



11 December 2023

Committee Secretary
Social Development Committee
Parliament of South Australia

Dear Secretary

Inquiry into the Potential for a Human Rights Act for South Australia

Thank you for the opportunity to make a submission. I have worked on the matters canvassed by this inquiry for 25 years as an academic, barrister and policymaker.

I have canvassed the issues being examined by this committee at length in my work *A Charter of Rights for Australia* (UNSW Press, 4th ed 2017). This book assesses the current state of human rights protection in Australia across areas including aged care, counter terrorism and freedom of speech. It identifies major gaps in the current framework and concludes that a Human Rights Act should be enacted at the national level and in each of the Australian states and territories.

This reform is required to remedy the deficiencies in our law that result from inadequate protection of human rights. This includes important democratic rights, such as freedom of speech, being subject to more frequent and more severe breaches than in other comparable nations. The capacity to neglect the human rights of disadvantaged and vulnerable people in the community (including Indigenous peoples, the elderly and people with disabilities) is also evident and deeply concerning.

These problems have been examined extensively at the state and territory level. Every such inquiry over the past two decades has identified a significant gap in the law that needs to be remedied to better protect of basic rights. This is reflected in the enactment of the *Human Rights Act 2004* (ACT), *Charter of Human Rights and Responsibilities Act 2006* (Vic) and the *Human Rights Act 2019* (Qld). Public inquiries in Western Australia and Tasmania have also recommended reform. I witnessed first-hand the need for reform, and strong community support for change, as chair of the public inquiry that led to the Victorian law.

These enactments, along with like laws in New Zealand and the United Kingdom, have proven effective in providing necessary additional protection for human rights. The laws are not a failsafe for human rights protection, as like any law they also depend on a supportive political culture. They have however shown time and time again that they improve people's lives. A good, recent examination of the effectiveness of the Australian instruments is the [report](#) of the Australian Human Rights Law Centre detailing 101 case studies of where the instruments have changed lives for the better.

Public support for comprehensive national human rights protection has grown significantly. The Brennan committee reported in 2009 that Australians wanted reform. The submissions overwhelmingly favoured a charter of rights, as did independent polling showing 57% of the community in support, 14% opposed and the remainder undecided.

The pandemic exposed the chronic lack of protection for human rights in Australia. Governments have made it clear how easily they can take away the most fundamental of rights without checks or balances such as disallowance by parliament. Many people have been shocked at how ministers can ban Australians from returning home under threat of jail, lock us down in our homes, close borders, mandate vaccination and impose curfews without any requirement to act proportionately or to minimise the impact on human rights.

These and other human rights challenges have had a powerful impact on public opinion. Recent polling by Amnesty International shows that 73% of the community support a national human rights law, with 24% uncertain and only 3% opposed. This is confirmed by other polls. Another Amnesty poll taken a year earlier in May 2021 found 76% of Australians, including 70% of Liberal voters, favour a national charter with only 4% opposed. Another poll again by the Human Rights Law Centre in late 2021 showed a surge in support to 83% of the community. All up, these polls show a 20% increase in support amongst Australians for a national human rights act since the Brennan report in 2009.

The desirable form of a State Human Rights Act has been well understood for many years. An appropriate starting point is the *Human Rights Act 2019* (Qld), along with the recent position paper of the Australian Human Rights Commission, as informed by the Brennan report and a range of other public processes.

A South Australian Human Rights Act should be a legislative instrument capable of amendment by Parliament. It should set out a comprehensive range of rights against which Parliament should scrutinise laws and courts interpret legislation (again subject to parliamentary oversight). The instrument should provide remedies for the breach of rights, including by way of court action where necessary, or preferably low-cost dispute resolution. Each of these aspects of the model should be directed towards creating a dialogue between the arms of government to prevent the breach of human rights in the first place and thereby improve the lives of people in the community.

Yours sincerely

Professor George Williams AO