

A Human Rights Act for Australia?



National Human Rights Consultation

- Launched on 10 December 2008
- Independent Consultation Committee:
 - Father Frank Brennan (Chair)
 - Mary Kostakidis
 - Mick Palmer
 - Tammy Williams
- Submissions due 15 June 2009
- Community Roundtable ongoing
- Committee to report by 31 August 2009

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National Human Rights Consultation

- How can I contribute?
 - Write a submission
 - Attend a community roundtable
 - Encourage & facilitate your clients/members to write a submission
 - Awareness raising

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Three Questions

1. Which HRs should be protected and promoted in Australia?
2. Are these HRs currently sufficiently protected and promoted?
3. How could Australia better protect and promote HRs?

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Why is it important to become involved?

- 'Once in a lifetime' opportunity
- Change and influence our system of government in a fundamental way
- Contribute to the future direction of Australia
- Tell the government about your own HRs experiences

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VCOSS & PILCH involvement

- This workshop
- Preparing a submission
- Assisting others to make submissions

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Overview of Workshop

1. Understanding HR
2. International HR framework
3. Which HR should be protected?
4. Domestic HR framework
5. What are the best ways to protect our HRs?
6. Is a HR Act a good idea?
7. Group Discussion

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Understanding human rights

- What are human rights?

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Universal Declaration of Human Rights

- Arose out of the experience of WWII
- First attempt to develop a global expression of HRs
- Protects civil and political rights, as well as economic, social and cultural rights
- Not binding but very influential

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Human rights treaties

- International Covenant on Civil and Political Rights (ICCPR) ✓
- International Covenant on Economic, Social and Cultural Right (ICESCR) ✓
- Convention on the Elimination of Racial Discrimination (CERD) ✓
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) ✓

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Human rights treaties

- Convention on the Rights of the Child (CRC) ✓
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (CAT) ✓
- Convention on the Rights of Persons with Disabilities (CRPD) ✓
- Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families ✗
- See *also*: Declaration on the Rights of Indigenous Peoples ✗

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Examples of human rights

- Examples:
 - Non-discrimination
 - Equality before the law
 - Health
 - Life
 - Education
 - Privacy
 - Freedom from cruel, inhumane or degrading treatment
- *Note*: Economic, Social & Cultural vs Civil & Political

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How are human rights treaties enforced internationally?

- Reporting procedures
- Inter-state procedures
- Communication procedures
- Inquiry procedures

- Strong moral force

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NHRC - Question 1

- Which human rights should be protected?

- *A New Planet Group Exercise*

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Current HR protections

- Which human rights are protected in Australia?

- How are human rights protected in Australia?

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Current human rights protections in Australia

- Constitutional protection
- Federal and state legislation
- Common law (enforced by courts)
- Other mechanisms

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Constitutional protection

- Express constitutional rights
 - Eg. right to trial by jury
- Implied constitutional rights
 - Eg. freedom of political communication

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Statutory protection

- Commonwealth laws
 - *Age Discrimination Act 2004*
 - *Disability Discrimination Act 1992*
 - *Racial Discrimination Act 1975*
 - *Sex Discrimination Act 1984*
 - Other statutes – e.g. *Privacy Act 1988*
- State Laws
 - *Victorian Charter of Human Rights 2006 (Vic)*
 - *Human Rights Act 2004 (ACT)*
 - Other statutes – e.g. *Crimes Act 1958 (Vic)*

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Common law

- Human rights are often enforced by courts:
 - E.g. right to a barrister when accused of a serious crime
- Courts may use human rights when interpreting legislation

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Applying human rights treaties in domestic law

- HR treaties are not directly binding until incorporated in a statute
- However they can have indirect effect:
 - 'Legitimate expectation' HRs will be complied with
 - Courts interpret laws consistently with HRs
 - Used by courts as a guide

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NHRC - Question 2

- Are human rights currently sufficiently protected and promoted in Australia?

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Case Studies

- Case Study No. 1
- Case Study No. 2

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NHRC - Question 3

- How could Australia better protect and promote human rights?

