

## **AUSTRALIAN LOCAL GOVERNMENT ASSOCIATION SUBMISSION TO THE NATIONAL HUMAN RIGHTS CONSULTATION**

The National Human Rights Consultation Secretariat  
Attorney-General's Department  
Robert Garran Offices  
BARTON ACT 2600

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The Australian Local Government Association is pleased to have this opportunity to make a submission to the National Human Rights Consultation.

The Australian Local Government Association (ALGA) represents the interests of more than 560 councils at the Federal level. Its membership is made up of the state and territory local government associations which represent the interests of councils in their respective jurisdictions. The ACT Government is also a member in its role as the local authority in the Australian Capital Territory.

ALGA is making this submission on its own behalf. Individual councils and state associations may also make their own submission as they see fit.

### **The Importance of Human Rights**

ALGA sees the protection of human rights (including the right of the Australian people to be represented in the community by democratically elected and accountable local government representatives) as important and that ALGA sees this public consultation process on human rights as important. Local government, as a level of government, has an important role to play in ensuring that local regulations are consistent with human rights. The more than 560 councils around Australia also have a role, as employers, to ensure that the employment practices they adopt also promote and do not infringe human rights.

ALGA believes strongly in the appropriate inclusion of local government in the Australian Constitution and the broad recognition that local government plays as an important part of the Australian Federation.

Some jurisdictions (Victoria and the Australian Capital Territory) have already moved to adopt legislation or instruments which recognise human rights and some councils in Victoria have taken the step of developing their own individual charters.

ALGA has not formulated a position on whether it is necessary to enact national legislation or implement something less than legislation at the national level to protect

human rights in Australia. ALGA believes, however, that it is important to draw to the attention of Consultation Committee the ways in which a National Human Rights Charter or Bill of Human Rights could impact on local government.

### **Impacts on Local Government of a Bill or Charter of Human Rights**

If Australia decides to pursue a national human rights charter or bill it will impact on local government (and potentially require local government to incur additional costs) in several ways:

As elements of public administration local government bodies are likely to fall within the scope of human rights legislation. There are 565 local governing bodies in Australia employing around 170,000 people. Councils exercise regulation-making powers and play a role in enforcing state legislation. Councils may well have to ensure that local laws comply with the requirements of any charter or bill of rights. Similarly councils may need to ensure that their policies comply with requirements of any charter or bill of rights and that their internal processes for developing plans, considering complaints and performance management systems incorporate charter considerations.

Councils play an important role in community building and strengthening throughout Australia and are often the first point of contact on government matters (regardless of the level of government involved) for community members. Councils may well need to take a role in informing local communities of their rights under a charter or bill of rights

Local government is an important third level of government in Australia and the protection of the right of individuals to participate in Australia's political processes should extend to participation in local government. Councils may need to take action to ensure minority groups can participate fully in council activities.

ALGA is mindful that experience in Victoria suggests that some individual councils may wish to adopt their own charter of human rights, consistent with any federal or state legislation. This does raise the issue of potential inconsistency between state legislation and federal legislation. ALGA has considered this issue and can foresee the following scenario:

A Bill of Rights is drafted which nationally applies to all councils. This is complicated by the fact that Victoria already has legislation.

The Federal Bill of Rights however would override Victorian law to the extent of any inconsistency.

An option under which Federal law only applies to local government and states if they choose to 'opt in'. This means that there is the capacity for local government to be bound by state or federal law as appropriate. In the absence of state law, federal

law would apply. A formal election to “opt in” by local councils would be the best way to achieve this outcome.

The option outlined above which provides for councils to “opt in” would be the preferred option for the Australian Local Government Association.

### **Conclusion**

The Australian Local Government Association (ALGA) recognises the importance of protecting the human rights Australians enjoy, particularly civil, political, economic, social and cultural rights.

If, following this national consultation and advice from the Consultation Committee, the Australian Government decides to pursue a national instrument (whether legislative or not) to protect human rights then its impact on local government bodies needs to be acknowledged and understood.

It is the preference of ALGA that the Government takes steps to avoid any inconsistencies between federal legislation and existing state legislation and that it considers the possibility of an opt in for councils when determining whether a federal or state framework should apply.

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