



25 March 2023

Committee Secretary
Parliamentary Joint Committee on Human Rights

Dear Secretary

Inquiry into Australia's Human Rights Framework

Thank you for the opportunity to make a submission. I have worked on the matters canvassed by this inquiry for 25 years as an academic, barrister and policymaker. Rather than restate my work at length, I begin by referring the committee to three publications:

- ['Australia's Human Rights Scrutiny Regime' \(2020\) 46 *Monash University Law Review* 256](#)

This is the second in a series of articles that conducts a detailed empirical examination of the effectiveness of the parliamentary scrutiny regime. The article identifies areas for improvement, while concluding that the regime was never capable of providing an adequate mechanism for protecting fundamental rights (in part because a self-enforcement regime was flawed from the start). The parliamentary scrutiny regime has failed to remedy the many serious human rights problems identified in the Brennan report. Rather than being dismantled, the scrutiny regime should be incorporated within a national Human Rights Act.

- ['The Legal Assault on Australian Democracy' \(2016\) 16 *OUT Law Review* 19](#)

This examines the statute book to determine the extent to which Australian parliaments have legislated to infringe fundamental democratic rights. It identifies 350 laws that infringe on freedom of speech, freedom of the press, freedom of association, freedom of movement, the right to protest, basic legal rights and the rule of law, all of which are essential to a healthy democracy. Many of these laws were enacted after the new human rights framework came into effect, thereby demonstrating the ineffectiveness of that regime to prevent even severe human rights contraventions.

- [*A Charter of Rights for Australia* \(UNSW Press, 4th ed 2017\)](#)

This book assesses the current state of human rights protection in Australia across areas including aged care, counter terrorism and freedom of speech. It identifies major gaps in the current framework and concludes that Australia should enact a Human Rights Act. It does so after careful examination Human Rights Acts in Australia and internationally.

These and other works demonstrate the consequences of Australia being the only democratic nation not to have enacted a national comprehensive regime for protecting human rights. These include important democratic rights, such as freedom of speech, being subject to more frequent and more severe breaches than in other comparable nations. The capacity to neglect the human rights of disadvantaged and vulnerable people in the community (including Indigenous peoples, the elderly and people with disabilities) is also evident and deeply concerning.

These problems have been examined extensively at the state and territory level. Every such inquiry over the past two decades has identified a significant gap in the law that needs to be

remedies in order to protect of basic rights. This is reflected in the enactment of the *Human Rights Act 2004* (ACT), *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Human Rights Act 2019* (Qld). Public inquiries in Western Australia and Tasmania have also recommended reform. I witnessed first-hand the need for reform, and strong community support for change, as chair of the public inquiry that led to the Victorian law.

These enactments, along with like laws in New Zealand and the United Kingdom, have proven effective in providing necessary additional protection for human rights. The laws are not a failsafe for human rights protection, as like any law they also depend on a supportive political culture. They have however shown time and time again that they improve people's lives. A good, recent examination of the effectiveness of the Australian instruments is the [report](#) of the Australian Human Rights Centre detailing 101 case studies of where the instruments have changed lives for the better.

Public support for comprehensive national human rights protection has grown over time. The Brennan committee reported in 2009 that Australians wanted reform. The submissions overwhelmingly favoured a charter of rights, as did independent polling showing 57% of the community in support, 14% opposed and the remainder undecided.

The pandemic exposed the chronic lack of protection for human rights in Australia. Governments have made it clear how easily they can take away the most fundamental of rights without checks or balances such as disallowance by parliament. Many people have been shocked at how ministers can ban Australians from returning home under threat of jail, lock us down in our homes, close borders, mandate vaccination and impose curfews without any requirement to act proportionately or to minimise the impact on human rights.

These and other human rights challenges have had a powerful impact on public opinion. Recent polling by Amnesty International shows that 73% of the community support a national human rights law, with 24% uncertain and only 3% opposed. This is confirmed by other polls. Another Amnesty poll taken a year earlier in May 2021 found 76% of Australians, including 70% of Liberal voters, favour a national charter with only 4% opposed. Another poll again by the Human Rights Law Centre in late 2021 showed a surge in support to 83% of the community. All up, these polls show a 20% increase in support amongst Australians for a national human rights act since the Brennan report in 2009.

The appropriate form of a national Human Rights Act has been well understood for many years. An appropriate starting point is the recent position paper of the Australian Human Rights Commission, as informed by the Brennan report and a range of other public processes. I support the model proposed by the Commission.

An Australian Human Rights Act should be a legislative instrument capable of amendment by Parliament. It should set out a comprehensive range of rights against which Parliament should scrutinise laws and courts interpret legislation (again subject to parliamentary oversight). The instrument should provide remedies for the breach of rights, including by way of court action where necessary, or preferably low-cost dispute resolution. Each of these aspects of the model should be directed towards creating a dialogue between the arms of government to prevent the breach of human rights in the first place.

Yours sincerely

Professor George Williams AO