

PART FOUR

A Human Rights Act?

Although members of the community proposed to the Committee a range of options for improving the promotion and protection of human rights, many focused on the desirability of a Human Rights Act and the form it should take. This part of the report discusses the views put forward and describes the historical and comparative context of the debate.

Chapter 10 provides an overview of previous attempts to introduce a bill of rights (or specific human rights protections) in either constitutional or statutory form in Australia, Chapter 11 outlines the statutory models of human rights protection that have been introduced overseas and in some Australian jurisdictions, Chapters 12 and 13 examine the arguments for and against a Human Rights Act, and Chapter 14 discusses some of the technical aspects of drafting such an Act.

10 Bill of rights debates: a historical overview

The questions of whether and how human rights should be protected in Australia have been the subject of debate since before Federation. The drafters of the Australian Constitution considered whether they should include a list of rights and ultimately settled on including a small number of limited rights. Since then, at the federal level there have been a number of proposals either to alter the Constitution or to pass new legislation in order to formally protect human rights. This chapter examines these proposals and outlines the findings and outcomes of recent inquiries into the desirability of human rights Acts at the state and territory level.

1890s—The Australian Constitution is drafted. It includes a limited range of rights.

1944—A referendum on freedom of speech and freedom of religion fails.

1973—Federal Attorney-General Lionel Murphy introduces a human rights Bill into parliament. It is never passed.

1981—The Commonwealth *Human Rights Commission Act 1981* is passed.

1984—Senator Gareth Evans drafts a human rights Bill, but it is never introduced into parliament.

1985—Senator Lionel Bowen's human rights Bill passes the House of Representatives but stalls in the Senate.

1988—A referendum on extending constitutional rights to the states fails.

10.1 The drafting of the Australian Constitution

The Australian Constitution was drafted at a series of conventions held in the 1890s. One of the questions debated by the delegates was whether rights should be provided for in the Constitution, as they had been in the US Constitution. Tasmanian Attorney-General Andrew Inglis Clark proposed that the Constitution include the right to trial by jury for all crimes, the right to the privileges and immunities of state citizenship, the right to equal protection under the law, the right

to freedom of religion, and a prohibition on the establishing of any religion by the Commonwealth.¹

As outlined in Chapter 5, some of these protections were ultimately included in the Constitution, albeit in a limited form.² A more comprehensive list of rights was not included: it was generally felt that parliamentary democracy was a sufficient guarantee of citizens' rights. It has also been suggested the delegates feared that such protections might inhibit the states' abilities to enact racially discriminatory legislation.³

10.2 Constitutional attempts to protect rights

The 1944 referendum

In 1944 the Curtin Government proposed that the Constitution be amended to transfer a range of state powers to the federal government to assist in postwar reconstruction. The powers covered 14 different areas, among them health, Indigenous peoples, employment, companies, the production and distribution of goods, and the control of overseas exchange and investment. The federal Attorney-General, Dr HV Evatt, proposed that the package of reforms include protections for certain rights, apparently to allay concerns that the government was trying to implement a socialist agenda.⁴

The proposed provisions would have prevented both state and federal governments from curtailing freedom of speech and expression and would have extended to the states the freedom of religion contained in s. 116 of the Constitution. Some of the 14 areas in which power was to be transferred proved very controversial⁵, and the referendum required voters to vote on the entire package of reforms. The proposals were ultimately defeated.⁶

The 1988 referendum

In 1985 the Hawke Government established a Constitutional Commission to investigate the need for constitutional change and, in particular, whether new rights and freedoms should be inserted in the Constitution. Because of an apparent

¹ A Byrnes, H Charlesworth and G McKinnon, *Bills of Rights in Australia: history, politics and law* (2009) 24.

² See the discussion of constitutional protections in Chapter 5.

³ JA La Nauze, *The Making of the Australian Constitution* (1972) 231–2; G Williams, *Human Rights under the Australian Constitution* (1999) 41–2.

⁴ H Charlesworth, 'The Australian reluctance about rights' in P Alston (ed.) *Towards an Australian Bill of Rights* (1994) 25.

