

Brisbane North Community Legal Service

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Parliamentary Joint Committee on Human Rights
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Canberra ACT 2600

By Email: human.rights@aph.gov.au

SUBMISSION TO INQUIRY INTO AUSTRALIA'S HUMAN RIGHTS FRAMEWORK **IN SUPPORT OF A FEDERAL CHARTER OF RIGHTS -**

The Brisbane North Community Legal Service is a program of Northside Connect Inc and works to provide access to justice to the disadvantaged in our community, especially in Brisbane's North and North-West.

Our submission supports the promulgation of a Charter of Human Rights for Australia. The arguments in favour of a such a Charter are well known and we endorse these without further elaboration.

A majority in the legislature can easily lead to prejudice to the rights of the disadvantaged. An appropriate approach, on the "macro basis" is to acknowledge the paramountcy of the legislature, but with judicial oversight limited to declaring incompatibility with accepted human rights principles. With consequential publicity, the people can express their will, as a final resort, at an election.

The common law offers no secure protection of human rights. Parliament has full power to make laws and can extinguish past understood rights if it determines these as a lesser priority than responding to some perceived contemporary evils eg *Al-Kateb v Godwin* 2004 HCA 37; *Fardon v A-G [Qld]* 2004 HCA 46. Often draconian laws addressing the evils of terrorism and/or paedophilia have been extended [occasionally with some proper justification] well beyond such extreme circumstances to the general law.

Further, Australian state and federal governments have passed legislation where such ancient rights as those to silence, association, legal representation and/or against self-incrimination were abrogated - often also excluding any judicial oversight.

There is also the "micro" consequence in the empowering of individuals. Too often when rights are limited, if not terminated, they are those of the most marginalised in our society and least able to defend themselves. Beyond legislative excision, rights may be practically negated by bureaucratic action. While sometimes justice prevails [eg *Houda v NSW* 2005 NSWSC 1053 and especially *Rowe v Kemper* 2008 QCA 175], often it is only through coincidental personal tenacity, individual wealth or the skill, courage and commitment of lawyers, community advocates, political activists or crusading journalists.



The protected rights should include the legal and other rights encompassed in the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights.

That said, we acknowledge the need for a balancing of rights and that with rights come responsibilities [eg "The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic." OW Holmes J, *Schenck v US* 1919 249 US 47, at 52]. There also needs to be a delineation to ensure rights do not inappropriately impinge on the legislature's role in approving public expenditure and the executive's role in establishing priorities in the public interest. It is stating the obvious that reasonable minds may differ on how such balancing is to be achieved.

Those rights should be available to all as a matter of course and not dependent on chance acquaintance or champion - formalised in legislation and with a cheap, accessible quasi-judicial tribunal to enable the pursuit of any remedy as a free standing action. This will facilitate, over time, beyond the legal framework, the recognition of human rights with social acceptance and cultural change.

We urge the Committee to advise the Federal Government that Australia needs a Charter of Rights and thank it for its time and consideration.

Yours faithfully
NORTHSIDE CONNECT INC

transmitted electronically

BRISBANE NORTH COMMUNITY LEGAL SERVICE
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