

Submission to the National Human Rights Consultation



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1. Introduction

The Council of Social Service of NSW (NCOSS) provides independent and informed policy development, advice and review and plays a key coordination and leadership role for the non government social and community services sector in New South Wales.

NCOSS works with its members, the sector, the NSW Government and its departments and other relevant agencies on current and emerging (and ongoing) social, systemic and operational issues.

NCOSS membership is composed of community organisations and interested individuals. Affiliate members include local government councils, business organisations and Government agencies. Through current membership forums, NCOSS represents more than 7,000 community organisations and over 100,000 consumers and individuals.

NCOSS is pleased to have the opportunity to contribute to the national consultation on Human Rights; and believes strongly that implementing a Human Rights Act will best protect and promote human rights for all Australians.

2. Terms of Reference

NCOSS welcomes the opening statement from the Australian Government's in the National Human Rights Consultation's Terms of Reference that it 'is committed to the promotion of human rights – a commitment that is based on the belief in the fundamental equality of all persons'.

NCOSS believes that establishing human rights legislation as soon as possible is the primary step in protecting and promoting human rights in Australia. However NCOSS, along with many other in the community, is concerned that, unlike constitutionally entrenched human rights charters, a statutory human rights act would not provide a framework that sufficiently protects human rights. NCOSS therefore supports the call of the NSW Charter Group that the next step in protecting and promoting human rights in Australia is to introduce a charter of rights in the Australian Constitution.

A fundamental aspect of protecting human rights is to ensure that they are free from political or arbitrary interference. A legislatively entrenched human rights act is subject at any time to alteration by a particular government, is not free from such interference. Assurances from governments that they will not alter rights, offers no protection for human rights because assurances can be removed as frequently as governments.

In contrast, a constitutionally entrenched charter of human rights is more immune to interference because it is more difficult to be altered by a government. Subsequently, a constitutionally entrenched charter of human rights is a stronger way in which to promote and protect human rights in Australia.

It is therefore disappointing that the Terms of Reference specifically deny the National Human Rights Consultation Committee the opportunity to recommend the adoption of a constitutionally entrenched bill of rights. NCOSS believes that all models of human rights protection should have been open for consideration so to allow the Committee to properly seek out the diverse range of views held by the community about the protection and promotion of human rights.

3. Misconceptions regarding the implementation of a Human Rights Act

Before responding to the Terms of Reference NCOSS would like to respond to a number of arguments consistently raised by people opposed to a Human Rights Act.

3.1 *Our rights are already protected*

Many people believe, incorrectly, that their rights are already protected within Australia by the Australian Constitution or that a Bill of Rights already exists. However, this is not the case. Apart from some protection offered through limited legislation, such as anti-discrimination legislation, most human rights remain legally unprotected within Australia.

Further, arguments based upon the ‘system ain’t broke so don’t fix it’ mentality cannot hold whilst over 100,000 are homeless every night and a seventeen year gap exists in lifespan between Aboriginal and Torres Strait Islander people and non-Aboriginal people of Australia.

3.2 *A Charter is undemocratic*

The argument that the Human Rights Act is undemocratic is based on the belief that political power will shift from elected Parliament to an unelected Judiciary. This is not the case.

The Human Rights Act should be developed and implemented so that it is consistent with Australia’s Parliamentary system; whereby the proposed Act would operate so that the final decision and action regarding a federal law and its incompatibility with the Human Rights Act would be taken by Parliament rather than the courts.

New Zealand, the United Kingdom, Victoria and the ACT all preserve the supremacy of the Parliament and prevent courts from making the final decision as to the legitimacy of legislation. For example, under the *Victorian Charter of Human Rights and Responsibilities 2006*, the courts are not given the power to strike down or invalidate legislation. Nor do courts have the power to award damages. Rather, the Supreme Court of Victoria has the power to declare that a law is incompatible with a right or rights in the *Victorian Charter of Human Rights and Responsibilities 2006*, but parliament retains an absolute discretion in how to respond to such declarations, and may leave the impugned law unamended.¹

3.3 *A Charter gives too much power to minorities*

In general, those who instigate claims under a Human Rights Act are individuals or groups who feel unjustly treated by the government’s actions or legislation.