⁵ S Bennett, *The Politics of Constitutional Amendment*, Parliamentary Research Service, Commonwealth Parliament, Research Paper No. 11 (2003) 17.

⁶ H Charlesworth, 'The Australian reluctance about rights' in P Alston (ed.) *Towards an Australian Bill of Rights* (1994) 25.

eagerness to hold the referendum in 1988—the bicentenary of European settlement in Australia—the government asked the commission to prepare an interim report, which was released in 1987. The report recommended the inclusion of a range of rights drawn from the International Covenant on Civil and Political Rights. Before the commission had issued its final recommendations, however, the government announced its plan for constitutional change.⁷

The September 1988 referendum proposed to guarantee the right to trial by jury for all people in Australia charged with offences carrying a maximum penalty of at least two years' imprisonment and to extend to the states the existing provisions relating to freedom of religion and the requirement that the acquisition of property be on just terms.⁸ The referendum also proposed reforms associated with the electoral system and local government. Voters were able to vote on each reform separately, but all the proposals were defeated. In the view of one commentator, the defeat can be attributed to 'the rushed nature of the referendum, the effective spoiling campaign mounted by the opponents ... the lack of community understanding of the proposals' and the absence of bipartisan support.⁹ Other commentators point to the fact that the Constitutional Commission had no state support and was seen to lack independence from the Labor Government.¹⁰

10.3 Federal legislative proposals to protect rights

The Murphy Bill

In 1973, following the Whitlam Government's signing of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, federal Attorney-General Senator Lionel Murphy introduced the Human Rights Bill 1973 into Parliament. When doing so, he noted that, although rights were basic to a democratic society, they received 'remarkably little legal protection in Australia'.¹¹ The Bill provided for civil and political rights virtually identical to those in the International Covenant on Civil and Political Rights,

⁷ See G Williams, *A Charter of Rights for Australia* (1997) 61; A Byrnes, H Charlesworth and G McKinnon, *Bills of Rights in Australia: history, politics and law* (2009) 33. The commission's final report, issued in June 1988, recommended more ambitious changes than its interim report. It proposed that a new chapter—Chapter VIA, 'Rights and freedoms'—be inserted in the Constitution, based heavily on the Canadian Charter of Rights and Freedoms. Unlike the Canadian Charter, though, government would not be given the power to 'opt out' of those rights and freedoms if it wished to pass legislation that was inconsistent with them.

⁸ Constitution Alteration (Rights and Freedoms) Bill 1988 (Cth).

⁹ G Williams, *A Charter of Rights for Australia* (1997) 62.

¹⁰ B Galligan, R Knopff and J Uhr, 'Australian federalism and the debate over a bill of rights' (1990) 20(4) *Publius* 53, 61–2.

¹¹ Commonwealth, *Parliamentary Debates*, Senate, 21 November 1973, 1972 (Senator Murphy, Attorney-General).

including the right to non-discrimination; equal protection under the law; freedom of thought, expression and movement; the right to vote; and the right to privacy.

The Murphy Bill had the following features:

- *Scope of application.* The Bill applied at the federal level and throughout the states and territories.
- *Enforcement of obligations.* The Australian Human Rights Commissioner could, on his or her own initiative, investigate human rights breaches by any person (including federal, state and territory authorities and private individuals) and then conciliate the matter or bring an action against the offender in the Australian Industrial Court. Individuals could also initiate court proceedings. The court could make a declaration that the offender's actions violated human rights and order a range of remedies, among them injunctions and damages.
- *Effect on inconsistent legislation.* Any federal or territory law that was inconsistent with the Bill, whether passed before or after the Bill, would be rendered inoperative to the extent of the inconsistency unless the law was expressed to operate regardless of any inconsistency. Any state law that was inconsistent with the Bill would be rendered inoperative by virtue of s. 109 of the Constitution.¹²

