action broadened.

A Bill of Rights would be very expensive given the amount of litigation it would generate.

Sir Harry Gibbs, former Chief Justice of the High Court, has said: "In Australia there seems to be no reason to fear such gross violations of human rights as those which regularly occur in some other countries...The common law has proved to be a flexible and effective instrument for the protection of freedom and the mitigation of injustices that might otherwise be brought about by ill considered legislation.

When legislation such as the proposed Australian Bill of Rights gives very wide powers to courts to decide issues which may involve questions of social policy, the fear is expressed that results may differ according to the social or political philosophy of the judges that decide each case.

In these circumstances it is argued uncertainty and injustice may be introduced into the law. This seems to be the most fundamental argument against constitutional entrenchment of a Bill of Rights.

A number of commentators see the issue of rights the subject of a Bill of Rights as the exclusive domain of the elected representatives of the people. An active judicial role in relation to a Bill of Rights is therefore seen as an affront to Parliamentary sovereignty and the inherently democratic nature of the operation of Parliamentary system. It is contended that the judges are not elected, not representative and not sufficiently accountable. This argument proceeds on the basis that broad written principles entrenched in the Constitution will probably result in compatibility with the present structure of the common law and will involve judges in the policy and politics of a nation to an excessive extent.