



24 August 2021

Committee Secretary
Senate Legal and Constitutional Affairs Committee
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Parliament House
Canberra ACT 2600

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Dear Sir/Madam,

We welcome the opportunity to provide input for the Committee's examination of the *Constitution Alteration (Freedom of Expression and Freedom of the Press) 2019 Bill* (the Bill). We are grateful for the additional time offered to us to complete this submission.

Maurice Blackburn a plaintiff law firm with 33 permanent offices and 30 visiting offices throughout all mainland States and Territories. The firm specialises in personal injuries, medical negligence, employment and industrial law, dust diseases, superannuation (particularly total and permanent disability claims), negligent financial and other advice, and consumer and commercial class actions. The firm also has a substantial social justice practice.

Maurice Blackburn has a strong history of standing up for social justice and human rights in Australia. All of our public policy and advocacy work is based on the lived experience of the people we serve. This often includes advocating for policy settings aimed at keeping governments and corporations accountable, and making sure that every-day Australians have access to justice in a way that is fair and affordable.

To this end, we applaud the intention of the Bill.

We note the words from the Senators' Introductory speech, that:

....the proposed explicit protection for freedom of expression would reflect the deep understanding in the Australian community that people must be able express their opinions with confidence and free of repercussions.¹

We agree that Australia has reached a point in its history where basic principles such as freedom of speech, freedom of the press, equality, diversity, respect, compassion and inclusion can no longer be taken for granted. Maurice Blackburn believes that it is only

¹ Ref: https://parlinfo.aph.gov.au/parlInfo/download/chamber/hansards/374b7d51-2533-445c-9bbd-2411c691e3bf/toc_pdf/Senate_2019_07_04_7071_Official.pdf;fileType=application%2Fpdf#search=%22chamber/hansards/374b7d51-2533-445c-9bbd-2411c691e3bf/0112%22: p.209

through the documentation, agreement and enshrinement of our human rights that individuals will be able to hold institutions – including government and corporate Australia – to account.

The Senators' Bill is a welcome contribution to this important national discussion. Maurice Blackburn is happy to support considered initiatives which would:

- Provide better protections for whistle-blowers

Whistle-blower protections in Australia are woefully inadequate. We need a system which rewards whistleblowing, not punishes it. Publicly identifying poor government and corporate behaviour is fraught. Constant media reports of whistle-blower vilification only enhance this perception, and act as a major disincentive to seeking redress. Any expression of rights should incorporate specific information on how whistle-blowers are protected, encouraged and rewarded.

- Provide better protections for the press

We agree with the sentiment expressed in the Senators' Introductory Speech, that:

The importance of free media inquiry and reporting, including quality investigative journalism, cannot be underestimated for the contribution it has made to an environment of accountability and opportunity for reform. Where serious wrongdoing, in the form of corruption and lack of integrity or an attitude of apathy to corruption, is uncovered, it is important that this can be brought to the public's attention after avenues for holding those accountable have failed.²

- Provide better protections for workers engaging in freedom of expression in their own time

There have been a number of high profile cases where a worker's employment has been terminated because he/she has expressed views contrary to that of their employer³ and that the termination of the employment was seen as a function of choice by the worker – that he/she chose to make that comment, and that termination was the cost of that choice.

Any attempt to articulate individual rights must combat this gross overstep on the part of employers, who prioritise the reputation of the employer over the right of the worker to employment. It is a problem that brings the power imbalance in the employer/worker relationship into sharp focus.

Maurice Blackburn agrees that having freedoms and rights articulated in the constitution, would lessen the need for piecemeal legislation that aims for a quick fix⁴ and remove the capacity for governments to sidestep current provisions in order to achieve their desired end (for example, raiding the houses and offices of journalists and union officials). As Prof. George Williams puts it:

² Ibid: p.209

³ See for example <https://www.abc.net.au/news/2015-04-28/wilson-freedom-of-speech-isnt-freedom-from-consequences/6427158>; <https://www.abc.net.au/news/2019-04-11/israel-folau-set-to-be-sacked-by-rugby-australia/10993856>; <https://www.theguardian.com/australia-news/2018/jul/30/woman-cricket-australia-sacked-abortion-rights-tweets>; <https://newmatilda.com/2016/06/01/latrobe-suspends-safe-schools-co-founder-and-academic-roz-ward-for-criticising-racist-australian-flag/>. Maurice Blackburn acted for each of the workers featured in these stories.