¹*Victorian Charter of Human Rights and Responsibilities 2006* sections 31 and 37.

It is incorrect to state that human rights law exists only for the protection of minorities. The underpinning features of human rights law is that it is universal, and belongs to all (as noted on the national Consultation website). Such legislation will guarantee that if a government adopts legislation that impinges upon the human rights of an individual or group that individual or group will be able to remedy their rights, regardless of whether or not they are considered a 'minority'.

The 'power to minorities' argument tends to be based on the concern that Human Rights legislation will be primarily used by criminals/social security cheats/terrorists etc. However, in other countries this has not proven to be the case. Whilst in the first two years of Human Rights legislation there is an increase in criminal challenges brought to court (which attracts vast attention), this then declines once the Courts have established precedents. The Human Rights Act is then predominantly used in the context of complaints alleging harmful actions or decisions taken by governmental agencies and governmental staff.²

3.4 Only lawyers and judges can benefit from a Human Rights Act

This argument assumes self interested lawyers will create human rights cases for the purpose of increasing personal income. Whilst this argument may ring true for *some* lawyers, experience has shown this has not been the case.

A recent review of the *Human Rights Act 2004* (ACT) noted that there has not been a 'flood of litigation'.³ A review of the *Victorian Charter of Human Rights and Responsibilities* came to a similar conclusion, revealing that the courts have demonstrated their skill in identifying which cases are meritorious and raise human rights concerns, and which do not.⁴ Even in the UK, where the *Human Rights Act* does allow an entitlement to damages, there is no evidence of any meaningful increase in the volume, length or costs of litigation.⁵ The five year Review of the UK *Human Rights Act* concluded that 'a substantial body of case law had been generated but this represented no more than two per cent of all cases determined by the courts'.⁶

It should also be noted that there is also an equal probability that some lawyers will take on human rights cases as pro-bono work because they believe that the rights of the client have been violated.

3.5 Previous charters protecting human rights have not been successful

Since implementation in 2000, the UK *Human Rights Act* has been said to compliment its legislative system; providing clear guidelines for action and ensuring greater human rights

² Zifcak S & King A, *Wrongs, Rights & Remedies, An Australian Charter? The Australian Collaboration*, Victoria, 2009, pp.57-58.

³ ACT Department of Justice and Community Safety, *Human Rights Act 2004: Twelve-Month Review*.

⁴ Lynch P, *Victorian Charter on the Right Path - An Assessment of the First 18 Months*, www.hrlrc.org.au.

⁵ Administrative Court of England and Wales, *Report for the Period April 2001 to March 2002*.

⁶ Department of Constitutional Affairs (UK), *Review of the Implementation of Human Rights Act (2006)*, 2006, pp.10-11, cited in Zifcak S & King A, *Wrongs, Rights & Remedies, An Australian Charter? The Australian Collaboration*, 2009, Victoria, p60.

protection.⁷ An example of such success can be noted for the elderly UK couple married for 65 years who had been separated in residential care facilities based upon their differing health needs. Human rights advocates argued that this decision impinged upon the couples 'right to respect for family life'. The presence of a charter meant that the authorities ultimately agreed to reverse their decision, and offered the less disabled wife a subsidised place at the residential admission with her husband.⁸

Successes have also been noted following the implementation of a human rights charter in South Africa, Victoria and the ACT amongst many other countries.

3.6 Conclusion

The brief summary above shows that the arguments commonly used against a Charter of Rights are invalid. While there may be a slight increase in some issues raised on initial implementation of the Charter, these soon settle down. It could also be possible that this is a common response to changes in laws that protect people's rights. Those who have continually had their rights breached are finally able to address their concerns resulting in an increase in actions and opposition from other groups.

