



About a Human Rights Act for Australia

1. Why do we need a Human Rights Act?

Most people in Australia would be surprised to learn that in our country there are very few legal protections of human rights. Australia is now the only Western democracy without some kind of national Human Rights Act or bill of rights.

While many people in Australia enjoy a relatively high standard of living, human rights problems do arise. Some examples of human rights issues in Australia include:

- Indigenous Australians on average have much poorer health and living conditions than other people in Australia and they die approximately 17 years younger
- asylum seekers, including young children, have been held in mandatory and indefinite detention (some for more than five years)
- more than 100,000 homeless people don't have adequate food, clothing and shelter
- prisoners serving custodial sentences of three years or more don't have the right to vote
- working parents don't have guaranteed parental leave provisions
- gay men and lesbians aren't protected from discrimination at the federal level and do not have access to formal relationship recognition.

Our current laws have not prevented these problems from occurring. In a strong democracy like Australia, it is true that public pressure can lead governments to change their positions. It is also true that change is often too slow.

For example, public pressure led to the removal of many asylum-seeking children from detention centres. However, this occurred only after hundreds of children were held in detention centres for long periods of time, during which the mental health of many child detainees was severely damaged.

A Human Rights Act could help prevent human rights breaches from happening and provide remedies for those breaches that were not prevented.

2. Will a Human Rights Act make any difference to ordinary people?

Many of us can point to a situation where we, or somebody close to us, was treated unfairly by government authorities. However, most people don't realise that these issues often involve human rights concerns. Some of the worst human rights breaches in Australia have happened to ordinary people. A Human Rights Act will help to make sure that our human dignity is always respected – no matter who we are, where we live, or what we do.

We are talking about ordinary people:

- people who visit a Medicare or Centrelink office, or who deal with other government authorities
 - elderly people living in aged care homes or people with dementia living in secure facilities
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- people with mental illness, an experience of many families in Australia
- women with young children seeking to escape domestic violence without a safe place to live
- women who have to go back to work soon after the birth of a child because they don't have paid maternity leave
- people in rural and remote locations without access to adequate health care or education.

We all should care about rights; our rights and the rights of others. After all, human rights are about everyone, everywhere, every day.

3. Doesn't our Constitution already protect human rights?

Many people believe that the Australian Constitution contains human rights protections, such as the right to free speech. This is not true. The Australian Constitution offers very limited protections for human rights.

The Constitution includes the right to vote, the right to trial by jury for certain offences, some protection of freedom of religion, an implied right to freedom of political communication, and the right to be paid a fair price if the government compulsorily acquires your property.

However, the Australian Constitution does **not** guarantee rights and freedoms such as the right to be represented by a lawyer at trial, the right to free speech (generally, as opposed to merely on political issues), the right to equality before the law, or the right of peaceful assembly.

4. What is a 'Human Rights Act'?

A Human Rights Act is a legislative or statutory charter of rights (that is, an ordinary Act of Parliament). It would not change the Parliament's current powers to make, amend or repeal laws. Like any other law, the Parliament can change a Human Rights Act if it needed to. For example, if Australia committed to the protection of new rights, the Human Rights Act could be amended and updated. This could prevent a Human Rights Act from becoming 'frozen in time'.

Unlike the United States Bill of Rights, a Human Rights Act would not be included in our Constitution (that is, it would not be 'constitutionally-entrenched').

In its final report to the government, the National Human Rights Consultation Committee will present options for better human rights protection in Australia. However, a constitutionally-entrenched bill of rights is specifically excluded from the terms of reference.

5. Which rights should be included in a Human Rights Act?

A Human Rights Act should include rights that are contained in international agreements that Australia has committed to observe. The rights contained in these instruments are very familiar: things like equality before the law, freedom from torture and cruel or degrading treatment, freedom of expression, and the right to vote.

The Australian Human Rights Commission believes that a Human Rights Act should also contain 'economic, social and cultural' rights – for example, the right to an adequate standard of living (including adequate food, clothing and housing), the right to education and the right to the highest attainable standard of physical and mental health.

The rights set out in a Human Rights Act should be guaranteed equally to all people in Australia, without discrimination of any kind.

6. What could a Human Rights Act do?

A Human Rights Act could lead to a more open and transparent government.

A Human Rights Act could:

- make the **Parliament consider how laws impact on human rights**
- make the **government respect human rights when developing policy**
- make **public servants respect human rights when making decisions and delivering services**
- provide a **range of enforceable remedies** if a government department breached human rights.

Over the longer term, a Human Rights Act would also be a powerful tool for fostering a stronger human rights culture in Australia by promoting greater understanding and respect among all Australians.

7. Will a Human Rights Act mean that I can take action when I think my rights have been violated?

A Human Rights Act is about preventing human rights breaches by the Australian Parliament, policy makers, public servants and public authorities. It is not about how you are treated by individuals in their private capacity.

If we have a Human Rights Act and you feel that a government department or agency has not respected your human rights as set out in the Act, then you will be able to do something about it.

What you can do will depend on the exact form of the Human Rights Act. For example, you might be able to get the government department to review its decision, make a complaint to the Australian Human Rights Commission or you might be able to bring an action before a court.

8. Is a Human Rights Act undemocratic? Will it give too much power to courts and take power away from our elected politicians?

Critics of a Human Rights Act often argue that our politicians, and not unelected judges, should be in charge of balancing sensitive issues of human rights. They argue that a Human Rights Act will give too much power to courts to make decisions about human rights, which can involve complex policy and financial considerations.

However, a Human Rights Act would be an ordinary Act of Parliament. It would be passed by our own elected representatives, meaning that it would be a fundamentally democratic document.

Australian courts would **not** be able to strike down laws that are inconsistent with a Human Rights Act. Under a Human Rights Act, Australian courts would be doing the kind of work they always do – judges interpret complex laws, and balance competing issues and social concerns everyday in making their decisions.

It is true that if we had a Human Rights Act, a court could highlight the fact that a law is inconsistent with human rights. The relevant Minister might be required to explain to Parliament why we have such a law. However, Parliament would still have the final say about whether that law should stay or go.

A Human Rights Act may also allow Parliament to limit rights in certain situations. However, if that happens, Parliament would have to publicly justify any of those restrictions. Rather than being undemocratic, a Human Rights Act could mean that we are better informed about parliamentary decisions that affect our human rights. This could promote accountability among our politicians and strengthen our democratic system of government.

9. Will a Human Rights Act lead to a massive increase in litigation?

Some people believe that a Human Rights Act will lead to a ‘flood’ of costly and time-consuming litigation. However, there is no evidence that this will happen.

A Human Rights Act could actually prevent human rights problems from arising in the first place, reducing the need to go to court. This should happen if a Human Rights Act requires Parliament to consider human rights when developing new legislation, and if government departments are required to act in accordance with human rights.

In fact, the biggest impact of a Human Rights Act should be felt outside the courtroom. The United Kingdom has had a Human Rights Act since 1998. Ordinary people have benefited from the UK Human Rights Act without having to go to court. For example, the British Institute of Human Rights has reported numerous cases of older people using the language and ideas of human rights to convince aged care service providers to respect their dignity.

10. How will a Human Rights Act affect difficult issues like abortion and euthanasia?

Abortion and euthanasia are issues that many people in Australia feel very strongly about. There is a strong argument that these issues should be left to Parliament to determine.

A Human Rights Act may have little impact on these issues. Under a statutory Human Rights Act, Parliament will still have the same power to make or change laws that it has now. The only difference might be that part of the Parliamentary debate may be about the different human rights issues that would arise.