⁴ See, for example, the proposed Religious Freedom Bills

*The scale of the problem is now so large that it lies beyond legislative tinkering.*⁵

Even if the current Bill does not receive the support required to initiate a referendum on the issue, we encourage the Committee to recommend that further work be initiated to further examine the introduction of a Bill of Rights (or equivalent) that would embed the important issues raised by Senators Griff and Patrick.

Australia is the only western democracy without a national Human Rights Act, Bill of Rights or Charter of Rights.⁶

We add our voice to that of human rights advocacy agencies calling for a legislated Charter of Human Rights. We believe that a Charter should achieve two important things:

- i. Require governments to consider people's human rights when creating new laws and policies and also when delivering services.
- ii. Provide a means for people to hold the government to account when it fails to do so.⁷

As fellow legal professionals, we endorse the description of a potential model provided by the Australian Lawyers' Alliance in their submission to the AHRC inquiry: 'Free and Equal: An Australian Conversation on Human Rights':

*The ALA considers that a charter of human rights would ensure that those who wield power within Australia's federal institutions are subjected to a code of conduct in accordance with the rule of law which operates to prevent them from exercising power in such a way as to infringe upon the rights of people domiciled in Australia or under Australian jurisdiction. A charter of human rights is a powerful tool not only in keeping society diverse, fair, respectful and inclusive, but is also an essential adjunct to the institutions of parliamentary democracy and the common law.*⁸

The ALA submits that the model of human rights protection that best suits Australia's system of parliamentary democracy, maintaining the sovereignty of Parliament, is a federal legislative human rights charter that follows a dialogue model of human rights protection (similar to what exists in the UK, New Zealand, Victoria, the ACT and Queensland). Such a legislative charter could provide additional human rights protections to all people in Australia in four ways:

- a) *A federal human rights charter would require the courts to interpret all existing legislation and regulations in a manner that is compatible with the protected human rights;*
- b) *A federal human rights charter would require that when new legislation and regulations are introduced into Parliament, they are to be accompanied by a Statement of Compatibility in which the relevant Minister is required to certify that the proposed legislation/regulations is compatible with human rights;*
- c) *A federal human rights charter would require all public authorities to act in a manner that is consistent with the protected human rights, or in making a decision to take into account the protected human rights. The definition of a*

⁵ <https://www.theaustralian.com.au/commentary/weve-waited-long-enough-for-proper-bill-of-rights/news-story/fff8551149661f6590573944d7de82f3>

⁶ Refer Australian Lawyers Alliance: <https://www.lawyersalliance.com.au/documents/item/1618>; p.9

⁷ Derived from: <https://charterofrights.org.au/charter-of-rights>

⁸ <https://www.lawyersalliance.com.au/documents/item/1618>; para 17

'public authority' would include a public or private body whose functions include functions of a public nature. The phrase 'functions of a public nature' includes functions of a regulatory nature. This would mean that all federal regulatory bodies would have obligations to act compatibly, and make decisions which are compatible, with the rights protected in the Charter; and

- d) *A federal human rights charter would require all non-government organisations that perform functions of a public nature to comply with the human rights protected by the Charter.*⁹

Ideally the Charter of Human Rights would be enshrined in the Constitution. We believe, however, that the most practical immediate step, given the importance (and unlikelihood) of bipartisanship in achieving affirmative change through referenda, would be to have the charter enshrined in legislation. This should be seen as an interim step enabling the protection of human rights until such time as constitutional enshrinement is more possible.

In summary, Maurice Blackburn applauds the Senators for this initiative. While making no comment on the methodology of achieving the desired outcomes, we believe that the overarching nature of the proposal is worthy.

Please do not hesitate to contact me and my colleagues on _____ or at _____ if we can further assist with the Committee's important work.

Yours faithfully,

Jennifer Kanis
Principal Lawyer
Social Justice Practice
MAURICE BLACKBURN

⁹ 4 Ibid, para 19