Therefore NCOSS supports the implementation of a Human Rights Act as the best way for Australia to protect and promote Human Rights.

⁷ Department of Constitutional Affairs (UK). *Peoples Rights – Human Rights – Frequently Asked Questions*, <http://www.dca.gov.uk/peoples-rights/human-rights/faqs.htm>, viewed 18 May, 2009

⁸ Australian Human Rights Commission, *Let's talk about rights*, 2009, Sydney, p9.

4. Which human rights should be protected and promoted?

Human rights are widely accepted to be indivisible, interdependent and interrelated. Whether expressed as civil and political rights or economic, cultural and social rights, the fundamental notion is that human rights are derived from the inherent dignity of every human person and that the fulfillment of one right can be dependent upon the fulfillment of others. Human rights have equal status and cannot be positioned in a hierarchical manner.⁹

Therefore in trying to determine which rights should be protected under an Australian Human Rights Act the Committee should consider the various international Human rights treaties to which Australia is a states party and therefore has an obligation to implement within Australia.

Australia has ratified and accepted obligations under a number of international human rights treaties and agreements including:

- (a) the Universal Declaration of Human Rights (UDHR)
- (b) the International Covenant on Civil and Political Rights (ICCPR);
- (c) the International Covenant on Economic Social and Cultural Rights (ICESCR);
- (d) the Convention for the Elimination of All Forms of Racial Discrimination (CERD);
- (e) the Convention on the Rights of the Child (CROC);
- (f) the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment (CAT);
- (g) the Convention on the Rights of Persons with Disabilities;
- (h) the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)
- (i) and the Convention Relating to the Status of Refugees.

The Australian Government has also recently announced its support for the Declaration on the Rights of Indigenous Peoples. This Convention sets out the collective rights of indigenous people.¹⁰

The above treaties and agreements should form the basis for determining which human rights are to be protected under a Human Rights Act. However, at a minimum, NCOSS believes that the rights stipulated in the UDHR, ICCPR and ICECSR should be protected under an Australian Human Rights Act. Consideration should also be given to the inclusion of specific rights for Aboriginal and Torres Strait peoples, women, children and people with disability.

4.1 Responsibilities

NCOSS does not support the explicit inclusion of individual responsibilities in national human rights legislation. NCOSS shares the concerns expressed by ACOSS and VCOSS in their

⁹ Law Council of Australia's Submission to the National Consultation on Human Rights, *A Charter: Protecting the rights of all Australians*, May, 2009, p4.

¹⁰ Commonwealth, *Parliamentary Debates*, House of Representatives, 3 April 2009 (the Hon Jenny Macklin MP).

submissions of the risk that the inclusion of ‘responsibilities’ could create an impression that rights are contingent on ‘good citizenship’.¹¹

NCOSS acknowledges that most human rights are not absolute and must be balanced against each other. This balancing recognises the relationship between rights and responsibilities, as in Article 29 of the UDHR.¹²

4.2 Who human rights be applied to?

Human rights are the rights of humans. They do not have any authority to offer protections for non-human entities. For this reason, NCOSS does not support provisions allowing non-human entities, such as corporations, to claim human rights protection. Corporations are recognised as legal persons, and as such, should continue to enjoy their rights and interests afforded to them in other areas of law that protect the rights of legal persons.

However, it is imperative that the implementation of a Human Rights Act must be applicable to individuals working in, employed by or directly involved with or affected by both public and private sector organisations and agencies.

Often private organisations have no responsibilities following the implementation of a Human Rights Act, as the Act is not directly binding upon the business/private sector. It is likely that a business would only be bound by the Act when it is classified as a ‘public authority’ or it takes steps (optionally or contractually) to bind itself to the Act. Therefore an individual who has their human rights breached by a private sector organisation is unable to seek redress through a Human Rights Act, unlike someone who has the rights breached by a public sector agency. This creates inequality between the people who work in each sector. There also needs to be recognition that often Australian owned companies are involved in countries with extensive human rights breaches and this will enable the Government to ensure that Australian organisations do not continue these breaches with their employees.