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Constitutional bill of rights

- Constitutionally entrenched
 - E.g. US, South Africa, Canada
- Changes can only be made by referendum
- Not being considered as part of NHRC
- Critics often assume all HR Acts are constitutional

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Legislative human rights protection

- Ordinary piece of legislation
- Can be amended by legislation
- Courts can't override laws that violate HRs
- Aims to create a 'dialogue' between Legislature, Executive and Judiciary
- E.g. UK, NZ, ACT and Vic
- This is our focus today

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Who should be bound?

- Courts
- Parliament
- Executive and public authorities
- Others: Corporations, individuals, NGOs?

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The role of courts

- Courts cannot invalidate laws but may:
 - Interpret legislation consistently with HR
 - Use international and comparative HR law to develop Australian law
 - Make declarations of incompatibility

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The role of parliament

- Parliament remains ultimately responsible for the protection of HRs since it has power to make, amend or repeal the HR Act
- Parliament may have specific procedural obligations:
 - Legislation scrutiny committee
 - Statements of compatibility
 - Respond to declarations of incompatibility
 - Override clause

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The role of the executive

- 2 types of obligations may be placed on executive and public authorities:
 - To act compatibly with HRs
 - To give proper consideration to HRs in making a decision

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Public authorities

- Public authorities are bodies that perform public functions
- A private entity performing a public function will be a public authority
- Examples include:
 - Police
 - Public transport officials
 - Health providers
 - Local council
 - Prison authorities
 - Schools
 - Government departments

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Limitations on human rights

- Most HRs are not absolute
- Need to balance and place limits on rights
 - E.g. freedom of expression vs privacy
- HR may be subject only to reasonable limits that can be demonstrably justified in a free and democratic society

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Potential remedies

- Potential remedies for a HR that has been infringed include:
 - Redress in the courts
 - Dispute resolution processes – e.g. conciliation & mediation
 - Lodging a complaint with a Human Rights Commission or an Ombudsman
 - Redress with the violating public authority

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Potential protections

- Other ways of protecting against HR infringements include:
 - Education and awareness raising
 - Codes of conduct
 - Action plans
 - Reporting requirements

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Is a Human Rights Act a good idea?

- No:
 - Unnecessary
 - Will only benefit lawyers, judges and criminals
 - Anti-democratic
- Yes
 - HR are universal standards for assessing laws, policies and practices
 - Will help protect minorities
 - Many HR aren't currently protected
- Do you think a HR Act is a good idea?

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Timeframe for Consultation

- **April 14** - Roundtables in Melbourne
- **June 15** - Deadline for submissions
- **August 31** - NHRC Committee to release report

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Making submissions

- It's a numbers game ... every submission counts, no matter how large or small
- You and/or your organisation can:
 - Write a submission
 - Encourage and help others to make a submission
- Opportunity for education and awareness raising about HRs affecting your organisation

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Writing your organisation's submission

- Some questions to consider:
 - What expertise and experience do we have?
 - What value can our organisation add?
 - What resources do we have?
- Options:
 - Endorse partially or wholly another submission
 - Use a template submission and modify
 - Write your own submission – can be large or small (1 page)

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Writing your organisation's submission

- What could we include in our submission?
 - What rights should be protected?
 - Economic, Social and Cultural Rights
 - Women's
 - HRs of persons living with a disability
 - HRs of Indigenous people
 - Who should have obligations?
 - What remedies should be available?

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Writing your organisation's submission

- Focus on areas and HRs that you know the most about
- Provide examples of experiences of your organisation:
 - Good news stories – where HRs protection has helped
 - 'Unfair outcomes' – where stronger HRs protection may have achieved a better outcome for your clients

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NHRC - details

- NHRC:
 - National Human Rights Consultation Secretariat
 - Attorney-General's Department
 - Central Office
 - Robert Garran Offices
 - National Circuit
 - Barton ACT 2600
- www.humanrightsconsultation.gov.au

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VCOSS and PILCH assistance

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Additional Resources

- List of annotated websites
- PILCH application form and guide to application form
- AHRC, “Ten Common Questions about a Human Rights Act for Australia”

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