

Doing Justice

THE QUICK GUIDE TO JUSTICE POLICY ISSUES FROM THE FEDERATION OF COMMUNITY LEGAL CENTRES (VIC) INC

Bill of Rights

LAST UPDATED 12 NOVEMBER 2007

10 reasons why we need a Bill of Human Rights in Australia

1. It will protect the rights of **all** Australians, including marginalised, disadvantaged and vulnerable minorities.
2. It will bring Australia into line with every other Western democratic nation and enhance our reputation as a tolerant and harmonious democracy. Australia is now the only Western democratic nation which does not have a constitutional or legislative bill of human rights.
3. It will encourage healthy checks and balances between our legal system and our government. If new laws are made or existing laws challenged, Parliament and courts will both have to assess whether this is compatible with our human rights standards.
4. It will prevent arbitrary government action by requiring prior assessment against a human rights yardstick.
5. It will provide a safeguard so that Parliament can't overlook human rights considerations if it wants to pass controversial laws on areas like police powers, voting, sedition, workplace relations, privacy, freedom of speech, censorship, the rights of Indigenous people or counter-terrorism.
6. It will improve government policy-making and administrative decision-making, by providing clear guidelines that put fundamental human rights above politics.
7. It will help Australia meet its obligations under the UN treaties we have signed.
8. It will help to educate Australians about human rights and our system of government.
9. It will help to promote a climate of mutual respect and understanding among Australia's various communities.
10. It will remind all of us that in a strong democratic and inclusive society, human rights also entail responsibilities – to respect the rights of others, to observe the law, and to live our lives mindful of our common humanity.



Frequently Asked Questions about Human Rights in Australia

What are human rights?

Human rights are essential minimum standards of treatment to which all human beings are entitled no matter who they are or where they live. Human rights reflect basic principles of freedom, respect, equality and human dignity. Human rights include protection from discrimination, the right to vote, freedom of expression and association, and access to affordable housing, education and health care.



Federation of
Community Legal Centres
VICTORIA

Tel: 03-9652 1500
www.communitylaw.org.au
Registration A0013713H
ABN 30 036 539 902

Aren't these rights already protected in Australia?

Human rights are only properly protected when everyone enjoys **all** of them.

At first glance, some rights appear to be protected because Australia has signed various international human rights treaties. By signing these treaties, Australia has committed to respect, protect and fulfil the rights contained in the treaties. However, these commitments do not have any real practical effect until Australian laws are passed, and government policies, programs and services are introduced, to implement the human rights in those treaties.

State and Federal laws currently only properly protect some human rights. For example, the *Racial Discrimination Act 1975* (Cth) and the *Sex Discrimination Act 1984* (Cth) provide important protections but they fail to cover some significant provisions of the treaties on which they are based.

Some rights in treaties which Australia has signed have actually been reduced or lost over time – via recent changes to workplace relations laws, and through anti-terrorism laws.

As well, there are some human rights which are not even contained in any treaty signed by Australia, such as the right of people in same-sex relationships to be treated equally in superannuation law or Medicare, or many of the rights of people with disabilities as expressed in the *UN Convention on the Rights of Persons with Disabilities*.

But what about our Constitution – doesn't that protect fundamental human rights?

No. The Constitution is modern Australia's founding document and as such carries a lot of legal weight – but unlike countries like the United States, our Constitution was not designed with human rights protection in mind. It provides only limited protection for a few rights, such as freedom of religion and freedom from being discriminated against on the basis of which state you live in.

Won't a Bill of Rights transfer too much power to the courts?

No. Current proposals focus on introducing a legislated Bill of Rights. This is a piece of legislation made by Parliament which could be changed by Parliament at any time. Under this model, a court could declare that laws are incompatible with human rights but Parliament will have the power to make the final decision about what should be done about the incompatibility.

How should we go about protecting our human rights then?

One way to better protect human rights in Australia is to pass a legislated Bill or Charter of Rights, similar to the human rights legislation passed in Victoria and the ACT. Another option is to make a Bill of Rights part of our Constitution, as some countries such as the United States and South Africa have done. Changing the Constitution requires a referendum approved by a majority of people in a majority of states.

More information

The Human Rights Act for Australia Campaign

<http://www.humanrightsact.com.au>

Public Interest Advocacy Centre

<http://www.piac.asn.au/publications/hrkit.html>

Human Rights Law Resource Centre

www.hrlrc.org.au

Federation of Community Legal Centres (Vic)

www.communitylaw.org.au



Tel: 03-9652 1500
www.communitylaw.org.au
Registration A0013713H
ABN 30 036 539 902