It should also be noted that the implementation of a human rights Act would have three very positive impacts upon Australian businesses.

1. Economic benefits – Australian savings (associated with no human rights breaches and maximising participation in the economy) are likely to flow to Australian businesses
2. Corporate social responsibility – Businesses will have the opportunity to showcase their commitment to social responsibility, which, according to research, has a direct correlation with long term sustainability and financial success

¹¹ See VCOSS *Submission to the National Human Rights Consultation Committee 2009* and ACOSS *Submission to the National Human Rights Consultation 2009*

¹² (1) Everyone has duties to the community in which alone the free and full development of his personality is possible. (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

3. Improved regulatory framework - Improved Government decision making would enhance levels of transparency and accountability of government action. This would create a more stable regulatory environment.

The majority of businesses would face no compliance costs following the implementation of an Act and for businesses that are bound by an Act, costs are likely to be minimal, and outweighed by the above benefits.¹³

NCOSS therefore believes that any Human Rights Act or legislation implemented to protect human rights be applicable to and should be binding on all persons and organisations within Australia, whether public or private.

¹³ 'Would an Australian Charter be good for business?' Resources: Charter of Human Rights, Gilbert + Tobin Centre for Public Law. <http://www.gtcentre.unsw.edu.au/Resources/cohr/goodForBusiness.asp>, viewed 19 May, 2009

5. How are human rights currently protected in Australia?

5.1 Human Rights Protection at a National Level

Currently there is **no overarching structure** which exists in order to protect and promote human rights in Australia. The Australian constitution was created in 1891, and the immediate inclusion of a 'bill of rights' was rejected based upon Australia's peaceful transition to federation, the requirement of colonies to be able to racially discriminate (the very basis of the Federation) and the view that rights would be better protected under common law. In its constitution Australia did include the right to trial by jury (section 80) and freedom of religion (section 116) however these protections have become merely restrictions on Commonwealth legislative powers.¹⁴

Anti Discrimination legislation exists at a Commonwealth level through the Racial Discrimination Act, the Sex Discrimination Act, the Disability Discrimination Act and the Age Discrimination Act. The Australian Human Rights Commission (AHRC, previously known as the Human Rights and Equal Opportunity Commission) was created in 1986 in order to investigate and settle discriminatory disputes under this legislation. The AHRC has a limited role of examining and appeasing disputes, and does not ensure with certainty the sanctity of human rights.¹⁵ Anti-discrimination laws are also susceptible to appeal and amendment by other legislation, for example where the Racial Discrimination Act was overturned in order to create the Northern Territory National Emergency Response Act 2007.

Some individual rights and freedoms are protected under Australian Common Law. Tracing back to the Magna Carta, rights of personal security, liberty and property are seemed to be inherent to all of humanity and thus assumed to be protected and enforced. Despite this assumption, the growing influence of parliament within public life has led to the displacement of common law rights and the translation of these principles to be statutory interpretations whereby governments can use ambiguous language and then override common laws.¹⁶ The scope of common law protections is limited and many common law rights have been displaced by parliament in recent years.

In addition to these Commonwealth legislative approaches, Australia has ratified The International Covenant on Civil and Political Rights (ICCPR), The International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Elimination of all forms of Racial Discrimination, The Convention of the Rights of a Child, The Convention against Torture and other cruel, Inhumane or Degrading Treatment or Punishment, The Convention on the Elimination of all forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and most recently the UN Declaration on Indigenous Rights. However these covenants have not been implemented within Australia as no enacting legislation has been passed by the Australian Government.

Whilst Australia can be understood to have taken basic steps towards the protection of human rights, current legislation does not ensure the full protection of human rights within

¹⁴ Zifcak S & King A, *Op.Cit*, pp.20-23.

