

Charter or Bill of Rights: Questions & Answers



What is a Charter of Human Rights?

Human rights are the basic freedoms and protections that all of us are entitled to because we are human beings. Human rights apply to everyone equally, regardless of age, nationality, race, colour, religion, gender, or sexual preference or other status.

A Charter of Rights is a list of all the human rights the nation thinks are important and deserving of specific legal protection. This could include civil, political, economic, social and cultural rights.

The Charter of Human Rights that the Law Council supports is just like a regular law. It doesn't need to be added to our Constitution, like the Bill of Rights in the US.

This means that it can be changed by Parliament if new rights need to be added.

How does Australia measure up on Human Rights protections?

Australia is the only western democracy without a Charter or Bill of Human Rights.

All countries with legal and political systems similar to Australia have a Bill or Charter of Human Rights. For example, Canada, the United States and South Africa all have a Bill of Rights in their Constitutions and the United Kingdom and New Zealand have Human Rights Acts.

Lots of other countries also have Bills or Charters of Human Rights, including: India, Brazil, Hong Kong, Kazakhstan, Iraq, East Timor, Turkey and Argentina.

Don't our current laws already protect Human Rights?

Most Australians take their fundamental freedoms and rights for granted. But the fact is there are lots of rights and freedoms that are not specifically protected by Australian law.

Did you know, for example, that at the federal level, your right to free speech is not protected, nor is your right to liberty and security of person, or your right to access quality health care?

And there's not much to stop the Government from introducing laws that take away our fundamental rights and freedoms.

For example, did you know that you can be questioned and detained, or your telephone tapped, just because intelligence agencies want to find out something about your work colleague or friend? Or that the Government can put controls on how you spend your welfare payments just because you are Aboriginal and live in a certain area of Australia? Or that some juvenile offenders can be locked up in the same cells as adult offenders?

A Charter of Human Rights would help fill these gaps in human rights protection.

A Charter of Human Rights would also help restore Australia's international reputation as a country that values and protects individual rights and freedoms.

How will a Charter of Human Rights work?

A Charter of Human Rights would help all Australians understand their human rights and provide a standard against which to measure Government action. It would ensure that every time law makers or decision makers act, they take human rights into account.

A Charter of Rights would also mean that if a person feels that their rights have been violated by the Government or a public official, they can bring the matter to the attention of the court.

If the court finds that the person's human rights have been breached, it can make a declaration that the particular law the Government or the public officials acted under is incompatible with human rights.

It would then be up to Parliament to make a decision about whether it should change the law, or whether it should leave the law in force despite the fact it violates human rights.

What will a Charter of Human Rights mean for me?

A Charter of Rights would mean that, as a nation, we have decided to set out a list of basic values and freedoms that we think are important enough to deserve legal protection.

It would also mean that the Government would be held accountable when it introduces new laws. For example, before it could introduce a law discriminating against a certain group of Australians, the Government would have to explain to the Parliament and the community why it intended to breach human rights in this way.

A Charter would also mean that if you did happen to find yourself in a situation where your rights or freedoms weren't being respected, you could bring the matter to the court, and try and make sure that same kind of treatment doesn't happen to other people.

What about claims that a Charter of Human Rights is just about more work for lawyers and more power for judges?

That's not the case. Under the Charter of Rights model supported by the Law Council, courts and lawyers have a limited role.

Under a Charter, the court couldn't invalidate a law – it could only tell Parliament that the law is working in a way that is inconsistent with human rights.

The idea behind a Charter is to prevent human rights abuses from taking place by making sure

law makers and decision makers act in a way that is consistent with human rights, rather than bringing lots of human rights cases to court. This should lead to less work for lawyers, not more.

Because lawyers' every day work involves protecting people's rights (in many cases for free), they have an important perspective to offer on this debate. But lawyers aren't the only group calling for a Charter. Many other groups also support a Charter, including groups representing people with disabilities, mental health organisations, arts and cultural institutions, social service providers, child care groups and Indigenous organisations.

What can I do to help support an Australia Charter of Human Rights?

On 10 December 2008, the Commonwealth Government announced a National Consultation on Human Rights. The Consultation Report was released on 8 October 2009. It can be found at www.humanrightsconsultation.gov.au/www/nhrcc/nhrcc.nsf/Page/Report

The Report makes a number of recommendations, including that there be a Charter of Rights.

The Government is currently considering its response to the Report.

If you support a Charter of Rights, you could write to your local Member of Parliament to advise them of your support.

You can find a copy of our Policy, and more information, at www.lawcouncil.asn.au

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