The Bill was criticised as 'unnecessary' and 'likely to politicise the judiciary'¹³ and intrude on state power.¹⁴ Its legitimacy was also called into question because it was based on the International Covenant on Civil and Political Rights, which had not yet entered into force. The Bill lapsed when both houses of parliament were dissolved in 1974, and it was not re-introduced.¹⁵

The Human Rights Commission Act

In 1981 the Fraser Government took a different approach to the legislative protection of human rights. It had ratified the International Covenant on Economic, Social and Cultural Rights in 1976 and the International Covenant on Civil and Political Rights in 1980 but argued that a human rights Act was inappropriate in the Australian context because it 'would have serious implications for our federal system of government' and 'would be contrary to our long established constitutional

¹² Section 109 of the Australian Constitution provides that, where a law of a state is inconsistent with a federal law, the state law is invalid to the extent of the inconsistency. Generally, a state law may be found to be inconsistent where the state and federal laws cannot be obeyed simultaneously; the state law would alter, impair or detract from the operation of the federal law or the exercise of a power under the federal law; or a law of a state enters a field that the federal law was intended to cover exclusively or exhaustively.

¹³ A Byrnes, H Charlesworth and G McKinnon, *Bills of Rights in Australia: history, politics and law* (2009) 29.

¹⁴ One state spokesperson asserted that the real purpose behind the Bill was to 'assert a Commonwealth domination over the States'—see B Galligan, R Knopff and J Uhr, 'Australian federalism and the debate over a bill of rights' (1990) 20(4) *Publius* 53, 57–8.

¹⁵ A Byrnes, H Charlesworth and G McKinnon, *Bills of Rights in Australia: history, politics and law* (2009) 29.

traditions, according to which authority for our basic human rights is primarily derived from the parliamentary and elective processes'.¹⁶

To redress some of the defects in the system, however, the *Human Rights Commission Act 1981* (Cth) was enacted. It established the Human Rights Commission, which was able to inquire into acts or practices of the federal government that were inconsistent with human rights.¹⁷ The commission could try to settle the matter and if this was not possible or appropriate, it could report to the Minister on its findings. Its functions also included examining federal legislation to determine its compatibility with human rights, reporting on laws that should be made or actions that should be taken in matters relating to human rights, promoting an understanding and acceptance of human rights, and engaging in research and educational programs to promote human rights. The Act applied only at the federal level since the states had apparently signalled their unwillingness to cooperate if the commission's powers extended to state affairs.¹⁸

Five years later the Act was replaced by the *Human Rights and Equal Opportunity Commission Act 1986* (Cth), which established the Human Rights and Equal Opportunity Commission (now called the Australian Human Rights Commission). While its predecessor the Human Rights Commission had operated essentially as a part-time body, the Human Rights and Equal Opportunity Commission employed three full-time commissioners. It also had an expanded complaint-handling function and a greater emphasis on research and education.¹⁹

The Evans Bill

In July 1983 Senator Gareth Evans, Attorney-General in the Hawke Government, announced that the government would introduce the Australian Bill of Rights Bill 1984 as a precursor to constitutional reform. As with the Murphy Bill, the rights were drawn from the International Covenant on Civil and Political Rights. Senator Evans sought, however, to distinguish his Bill from the failed Murphy Bill: this one would be used 'not so much as an aggressive weapon in its own right, but rather as an aid to the interpretation of existing rules'.²⁰

¹⁶ Commonwealth, *Parliamentary Debates*, Senate, 25 September 1979, 918 (Senator Durack).

¹⁷ 'Human rights' took in the rights contained in the International Covenant on Civil and Political Rights, the Declaration on the Rights of the Child 1959, the Declaration on the Rights of Mentally Retarded Persons 1971 and the Declaration on the Rights of Disabled Persons 1975.

¹⁸ P Bailey, *Human Rights: Australia in an international context* (1990) 106–7.

¹⁹ See Australian Human Rights Commission, *History of the Commission*, <<http://www.hreoc.gov.au/about/history/index.html>> at 21 August 2009.