¹⁵ *Ibid*, p.24-26.

¹⁶ *Ibid*, p.26.

Australia thus leaving all people, and especially the most vulnerable, without full protection of their rights.

NCOSS believes that the most effective way to legally guarantee consistency and social justice between the states and territories of Australia is through the adoption of a Human Rights Act based on international human right standards.

5.2 Human rights protection in the Australian Capital Territory (ACT)

The Human Rights Act 2004 (ACT) (HRA) was created in response to developing and protecting a human rights culture within the ACT through recognising and protecting civil and political rights in law. The HRA states that all courts, tribunals and decision makers must take human rights into account when interpreting ACT legislation. If a law is then deemed to be incompatible with human rights, the legislation is taken to the Legislative Assembly to decide whether or not changes to the law should be made.¹⁷

Since the HRA has been passed in the ACT, three major changes have occurred.

1. All legislation are checked for their compliance with Human Rights Principles
2. Human rights audits are conducted
3. Human rights have become a relevant consideration in the administrative decision making process.

In evaluating its progress over the first year, it has been established that the ACT HRA has contributed to an increasing consciousness of human rights by the government in developing new bills and interpreting legislations. The HRA has not been divisive in nature, because of its limited power for judges to invalidate legislation or civilians to assert legal rights against the government.¹⁸

5.3 Human rights protection in Victoria

In 2007 Victoria created a Charter of Human Rights and Responsibilities. The act can be seen to have improved upon its ACT counterpart by demanding reasoned statements of compatibility with human rights at a parliamentary stage, rather than Ministerial assertions of human rights compatibility. In addition, the act is also more explicit, indicating that governments are acting unlawfully if they fail to give effect to human rights, and providing for a range of remedies if the government does not comply.¹⁹

¹⁷ ACT Human Rights Commission, "Human Rights Brochure", <http://www.hrc.act.gov.au/assets/docs/humanrightsactbrochure.pdf>, viewed 20 April 2009.

¹⁸ The ACT Human Rights Act 2004 – the First Year, "Regulatory Institutions Network, ANU – Gabrielle McKinnon" http://acthra.anu.edu.au/articles/Gabrielle_McKinnon.pdf, viewed 21 April 2009.

¹⁹ Evans S, The Victorian Charter of Rights and Responsibilities and the ACT Human Rights Act: Four Key Differences and their implications for Victoria, presented at the Australian Bill of Rights: The ACT and Beyond Conference ANU, 2006, <http://acthra.anu.edu.au/articles/Simon%20Evans%20-%20Vic%20Charter%20and%20the%20ACTHRA.pdf>, viewed 21 April 2009.

The charter has had direct successes throughout Victoria. In one example in 2008 Asperger Syndrome and other Autism Spectrum Disorders were not classified to be a 'disability', and thus individuals with these disorders could not receive Disability Service Support from the Victorian Department of Human Services. The mother of a boy with Asperger Syndrome applied for a review of this decision, calling for a more inclusive interpretation of the disability definition. This led to an acknowledgement by the Victorian government that disorders within the autism spectrum are disabilities and thus individuals are entitled to disability assistance. The Victorian government backed the announcement with \$2.75 million in funding, thereby committing themselves to the protection of rights for families and children before the law.²⁰

5.4 Human rights protection in the United Kingdom (UK)

In England in 2000, the UK Human Rights Act (the Act) was implemented, following a 15 month departmental training period. This period was used to explain the Act and its implications to Public Servants in order to ensure that the new requirements for treating people were met with respect. Initially the Act was not used significantly within the courts but as interpretations ensued, the Act became more routinely utilised in the British legal environment.

