



## Federation of Ethnic Communities' Councils of Australia Submission to the National Human Rights Consultation

The Federation of Ethnic Communities' Councils of Australia (FECCA) welcomes the opportunity to contribute to the National Human Rights Consultation.

FECCA is the peak national body representing the interests of culturally and linguistically diverse (CALD) communities. FECCA supports multiculturalism and social inclusion and rejects all forms of discrimination and racism.

### Introduction:

Australian society is notably diverse. Australia's 21.7 million residents come from more than 230 countries, speak more than 200 languages and follow more than 100 faiths. Around 45% of Australians were either born overseas, or have one or more parents who were born overseas.

FECCA believes that, given Australia's high levels of cultural diversity, it is imperative that an overarching human rights protection mechanism be put in place in Australian law to ensure that all people, regardless of culture, race or religion, enjoy equality of opportunity, can live lives of dignity and without fear of discrimination.

FECCA contends that the current mechanisms in place to protect human rights in Australia – implied constitutional rights, limited legislative protection and piecemeal common law—are inadequate. These existing mechanisms do not do justice to Australia's international human rights obligations, nor do they sufficiently guarantee basic rights, such as the right to religious freedom and right to cultural freedom.

FECCA's submission discusses the following:

- 1) The ideal model for national human rights protection in Australia.
- 2) Human rights that must be incorporated into any formal human rights document.

## 1. The Ideal Model for Human Rights Protection in Australia

Ideally FECCA supports the implementation of a Constitutional Bill of Rights.

FECCA believes that this form of human rights protection would work towards ensuring that all legislative, executive and judicial decision making is undertaken with reference to fundamental human rights.

Additionally, a constitutionally enshrined Bill of Rights would be difficult to amend, as constitutional change is inherently difficult. The permanent nature of the Bill would clearly suggest to all Australians that human rights are 'inherent', 'inalienable' and a fundamental part of the Australian legislative agenda. Under a constitutional Bill of Rights federal legislation would generally have to comply with the human rights principles outlined in such a Bill, unlike with a legislative charter where exceptions are allowed provided they are fully explained to the Parliament and Courts.

However, FECCA acknowledges that the implementation of a Constitutional Bill of Rights would be difficult, given the poor success rate of constitutional referendums in Australia to date.

Therefore, FECCA, as a secondary alternative, supports the introduction of a Charter/Act of Human Rights, operating in a similar manner to the Charter of Human Rights and Responsibilities Act 2006 (Vic) and the Human Rights Act 2004 (ACT).

FECCA also notes that a standard Charter/Act of Human Rights, as operates in other similar jurisdictions such as Victoria and the ACT, would not override the sovereignty of the parliament—which has been a concern expressed by some critics of a Constitutional Bill of Rights.

## 2. Human Rights that Must be Incorporated into Any Formal Human Rights Document

FECCA supports the incorporation, into domestic law, of all of Australia's human rights obligations under instruments such as The International Covenant on Civil and Political Rights (ICCPR), The International Covenant on Economic, Social and Cultural Rights (ICESCR) and The Convention on the Elimination of all forms of Racial Discrimination.

As Australia's multicultural peak body FECCA has indentified a number of rights that it feels must be included in any new human rights instrument. These rights reflect the human rights aspirations of FECCA's members, and Australians from culturally, linguistically and faith diverse backgrounds more generally.

These rights are:

- The Right to Religious Freedom/Right not to be Subjected to Religious Vilification
- The Right to Cultural and Linguistic Freedom
- The Right to non-discrimination on Racial, Ethnic, Cultural or Religious grounds
- The Right to Liberty / Right to not be Subject to Arbitrary Arrest
- The Right to Work, Family and Housing
- The Right to Citizenship Following Immigration Clearance

FECCA believes that these rights are fundamentally important in a multicultural Australian society, and that none of these rights are currently afforded sufficient protection at a national level in Australia.

### A) The Right to Religious Freedom/Right not to be Subjected to Religious Vilification

With over 100 religious faiths practiced in Australia, FECCA believes it is in the best interests of all Australians to protect people's right to practice their religious faith in a safe, supportive environment.

As a signatory to the ICCPR, Australia has declared that it believes that:

- “The Law shall ... guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” Article 26
- “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other member of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.” Article 27
- “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.” Article 20

FECCA is concerned that these articles have not been adequately incorporated into Australia’s Federal legislative framework. FECCA is also concerned about on-going incidences of abuse, vilification, discrimination and even religiously motivated criminal acts against Australians from faith diverse backgrounds.

While at present valuable legislation does exist to protect against Racial Discrimination in Australia (namely through the Racial Discrimination Act 1975 (Cth)) FECCA is concerned that there is no legislation to deal specifically with religious discrimination and vilification. FECCA believes that the wording of the Racial Discrimination Act is too easily interpreted as excluding religious groups, such as Muslim groups, who do not neatly fit within the definition of a ‘race’.

Therefore FECCA contends that the right to religious freedom/freedom from religious vilification must be included in any new Bill/Charter of Human Rights.

FECCA believes that if the important right to freedom of expression is included in any Charter, it should not be completely absolute and should preclude any right to practice racial or religious vilification or speech which inspires racial or religious hatred.