²⁰ J Faine and M Pearce, 'An interview with Gareth Evans: blueprints for reform' (1983) 8 *Legislative Services Bulletin* 117, 118, cited in H Charlesworth, 'The Australian reluctance about rights' in P Alston (ed) *Towards an Australian Bill of Rights* (1994) 31.

The Evans Bill had the following features:

- *Scope of application.* The Bill applied at the federal level and throughout the states and territories.
- *Enforcement of obligations.* In contrast with the Murphy Bill, neither individuals nor the Human Rights Commission could bring court actions for human rights breaches. The commission was empowered to investigate complaints about federal, state or territory government authorities and to resolve them through conciliation.
- *Effect on inconsistent legislation.* Where federal, state or territory legislation was ambiguous, the Bill required that legislation be interpreted in a manner that was consistent with the Bill or that furthered the Bill's objects. Any federal legislation that had been passed before the Bill and was inconsistent with it would be impliedly repealed. Any federal legislation that was passed after the Bill and was inconsistent with it would be rendered inoperative unless it was expressed to operate regardless of the inconsistency. If individuals felt that their rights had been or would be infringed by federal, state or territory legislation they could apply to a court for a declaration to that effect.²¹ Inconsistent state legislation would be rendered inoperative by virtue of s. 109 of the Constitution.

Senator Evans circulated the draft Bill among a few people but decided not to make it public until after the 1984 federal election.²² Queensland Premier Sir Joh Bjelke-Petersen exposed the Bill during the election, however, calling it 'an audacious attempt to restructure Australian political and social life to meet the demands of a power-hungry Commonwealth Government bent on the destruction of the States and the establishment of a socialist republic'.²³ Western Australian Premier Brian Burke attacked the Bill for its impact on the states.²⁴ The Bill was never introduced into Parliament.²⁵

The Bowen Bill

In April 1985 the Senate Standing Committee on Constitutional and Legal Affairs conducted an inquiry into the desirability of a human rights Act. In November of that year the committee produced an exposure report that recommended the adoption of such an Act²⁶, but the report was overshadowed by the introduction into

²¹ Unless the individual was a party to proceedings arising under the impugned legislation.

²² B Galligan, R Knopff and J Uhr, 'Australian federalism and the debate over a bill of rights' (1990) 20(4) *Publius* 53, 60.

²³ *The Canberra Times*, 24 October 1984, cited in B Galligan, R Knopff and J Uhr, 'Australian federalism and the debate over a bill of rights' (1990) 20(4) *Publius* 53, 60.

²⁴ A Byrnes, H Charlesworth and G McKinnon, *Bills of Rights in Australia: history, politics and law* (2009) 31.

²⁵ H Charlesworth, 'The Australian reluctance about rights' in P Alston (ed.) *Towards an Australian Bill of Rights* (1994) 32.

²⁶ Senate Standing Committee on Constitutional and Legal Affairs, Parliament of Australia, *A Bill of Rights for Australia? An exposure report for the consideration of senators* (1985).

parliament of a revised Australian Bill of Rights Bill 1985 by the new federal Attorney-General, Lionel Bowen. The Bill focused on civil and political rights but was less ambitious than the Murphy and Evans Bills.

The Bowen Bill had the following features:

- *Scope of application.* The Bill applied at the federal level and to the territories. It applied to the states only with respect to the powers and functions of the new Human Rights and Equal Opportunity Commission.
- *Enforcement of obligations.* As with the Evans Bill, neither individuals nor the commission could bring court actions against government authorities. The commission retained its power to investigate and report on breaches by federal and territory authorities but could do so in relation to state authorities only with the consent of the federal attorney-general.
- *Effect on inconsistent legislation.* In contrast with the Evans Bill, only federal and territory legislation was to be interpreted consistently with human rights. Any existing federal legislation that was inconsistent with the Bill was deemed repealed, and any inconsistent federal legislation passed after the Bill would be rendered inoperative unless it was expressed to operate regardless of the inconsistency. The Bill omitted the Evans Bill provision that enabled individuals to seek a court declaration that a particular piece of legislation infringed their human rights.