This Act uses a statement of incompatibility, making it unlawful for public authorities to act in a way that is incompatible with a Convention right. The act hosts 16 basic rights, as taken from the European Convention on Human Rights.²¹

The UK Human Rights Act has not limited the power of the democratically elected UK government. Ministers presenting bills are now required to certify that the bill is compatible with human rights standards. The statement of compatibility is scrutinised by a committee of Human Rights, and then debated with the houses of Parliament. From implementation until December 2008, the courts have only granted 26 declarations of incompatibility, and 8 of these were ultimately overturned on appeal.

In evaluating the Act the Lord Chancellor has highlighted the benefits that stem from having a new layer of assessment. Authorities must consider 'Does what I do affect people to the minimum in terms of infringing of their human rights. And human rights mean people's basic entitlement to dignity'.²² Commentators indicate that the Human Rights Act has led to 'better government and better public services: it has assisted decision makers to seemingly intractable problems in a new light, especially in helping the vulnerable to a better quality of life and protecting them from abuse.'²³

²⁰ Amnesty International Australia, *Victorian Charter in Action – Real Stories*, <http://www.amnesty.org.au/yourhumanrights/comments/20134/>, viewed 22 April 2009.

²¹ Department of Constitutional Affairs (UK), *Making Sense of Human Rights – a short introduction, justice rights and democracy*. <http://www.justice.gov.uk/guidance/docs/hr-handbook-introduction.pdf>, viewed 22 April 2009.

²² House of Lords and House of Commons, Joint Committee on Human Rights 'The Human Rights Act', para 74. Cited in Robertson G, *The Statute of Liberty – How Australians can take back their rights*, Random House, North Sydney, 2009.

²³ Robertson G, *The Statute of Liberty – How Australians can take back their rights*, Random House, North Sydney, 2009.

The ACT and Victoria have developed human rights legislations, based upon the UK Human Rights Act. Through the similar methodology of implementing a Federal Human Rights Act, Australia needs to promote and protect Human Rights.

6. How could Australia better protect and promote human rights?

The implementation of a Human Rights Act will enhance the capacity of Australia to protect and promote human rights. This is supported by the experience of the ACT and Victoria where an Act has already been implemented.

6.1 *Enhancement of Constitutional Protections*

Former High Court Chief Justice Brennan explains that ‘The exigencies of modern politics have sometimes led Governments to ignore human rights in order to achieve objectives which are said to be for the common good’.²⁴ A Human Rights Act could make it more difficult for Parliament to compromise protected rights by:

- Requiring the Parliament to consider the impact of its laws on human rights,
- Requiring the executive arm of the government to respect human rights in implementing laws and making decisions and
- Enabling access to courts and tribunals to declare laws inconsistent with protected human rights.²⁵

The UK Human Rights Act has already been seen to enhance the rights of individuals. A HREOC Case Study documents a woman who fled domestic violence with her children, and moved frequently around London as her ex-husband continued to track her down. Social Workers declared the woman an ‘unfit parent’ based on the unintentional homelessness she had placed upon her children, and placed the children in a foster home. Using the Human Right of ‘Respect for Family Life’ the mother challenged this decision and the family was permitted to stay together.²⁶

6.2 *Enacting of New Laws to Protect Human Rights*

By establishing a Human Rights Act, there will be greater opportunity to enact new laws and protect the human rights that are currently unprotected. This may include extending and building upon existing laws. The Australian Federal anti-discrimination legislation (Human Rights and Equal Opportunity Commission Act 1986) currently only protects discrimination in employment, and does not make age discrimination unlawful or enforceable.²⁷

Similarly disability discrimination laws do not guarantee positive measures (such as accessibility of public transport/workplaces) are taken to enable people with disabilities to participate in society. Legislation currently focuses on individual complaints rather than

²⁴ Brennan, G. ‘The Constitution, Good Government and Human Rights’ *Human Rights Law Resource Centre*, 12 March 2008.

²⁵ Lynch P, & Knowles P, The National Human Rights Consultation: Engaging in Debate, *Human Rights Law Resource Centre*, Victoria, p.4.