In addition FECCA supports the introduction of a federal Racial and Religious Tolerance Act (in the vein of the Racial and Religious Tolerance Act 2001 (Vic)) to strengthen the protection of this fundamental right, to further protect people in our community from extreme religious vilification, and to ensure that those subjected to vilification by non-government actors are also afforded a legal remedy. This Act would also set a reasonable community standard around religious tolerance.

## B) The Right to Cultural and Linguistic Freedom

Australians are far from homogenous – indeed they have varied cultural backgrounds, and many have a language other than English as their native tongue. FECCA strongly believes that Australian society benefits from the experiences and perspectives of CALD Australians.

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Once again, while FECCA believes the Racial Discrimination Act 1975(Cth) has made a valuable contribution to the domestic protection of these rights, such protection does not go far enough. FECCA does not believe that the Act adequately protects, in particular, a person’s right to use their own language.

FECCA has also notes with concern that the federal Parliament has twice suspended the Racial Discrimination Act 1975 (Cth) since 1998. Standard legislative Human Rights Charters/Acts usually require the Government to inform the parliament in a transparent manner in instances when it is suspending important human rights. The introduction of such a Charter/Act in Australia would therefore ensure that there was careful scrutiny of Commonwealth action before Human Rights were compromised.

Therefore FECCA asserts that any new human rights document must incorporate the ‘right to cultural freedom’ and the ‘right to linguistic freedom’. All people have an inherent right to be able to practice their cultural traditions (as long as they are not contrary to the Australian legal and democratic framework), and to speak their native language without fear of discrimination.

### C) Right to Liberty / Right to not be Subjected to Arbitrary Arrest

FECCA strongly believes that those seeking asylum in Australia must be treated with dignity and respect.

FECCA did not support the Howard Government's former policy of indefinite detention, and FECCA is currently supportive of the Rudd Government's moves away from such an approach.

Migrants who come to Australia as asylum seekers, and prove to be genuine refugees, in time make a valuable contribution to Australian society, and FECCA believes that on arrival they deserve to be treated with respect and humanity as their claims are assessed.

There has also been widely publicised cases of unlawful detention and deportation of Australian citizens further highlighting the need for stronger human rights protections in these areas for citizens and non-citizens alike.

Consequently FECCA contends that the following clause, accepted by Australia under the ICCPR, should be incorporated into any Bill/Charter of Human Rights.

"Everyone has the right to liberty and security of person. No one should be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Article 9.

### D) Right to Work, Housing and Family

FECCA believes that the right to attain, and keep, employment, the right to adequate housing and the right to a family life are fundamental to the development of all people. FECCA also notes that some immigrants, and particularly refugees and humanitarian entrants, may not enjoy these rights.

FECCA does acknowledge that the Federal Government does a great deal to try and ensure that refugees and humanitarian entrants are assisted in attaining these rights through extensive settlement and education programs.

Nonetheless FECCA feels that, given the inherent importance of these rights, they must be enshrined in any Bill/Charter of Human Rights. Such incorporation would re-affirm, to both Government and society as a whole, that discrimination in the arenas of work, housing and family is unacceptable, and that policies should be in place to ensure all people can exercise these rights.

FECCA believe these rights should be articulated in a manner similar to that found in ICESCR Article 6 (the right to work) and Article 11 (the right to food, clothing and housing), and Article 23 of the ICCPR (right to family).

#### E) The Right to Citizenship Following Immigration Clearance

FECCA believes in the importance of citizenship as a basic human right, for citizenship confers upon an individual the right to participate in political processes, and the peace of mind that one will not be deported and can travel freely.

The Universal Declaration of Human Rights (which Australia has given long-standing support and played a key role in drafting) states in Article 15 that “everyone has a right to a nationality”. To this end FECCA strongly believes that permanent residents and humanitarian entrants who have been lawfully accepted as Australian permanent residents should have a clearly enshrined ‘right to Australian nationality’, once they have spent the requisite time in Australia following their permanent residency—usually a few years. This right would override the current high-level citizenship test which discriminates against immigrants—and particularly refugees—with low level English language skills and/or low level comprehension skills. FECCA is pleased to note that the Citizenship Test is currently undergoing review with regard to humanitarian entrants.

#### F) The Preamble

FECCA contends that the preamble to any Bill/Charter of human rights should include reference to the following concepts:

- Australia’s commitment to supporting multiculturalism

- Australia's commitment to promoting social inclusion
- Australia's rejection of all forms of discrimination

FECCA believes that reference to these notions will positively set the tone of the new human rights instrument, establishing it as a powerful document committed to advancing the interests of CALD communities in Australia.

For that same reason FECCA supports the enactment of a Multicultural Act (in the vein of the Multicultural Act 2004 (Vic)) by the Commonwealth Parliament. Such an instrument would codify Australia's commitment to promoting and supporting multiculturalism.

## Conclusion:

FECCA strongly believes there needs to be a formal human rights instrument at a national level in Australia. While FECCA believes that a Constitutional Bill of Rights would be ideal, FECCA does support the introduction of a Charter/Act of Human Rights as a readily achievable alternative.

Rights that must be included in any human rights document are the: right of freedom of religion, right of cultural freedom, right of linguistic freedom, the rights of employment, family, housing and liberty and the right to Australian citizenship in the event of immigration clearance. Indeed, these rights are fundamental in Australia's richly diverse society.