Despite considerable opposition, the Bill was passed by the House of Representatives, but it stalled in the Senate, where it was attacked by both sides of the debate: the Australian Democrats said the Bill did not go far enough²⁷; others said it was unnecessary²⁸, liable to be abused by ‘crooks’²⁹ and forced judges to decide political matters.³⁰ The Bill was withdrawn in November 1986.

Other attempts

There have been several other attempts to introduce human rights Bills into the federal parliament³¹:

- *Senator Janine Haines, Australian Democrats—Human Rights Bill 1982 (introduced as a private senator’s Bill).* The Haines Bill was modelled on the Murphy Bill but contained several revisions: it protected the family as the

²⁷ See, for example, B Galligan, R Knopff and J Uhr, ‘Australian federalism and the debate over a bill of rights’ (1990) 20(4) *Publius* 53, 60.

²⁸ Commonwealth, *Parliamentary Debates*, Senate, 18 February 1986, 543 (Senator Collard).

²⁹ *ibid.*, 554–5 (Senator Archer).

³⁰ *ibid.*, 552 (Senator Hill).

³¹ See Parliament of Australia, Parliamentary Library, *Bills of Rights*, <<http://www.aph.gov.au/library/intguide/law/billofrights.htm>> at 21 August 2009.

‘natural and fundamental unit of society’, limited the permissible extent of government interference in religious freedom, and protected the freedom to manifest one’s sexual preference.³² The Bill did not progress beyond its second reading.

- *Senator Meg Lees, Australian Democrats—Parliamentary Charter of Rights and Freedoms Bill 2001.* The Lees Bill was modelled on the Bowen Bill but also applied to state laws and actions, as well as the common law and delegated legislation. The Bill did not progress beyond its second reading but was re-introduced by Senator Natasha Stott Despoja in 2005 and 2008.
- *Dr Andrew Theophanous MP, Independent—Australian Bill of Rights Bill 2001.* The Theophanous Bill required federal, state and territory legislation to be interpreted consistently with human rights and gave the Human Rights and Equal Opportunity Commission the power to investigate the conduct of federal, state and territory authorities. The Bill did not proceed to a second reading.

10.4 Why did previous attempts fail?

Although there are many reasons why these previous attempts failed, what is common to all the attempts is the impact they had on state power. The 1944 and 1988 constitutional amendments sought to constrain state power by reference to particular rights. The legislative attempts either imposed obligations on state authorities or affected the operation of state legislation, albeit to varying degrees. Although commentators acknowledge that many factors were at play during the debates over these Bills, they point to federal–state dynamics as an important element of the controversy.³³

One commentator has attributed the progressive weakening of the Bills in large part to ‘federal pressures’: ‘Some of the States predicted a dismantling of the federation because of the erosion of their rights’.³⁴ She noted that one concern in relation to Evans’s proposal was the Human Rights Commission’s ability to investigate state action and that the sole successful attempt at legislative protection—the *Human Rights Commission Act 1981* (Cth)—was passed only because it did not affect state legislation.³⁵

³² Commonwealth, *Parliamentary Debates*, Senate, 9 November 1982, 2058 (Senator Haines).

³³ See, for example, B Galligan, R Knopff and J Uhr, ‘Australian federalism and the debate over a bill of rights’ (1990) 20(4) *Publius* 53, 57.

³⁴ H Charlesworth, ‘The Australian reluctance about rights’ in P Alston (ed.) *Towards an Australian Bill of Rights* (1994) 33. See also B Galligan, R Knopff and J Uhr, ‘Australian federalism and the debate over a bill of rights’ (1990) 20(4) *Publius* 53.

³⁵ H Charlesworth, ‘The Australian reluctance about rights’ in P Alston (ed.) *Towards an Australian Bill of Rights* (1994) 33.

The second main reason for the failure of the various attempts is that they were seen to transfer power from a democratically elected parliament to an ‘unelected’ judiciary. Under the Murphy Bill both individuals and the Human Rights Commission were able to bring court actions, and there was a wide range of potential remedies available. Under all the Bills courts could declare legislation inconsistent with the Bill, with the consequence that it would be rendered inoperative.