²⁶ Human Rights and Equal opportunity Commission, *Let’s Talk About Rights Workshop*, http://www.hreoc.gov.au/letstalkaboutrights/workshops/NHRC_submission_writing_workshop_Session_2_FINAL.ppt#11, reviewed 12 May 2009

²⁷ Public Interest Advocacy Centre, *May Fact Sheet: Age Discrimination*, 2004.

systematic discrimination.²⁸ The creation of a Human Rights Act and the change of culture that would ensue following its implementation would enable greater equity and protection of Human Rights.

Following the implementation of a Human Rights Act, NCOSS recommends the establishment of an enquiry into current legislation to ensure their compatibility with human rights, in addition to the scrutiny placed upon incoming legislation.

6.3 Effective Complaints Process

An Act should include provisions enabling legal action by individuals in respect of alleged breaches and could permit the award of damages by a court on the finding of a breach. This is the approach NCOSS supports. A process of conciliation should continue to be resourced via the Australian Human Rights Commission.

6.4 Human Rights Culture

The implementation of a Human Rights Act will also promote human rights through the creation of a human rights culture. By making a clear statement of Australia's rights and responsibilities, there is a greater opportunity to increase awareness and respect of these rights. An Act will provide contemporary set of common values for communities within society, and provide a starting point from which everyone has the ability to actively participate.²⁹

A human rights culture will be best achieved in conjunction with an educational campaign. Following the UK Human Rights Act, a training program was successfully completed by public servants in order to create an environment that respected and provided dignity for the people with whom public servants were working. In addition to this training, NCOSS suggests for a human rights curriculum to be implemented within the primary and secondary school system, as well as a general educational campaign targeted at the public.

²⁸ *Ibid.*

²⁹ Zifcak S & King A, *Op Cit.*, p.44.

7. Conclusion

Australia is currently the only Western democracy without legislative structure which protects human rights. Australia sits signatory to treaties including the Universal Declaration of Human Rights, ICCPR and ICESCR, however our lack of implementation and legal inclusion of these declarations puts Australia in breach of these international laws and enables the opportunity for violation of human rights.

The NCOSS submission argues that human rights are not sufficiently protected or promoted in Australia, and recommends that implementing a Human Rights Act will be the best way to protect human rights into the future.

The United Kingdom's Human Rights Act has proven to be successful since its implementation in 2000. This Act protects human rights by enforcing legislations to make statements of 'compatibility' with Conventional rights. UKHRA has increased awareness and culture of human rights and without creating too much power to any particular group has enabled individuals to challenge situations, and be treated with the dignity which they deserve. The Act was effectively implemented attached to a 15 month training period for Government departments.

Models of the Human Rights Act have been implemented in the ACT (2004) and Victoria (2007). Direct successes have resulted in both, proving that such a model will work within an Australian context and cementing the argument that Australia will be able to better protect and promote human rights through the implementation of an Act.

8. Recommendations

NCOSS recommends that:

- 1. A Human Rights Act must be implemented in Australia within a 12 month period of the conclusion of the National Human Rights Consultation.**
- 2. This Act must protect the human rights contained in the various treaties and agreements that Australia is signatory to, but at a minimum it should contain the rights from the Universal Declaration of Rights, International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Consideration should also be given to the inclusion of specific rights for Aboriginal and Torres Strait Islander peoples, women, children and people with disability.**
- 3. Any Human Rights Act or legislation implemented to protect human rights must be applicable to and should be binding on all persons and organisations within Australia, whether public or private.**
- 4. Following the implementation of a Human Rights Act, an enquiry into current legislation must be implemented to ensure that it is compatible with human rights, in addition to the scrutiny placed upon incoming legislation.**
- 5. The Act's Preamble must specifically recognise Aboriginal and Torres Strait Islander people.**
- 6. The Act must be accompanied by an educational campaign that aims to instill a Human Rights culture amongst the Australian population.**