

Rights? National Human Rights Consultation



Civil Liberties Australia's statement and strategy recommendations

Philosophically:

Australians' civil liberties and human rights are intrinsic. We all have them in relation to each other and to the state, regardless of wealth, status, accident of birth or life choices.

Practically:

But only the powerful or rich in Australia can afford to enforce their rights, through contacts or the courts. The average Aussie feels lost and powerless when he or she comes up against another person, an 'authority' or a bureaucratic system which denies his or her rights.

Comparatively:

Australia is a wealthy, developed country but we don't protect the 'little people' like others do. The average Australian's ability to appreciate and enforce their intrinsic human rights hasn't kept pace with national technological development. We are power-less in comparison to people from places we normally compare ourselves with: the UK, USA, Canada, 'old' Europe, New Zealand.

Uniquely Australian:

Even though we're relatively powerless, Australians have the concept of liberties and rights uniquely labelled: we call it 'a fair go'. Every Australian knows instinctively what that means. We know when someone or some system has denied us a fair go. But usually, we can't do anything about it.

Umpire/referee:

A rights system would help ensure the average Australian gets a fair go. It would put the 'little person' on an equal footing with the powerful and the rich.

It's time:

We should have had a rights system for at least the past 50 years. Now, though, such a system is even more important. For nearly 10 years, special new laws have been added which curtail our liberties and rights, and snip away at the traditional rule of law, in the name of protection against terrorists. Instead, we should have a law, or a system, which reinforces the rights of the 99.9% of Australians who are not terrorists. The emphasis is wrong, and the balance is out of kilter.

Democracy has a tilt:

Over many decades, governments (especially Executives) have become more dominant over citizens. The power shift means Australian democracy is tilted: it's uphill going for the average Australian. A rights system can prevent politicians and governments taking away traditional freedoms without having a real and just reason: they will have to explain themselves to all of us in advance. A rights system can enable average Australians to seek justice simply and easily if they think their rights have been abused. People get a little personal power back.

Safeguarding a fair go:

Making sure parliament must formally consider people's rights before passing new laws will be a way of ensuring a fairer go. When the average Australia has written-down liberties and rights that everyone is aware of, and can ask a court to protect and enforce them, that will be a real fair go.

Balanced democracy:

Everyone's responsibility is to respect the rights of others, but we don't have a system for making sure that happens. It is up to federal parliamentarians to pass a law that ensures Australians can enjoy, and protect, their intrinsic rights. Australians want a balanced democracy, where everyone's rights are respected and protected: a rights system will help us get closer to that ideal.

CLA's strategy for achieving an Australian 'fair go' treatise-charter-bill

The 2009 national consultation on human rights is:

- heightening awareness of liberties and rights nationally; and
- creating a positive expectation (for a charter of rights/responsibilities) nationally.

It will:

- produce a generally positive (for new protections) report to the Executive/Cabinet;
- split the Parliament, with the Liberal-National Coalition voting as a bloc in opposition, if a bill or charter of rights is recommended.

Civil Liberties Australia believes any partisan split would be unproductive. Whatever the national consultation's short-term result, strong bipartisan support is needed in the longer term. Any foundation statement, whatever it is called – charter, bill, treatise – needs to 'bite' and resonate so that Australians fully perceive, enjoy, monitor and act to protect their own liberties and rights.

Unfortunately, the consultation is 'owned' by the Executive only, because it was not the Parliament which commissioned the process. To build a better outcome for Australia, the Consultative Committee's report and recommendations need twin foundations:

- recommendations must be capable of gaining widespread cross-party support, and
- further processes must be owned by all of the Parliament, not just the Executive.

Therefore, CLA believes the National Human Rights Consultation Committee should recommend – in answer to the three questions posed – that:

- *The list of liberties/rights (as identified by the consultation that should be protected and promoted) should be further analysed and refined by a parliamentary process;*
- *the liberties/rights of Australians do need better protecting, by the Australian Parliament; and*
- *Australia could better protect civil liberties and human rights by the Australian Parliament producing a binding national statement and/or legislation which is an endorsement of the liberties and rights owned by Australians intrinsically and/or mandated by international agreements and protocols to which Australia is signatory.*

The National Consultative Committee should recommend that the matter proceeds by:

- Political parties declaring the issue deserves a personal conscience vote;
- The Executive/Cabinet handing over management of the issue to Parliament;
- Parliament handing the responsibility for ongoing development to a Parliamentary Committee (or Committees);
- The Parliament committee process producing a document that:
 - ✦ sets out what Australia's liberties and rights are and/or should be; and
 - ✦ reports to Parliament in a way that can produce a determinate vote; and
- Parliament votes to decide what shall be the rights/responsibilities document or statement in whatever form or format the Parliament chooses.

...on behalf of CLA
President Dr Kristine Klugman
15 June 2009