10.5 Recent state and territory inquiries

In recent years six Australian jurisdictions have held inquiries into how human rights can be better protected.

In Victoria, Tasmania, Western Australia and the Australian Capital Territory the inquiries were conducted by independent committees—that is, the committees did not consist of members of parliament. All recommended the adoption of a human rights Act for their state or territory. Victoria and the ACT have now acted on that recommendation by passing the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Human Rights Act 2004* (ACT). Tasmania and Western Australia have deferred action until this National Human Rights Consultation is finalised.

In Queensland and New South Wales inquiries were conducted by parliamentary committees; both committees rejected the notion of a human rights Act and instead recommended the adoption of other measures to protect and promote human rights.

Following is a summary of the recommendations of the various inquiries and the extent to which those recommendations have been implemented.

Queensland

In 1998 the Legal, Constitutional and Administrative Review Committee considered whether Queensland should adopt a human rights Act. The committee released an issues paper and sought submissions from the public. It received 67 submissions.

The committee rejected all human rights Act models, finding that a human rights Act would involve an inappropriate transfer of power from parliament to an ‘unelected judiciary’, which could find itself making decisions of a policy nature. The committee was concerned that a human rights Act would have an unpredictable impact on the amount and cost of litigation and that increased legal costs would make such an Act of use only to the wealthy. It noted that a human rights Act that regulated the acts of public authorities would be limited in its coverage in view of the increasingly powerful private sector. Another factor found to weigh against a human rights Act

was that there were no readily identifiable solutions to questions such as which rights should be protected.³⁶

The committee's recommendations focused instead on education, and it prepared a handbook—*Queenslanders' Basic Rights*—for this purpose. It recommended that the handbook form an integral part of rights and civics education, that it be regularly updated by the committee, and that the Minister for Education report to parliament on current and planned strategies for ensuring that school children receive effective civics education. The committee also recommended improved public sector education.

In response, the government has taken steps to include civics education in school curricula and has sent resource kits to secondary schools, TAFEs, universities, state members of parliament, local governments and community groups.³⁷ *Queenslanders' Basic Rights* does not appear to have been updated since 1998.

New South Wales

In 1999 the Legislative Council Standing Committee on Law and Justice was asked to report on whether New South Wales should adopt a human rights Act and, if so, what rights and enforcement mechanisms should be included in the Act. The committee held 12 public hearings and received 82 submissions and 59 letters.

The committee acknowledged the failures of the current system but decided it was not in the public interest to enact a human rights Act because such an Act would undermine parliamentary supremacy and the independence of the judiciary.³⁸ It instead recommended the establishment of a new parliamentary committee to review Bills for their compliance with human rights. It also recommended amending the *Interpretation Act 1987* (NSW) to allow judges to consider international treaties to which Australia is a party when interpreting ambiguous legislation.

The Legislation Review Committee was established in 2003. It is required to report to parliament on whether a proposed law 'trespasses unduly on personal rights and liberties'.³⁹ The Interpretation Act was not amended in accordance with the committee's recommendations.

³⁶ See Legal, Constitutional and Administrative Review Committee, Parliament of Queensland, *The Preservation and Enhancement of Individuals' Rights and Freedoms in Queensland: should Queensland adopt a bill of rights?* Report No. 12 (1998) 52–3.

³⁷ Department of Premier and Cabinet, *Regional Communities Newsletter*, Issue 7, September 2002, 3.

³⁸ See Legislative Council Standing Committee on Law and Justice, Parliament of NSW, *A NSW Bill of Rights*, Report No. 17 (2001) 110.

³⁹ *Legislation Review Act 1987* (NSW), s. 8A(1)(b)(i).

The Australian Capital Territory

In 2002 the ACT Government appointed a Bill of Rights Consultative Committee to inquire into the possibility of a human rights Act for the ACT. The committee received 145 submissions, hosted six public consultations and held a further 49 meetings with various community groups and individuals. A deliberative poll was conducted at which 200 representative ACT residents were given the opportunity to discuss human rights before being surveyed.

