

Human Rights Charter Submission

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1 Are human rights sufficiently protected?

We celebrate living in a society that values an individual's right to fairness. We currently rely on the fairness of public servants (ministerial and bureaucratic) to provide this. Our laws should be improved to better match our desire for such fairness.

Governmental policy, the resulting legislation and its execution is driven by a number of factors that can result in inhumane outcomes for individuals or groups. This could be mitigated to some extent if it was created and executed within the context of a clear set of humane guidelines backed by law. The current protections afforded by a voting public, the senate, the media, and common law are not sufficient to adequately protect the rights of vulnerable people, as has been exemplified in high and low profile cases, and possibly in cases never to be made known to the public.

2 Who should be better protected?

Every person in the world should have their human rights better protected by law. This includes those outside of the citizenship of a government, but who still feel the reach of a government's policies. The risk of the better protection being taken advantage of by unscrupulous people will be offset by the fact that people with the same scruples are already using, neglecting or abusing others to their own advantage through the lack of such legal protection.

Every person has the right to be protected from the policies, legislation and actions of governments that result in abuse or neglect of those individuals' human rights.

3 What should we be protected from?

The nature of a democracy creates a risk of inhumane policy being legislated as a result of the stoked emotions of a mass-media consuming, voting majority. In order to achieve a competitive majority in popularity, both the media and our politicians appeal to our shared fears and prejudices during their weaker moral moments. Every person deserves to be protected from the product of a voting public's unfounded or exacerbated fears and prejudices.

Policy is a blunt instrument used by governments for the benefit of their constituents, but also the progress of public servants' own ideology, power, prestige, and privilege. Ambition for consolidation of personal power and the fear of the loss of it drives the actions of some of our public servants, lobbyists and common people, egged on by a media that fawns to one group and then another.

Power seduces many people. If they can use enemies, strangers, the weak and voiceless to forward their positions in power, they will during moments of moral weakness. A human rights charter will help protect innocent people from these ambitions. It will also make political decisions more transparent. Transparency and debate of government in the public arena is the cornerstone of a

strong democracy and reduces the likelihood of human rights abuse and neglect (as well as corruption).

A lack of transparency in the reasoning behind certain governmental policy and legislation can result in the planned outcomes and secondary effects of the legislation being hidden, and protected by law once enacted. Vulnerable, under-represented people become at risk of inhumane governmental actions when policy is actioned in the knowledge that the under-represented people will be placed at disadvantage in the process of favouring the "better friends" of the government, including the voting public.

Although governmental bureaucracy is meant to operate without fear or favour in the implementation of policy, public servants are at risk of public castigation by ministers for not following the minister's ideology when they come into public conflict. One example is the aftermath of Mick Keelty publicly stating that government policy put Australia at greater risk of terrorism in the execution of his assigned role.

Public servants are also at risk of working in an inhumane culture created by being forced to execute government policy in a harsh manner, which degrades an individual's ability to act with humane discretion. This was seen in the immigration department of the previous government.

The evolving processes within government can have an undesirable negative impact on the human rights of people. The enhancement of professionalism and competition in government by making high-level bureaucrats contract-based has introduced greater performance in government, but perhaps at the expense of impartiality. Individuals should be protected from this reduced impartiality.

There is an ability for separate pieces of legislation to be combined to create constitutionally legal, yet inhumane consequences. Situations that arise from this may be mitigated by a minister in a government, but require an act of courage beyond their desire or capacity. The high court is not able to act in this situation because of the constitutional validity of the legislation.

One oft-quoted example of this was the case of al-Kateb, a man who could be imprisoned indefinitely under Australian law because he was stateless. Section 189 of the Immigration Act requires immigration officers to detain anyone under a "reasonable suspicion" of being an "unlawful non-citizen." Section 196 states that unlawful non-citizens can only be released from detention after being granted a valid visa or by removal from the country. The potential to indefinitely detain an illegal entrant to Australia was enshrined in our law and confirmed by the high court in 2003, regardless of a willingness of the detainee to leave Australia, and in the absence of a country willing to offer a person a visa.

4 What protections should we have?

Australian citizens and non-citizens have the right to maintain their dignity, freedom of expression, freedom of association and the opportunity to personally develop. These rights should also include, but not be limited to the right to be protected from the inhumane intentions and actions of government, at the drafting, enactment, implementation and enforcement stages.

There should be equal opportunities to access education, labour and business opportunities for all, although government affordability to the provision of these equalities will necessarily restrict the reach of the implementation of such rights to a hierarchy of wheels based on their "squeakiness."

5 How should the protections be implemented?

We always need to be better protected legally from the ambitions of unscrupulous or misguided people which result in inhumane governmental policy, legislation and actions.

Parliament should be required by law to review and amend any legally incompatible legislation, as presented by the Attorney General in parliament. This may result in a reduction of the spread of rights in the human rights act, but should also result in clearer laws over time.

Government should be required, if called upon, to justify the humanity of its foreign policy in order to protect innocent foreign humans from harmful acts of government, ranging from the declaration of unjustifiable hostilities to the implementation of economic sanctions. These protections should be based on the understanding that all people in all countries are equally worthy of the human rights enshrined in our own act.

The strongest protection (but not necessarily the protection with the least risk of abuse) against the legislating and implementation of inhumane government policy would be by granting a body external to parliament the ability to strike down legislation which is incompatible with a human rights act, albeit constitutional.

Currently, the High Court can only deal in relation to specific cases, cannot provide advisory judgements, and can only find for the unconstitutionality of enacted legislation. These limitations prevent it from being able to strike down one piece of legislation on the basis of another, for example if a human rights act existed for this purpose. Constitutional amendment would allow the High Court, or another body external to parliament to force review and amendment of a passed act of legislation on the basis of its compatibility with the human rights act.

Even without constitutional change, a useful human rights act can still be passed that makes public the intentions and actions of parliament that are inhumane according to the act. This will increase transparency of government, thus providing better protection in a democracy, by providing the following statutes:

- 1) A requirement for tabled bills and proposed amendments to be accompanied with a submission as to their compatibility with the rights contained in the human rights act. A government should be required to publicly explain the underpinnings of its policies and decisions in the context of a human rights act.
- 2) The ability for the courts to request parliamentary review of legislation that it finds incompatible with the rights contained in the human rights act, by way of the tabling in parliament of the inconsistency.
- 3) The requirement that Government bodies act in ways consistent with the rights contained within the human rights act.

6 Are human rights sufficiently promoted?

Until and beyond such a time that Australians as a whole consider the rights of humans other than their own demographic, nationality or race as important as their own, the government has an obligation to promote the human rights of both local and foreign people in vulnerable situations.

7 How can Australia better promote human rights?

The Australian government can bring human rights further into the public consciousness by providing a mechanism that publicly limits its own ability (or at least exposes the processes) to create and keep legislation that is incompatible with human rights. This will generate public debate in the media, thus bringing those rights further into focus, and hopefully strengthening their protection.