

## National Human Rights Consultation Report: A brief summary

### Scope of recommendations

The National Human Rights Consultation Committee (the Committee) report recommends a number of measures to improve the protection of human rights in Australia. The key recommendations include:

- the enactment of a national Human Rights Act;
- strengthening the Australian Human Rights Commission;
- enhancing a human rights culture and education;
- improving parliamentary scrutiny of human rights; and
- addressing acute disadvantage experienced by groups such as Indigenous people.

### The recommendation for a Human Rights Act

The Committee strongly endorsed a Human Rights Act (HRA), adopting the ‘dialogue model’. This means the HRA would not be enshrined in the Constitution. Instead, it would be an ordinary Act of Parliament, based on the model adopted in jurisdictions such as the United Kingdom, New Zealand, Victoria and the ACT.

There was overwhelming community support for a HRA, with 27 888 submissions—that is, 87% of those who considered this issue—favouring this reform. The opinion polling also indicated a very strong majority of Australians support a HRA (57% in favour; 14% against and 30% neutral). This is consistent with all major recent opinion polling, which has shown a clear majority of Australians support a HRA. More generally, over 40,000 people participated in the Consultation which makes this the largest public inquiry in Australian history.

### Which rights should be protected?

The Committee takes a strong line in saying that Australia should fulfil all of its major international human rights law obligations. This means legislating to protect key civil and political rights, as well as the rights of children, the right not to be tortured and so on. The Committee recommended including economic, social and cultural rights (ESC rights)—such as the right to adequate food, healthcare and housing—but these rights would not be judicially enforceable. In other words, ESC rights would receive more limited protection.

### Who will bear obligations under the proposed HRA?

The Committee recommends that only federal ‘public authorities’ should be required to comply with the human rights listed in the HRA. Public authorities are essentially Ministers, public servants, government departments and the like. They also include private entities, when they are acting as public authorities (eg, a private company that performs a public service on behalf of the government). Ordinarily, private corporations will not be required to comply with the HRA. The Committee recommends that the HRA apply only to the *federal* Government, which would allow the States to continue to develop their own approaches to human rights protection.

### Scope of protection of the proposed HRA

The Committee recommended that only humans (and not, for example, corporations) should be able to claim the protection of the proposed HRA. However, the Act should apply to all people in Australia, and anyone subject to Australian jurisdiction. Where a public authority breaches an individual’s human rights, the usual remedies (including, in appropriate cases, damages) would be available to remedy the breach.

## **Interpretation of laws and constitutionality**

According to the Report, the HRA should require other laws to be interpreted consistently with HRA-protected rights, provided this is consistent with Parliament's intent. Where a law is incompatible with a HRA-protected right(s), the High Court would have the power to issue a 'declaration of incompatibility', but not to invalidate the law in question. A declaration would notify the Government of the incompatibility, but Parliament would have the final say on whether to amend the law.

The Committee is clear that a HRA of this form would be constitutionally valid. This is consistent with the majority of the expert submissions that the Committee received. The report also includes the advice of the Commonwealth Solicitor-General, Stephen Gageler SC. Mr Gageler's advice was clear on the major points of constitutional debate, advising that an appropriately drafted HRA would survive any constitutional challenge. This includes the power to issue declarations of incompatibility.

## **Applying human rights principles to new and existing laws**

When new Bills are introduced to Parliament, Ministers would have to issue a Statement of Compatibility, triggering a process to consider their compatibility with human rights by a special joint committee of both Houses of Parliament. This recommendation is designed to operate whether or not the Government introduces a HRA.

## **Other important recommendations**

### **1. Human rights culture**

The Committee strongly recommended the fostering of a human rights culture in Australia, especially through the development of a national human rights action plan, departmental plans and related measures.

### **2. Australian Human Rights Commission**

The Committee recommended expanding the role of the Australian Human Rights Commission to receive and mediate human rights complaints.

### **3. Audit of current laws**

The Committee recommended that the Government conduct an audit of all federal laws, policies and practices to determine their compliance with Australia's international human rights obligations, with a view to making whatever amendments are necessary to make them compliant. This appears similar to the Commission's 2007 *Same-Sex: Same Entitlements* inquiry, which identified federal laws that discriminated against same-sex couples, and ultimately led to the Australian Government introducing amendments to 84 federal laws.

### **4. Amendments to ADJR Act and Acts Interpretation Act**

The report proposes major changes to the *Acts Interpretation Act 1901* (Cth), which sets out how federal laws should be interpreted. The amended Act would require that "as far as it is possible to do so consistently with the legislation's purpose, all federal legislation is to be interpreted consistently with [a definitive list of human rights specified by the Government]". The report also proposes amending the *Administrative Decisions (Judicial Review) Act 1975* (Cth), so as to provide that Government decision makers must take into account a list of human rights as a 'relevant consideration' whenever they make a decision. These reforms are significant in that they resemble key aspects of a HRA, and so provide the Government with an option to pick and choose which features it might want to introduce.

**Edward Santow and George Williams**  
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