The committee recommended the adoption of a human rights Act and for that to be accompanied by broad and continuing education programs.⁴⁰ The Act was to be based on the ‘dialogue’ model (see Chapter 11) and was to include civil, political, economic, social and cultural rights.

The ACT Government accepted most of the committee’s recommendations—although it rejected, for example, the inclusion of economic, social and cultural rights—and the *Human Rights Act 2004* was passed.

Victoria

In 2005 the Victorian Government appointed a Human Rights Consultation Committee to consult the community about whether Victorian law should be changed in order to better protect human rights. Before the committee’s appointment the government released a statement of intent, setting out its preferred model for a human rights Act.⁴¹ In all, 2524 submissions were received; 55 community consultations, information sessions and public forums were held; and there were 75 consultations with government and parties with an interest in the subject, among them the judiciary, the police, businesspeople, human rights bodies, victims of crime and legal academics.

The committee recommended the enactment of a human rights Act based on the dialogue model, focusing on civil and political rights but with the possibility of inserting economic, social and cultural rights at a later stage.⁴²

The Victorian Government accepted most of the committee’s recommendations and the *Charter of Human Rights and Responsibilities Act 2006* (Vic) was passed.

⁴⁰ ACT Bill of Rights Consultative Committee, *Towards an ACT Human Rights Act: report of the ACT Bill of Rights Consultative Committee* (2003).

⁴¹ See Victorian Human Rights Consultation Committee, *Rights, Responsibilities and Respect: the report of the Human Rights Consultation Committee* (2005), Appendix B.

⁴² Victorian Human Rights Consultation Committee, *Rights, Responsibilities and Respect: the report of the Human Rights Consultation Committee* (2005).

Tasmania

In 2006 the Tasmanian Government asked the Tasmanian Law Reform Institute to consider how human rights could best be promoted and protected in the state. The institute established a Human Rights Community Consultation Committee, which received 407 submissions and held 66 community consultation meetings, briefing sessions and presentations with a range of community groups.

The committee recommended the enactment of a human rights Act based on the dialogue model and including civil, political, economic, social and cultural rights.⁴³

The Tasmanian Government decided to delay action on the matter until this National Human Rights Consultation is finalised.⁴⁴

Western Australia

In 2007 the Western Australian Government appointed a Consultation Committee for a Proposed WA Human Rights Act and asked it to consider the ways in which greater awareness of, respect for and observance of human rights could be achieved. The government prepared a draft Human Rights Bill 2007 to facilitate consultation, the Bill being based on the dialogue model and designed to protect civil and political rights. The committee received 377 submissions, held 39 public forums and 50 meetings with interested parties, conducted a random survey of 400 people, and consulted 405 people from marginalised groups.

The committee recommended the adoption of the Human Rights Bill with some modifications, among them the inclusion of economic, social and cultural rights.⁴⁵

When the report was published the Western Australian Government announced it would await the outcome of this National Consultation before giving further consideration to a human rights Act.⁴⁶ Since then, however, the Attorney-General has revealed he is opposed to a human rights Act.⁴⁷

Conclusion

Victoria and the ACT are not alone in having passed human rights Acts: in fact, they both drew heavily from other human rights legislation around the world. Chapter 11 compares the Victorian and ACT human rights Acts with Acts that have been adopted in New Zealand, the United Kingdom and Canada.

⁴³ Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Report No. 10 (2007).

⁴⁴ 'Plans for a Tasmanian bill on hold', *The Mercury* (Hobart) 11 December 2008.

⁴⁵ Consultation Committee for a proposed WA Human Rights Act, *A WA Human Rights Act: report of the Consultation Committee for a Proposed WA Human Rights Act* (2007).

⁴⁶ Attorney-General, 'Human rights report completed' (Press release, 20 December 2007).

⁴⁷ See, for example, C Porter, 'Pluralism, parliamentary democracy and bills of rights' in J Leeson and R Haddrick (eds) *Don't Leave Us with the Bill: the case against an Australian bill of rights* (2009) 127–44.