

# A HUMAN RIGHTS ACT FOR AUSTRALIA

Sponsored by New Matilda - [www.newmatilda.com](http://www.newmatilda.com)

## Campaign Information

### What is the aim of the campaign?

Australia is the only Western country that does not have a Human Rights Act or equivalent. This campaign sets out to change this.

In October 2005 New Matilda launched a national campaign to promote a Human Rights Act for Australia. Following extensive nationwide consultation and education and with the input of experts and the broader community we have produced a final Draft Human Rights Bill. This statutory Bill embodies Australia's international human rights obligations and with significant public support generated through our consultations we hope to persuade the major political parties to adopt it as part of their policy platforms.

Our aim is to have the community endorsed Human Rights Bill tabled and debated in the Federal Parliament.

### Why does Australia need a Human Rights Act?

Australia is a signatory to the UN's two principal human rights covenants: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These documents identify the fundamental human rights that should be guaranteed for all people. To make them effective the parliament must enact comprehensive domestic laws that mirror the international obligations. Australia has never done this. The Australian Government has been found by the UN to have breached international obligations in a range of areas including mandatory detention and the protection of its indigenous peoples. It seems likely that its anti-terrorism legislation may also transgress these obligations. Without specific Australian legislation embodying the provisions of the international covenants, these breaches remain lawful.

Without a Human Rights Act, we are left with an ad hoc and incomplete patchwork of common law, statutory and constitutional rights. There are currently very few rights protected under Australian law.

## **The legislation**

### Which human rights will it protect?

The draft legislation will protect a range of civil and political and social and economic rights. It draws heavily on the International Covenant on Civil and Political Right (ICCPR), the International Covenant on Social, Economic and Cultural Rights (ICSECR) and the Convention on the Rights of the Child (CRC). Australia is a signatory to all three of these covenants but without national legislation they do not have the force of law. The Human Rights Act will seek to remedy this. It will draw on

the experiences of Britain, Canada, New Zealand, the ACT, and Victoria which have either Human Rights Acts or an equivalent.

### Constitutional or statutory?

The campaign is promoting a statutory Human Rights Act rather than a constitutional amendment because legislation is the most realistic avenue for promoting a human rights agenda in Australia.

Referenda are notoriously difficult processes. Throughout Australia's history there have been only 8 successful results from 44 campaigns – including one unsuccessful attempt to introduce a limited range of rights in 1988.

The UK and New Zealand have both enacted statutes. The experience in these two countries is that governments will moderate their policies to comply with their Human Rights Acts. The Blair Government changed its anti-terrorism laws in 2005 following the House of Lords' condemnation of them for being in breach of UK and European human rights laws. Compliance with the Human Rights Act requires the government to find ways of achieving national security aims without unnecessarily breaching human rights.

The Campaign Committee believes that a statutory Human Rights Act, if successful, could pave the way for a future referendum on the matter.

### Does the Bill signal a softening of Australia's campaign against terrorism?

No, the bill does not compromise Australia's necessary security. Rather it recognizes the need for balance and for governments to explore measures which are proportionate to the real risks and that do not unnecessarily take away human rights.

As stated by UK's Lord Chancellor, Lord Falconer, while recently visiting Australia, *"We must recognize that national security is not a wand which sweeps away human rights, and human rights is not a barrier which prevents a state from protecting itself against those who would destroy it."*

While the UK has implemented anti-terrorist laws which do ensure that the security services have got the tools they need, Lord Falconer reminded us that we must respond to terrorism in accordance with fundamental human rights principles otherwise we compromise the very values that we were defending in our response to terrorism.

### Parliamentary sovereignty

The Campaign Committee understands the importance of parliamentary sovereignty and the draft bill explicitly recognises it. Importantly, judges will not have the capacity to invalidate laws. A statutory model encourages rights protection through a dialogue between the courts and parliament without taking power away from the parliament. Courts may declare laws incompatible with human rights but the final decision on what to do about the incompatibility will remain with parliament.

## Will a Bill of Rights increase litigation?

No, experience to date in countries such as the UK and New Zealand, who have introduced similar legislation over the past decade, tells us otherwise. In fact, senior judges in the UK have concluded that the Act has not disrupted the system at all, but has complemented it.

Furthermore, experience in New Zealand has taught us that while there may be an initial upsurge in litigation, (most notably in the area of criminal law) it is temporary and usually decreases in a short period of time.

Finally, in Australia, the ACT Human Rights Act has not “opened a Pandora's box” as was claimed by its most vocal opponents.

## **Human Rights as a Core Australian Value**

There has been much recent debate about Australian values, our strong commitment to equality and of the perceived need to do more to promote and to protect these values. Respect for human rights must be regarded in this context. By enacting New Matilda's proposed Human Rights Bill, Parliament would entrench in law the core values of Australian democracy.

An Australian Human Rights Act would provide an invaluable tool for teaching all Australians and migrants of the rights (and responsibilities) that come with Australian citizenship, as it would clearly define a set of legal rights to aspire to.

## **The campaign**

### Campaign phases and Scope

The Right Honourable Malcolm Fraser launched the Human Rights Act for Australia campaign on 5 October 2005. A range of prominent human rights advocates and community leaders also addressed the launch including Professor Larissa Behrendt, Elizabeth Evatt AC, Waleed Aly, Greg Combet, Nahid Karimi, Associate Professor Spencer Zifcak, Susan Ryan AO and John Menadue AO.

New Matilda's Human Rights Act has now been successfully launched in every capital city and several regional centres across Australia. An extensive period of consultation and education culminated in a ‘final’ draft Bill being presented to the Melbourne launch on 13 August 2006. Addressing the crowd were Julian Burnside QC, Professor Larissa Behrendt, Waleed Aly, Max Gillies, Hilary McPhee AO, Sharan Burrow, Brian Walters SC, and Associate Professor Spencer Zifcak.

We have consulted with state based campaigns and have sought partnership with the full range of human rights bodies and NGOs, indigenous rights groups and supportive religious groups where possible. The first phase of the campaign involved consultation through the New Matilda website and through community forums. The

second phase now involves generating support within the community and collecting petitions to the parliament. Our aim is to have a Human Rights Bill tabled and debated as a Private Member's Bill by the end of 2006.

New Matilda has embarked on a long term, active campaign. While the Bill may not pass through parliament the first time, we will persist with a second and, if necessary, a third presentation, until the Bill has the numbers.

### Drafting the bill

Associate-Professor Spencer Zifcak is primarily responsible for the drafting of the Human Rights Bill. He has sought input from others with expertise and experience in human rights and a number of submissions were received from various legal organisations, NGOs and members of the community. Professor George Williams was also involved in the early stages of the drafting before being appointed as Chair of the Victorian Human Rights Consultation Committee.

### New Matilda

New Matilda is sponsoring the Human Rights Act for Australia campaign. New Matilda is an online magazine and policy portal that seeks to promote:

- truth in public life;
- independent political commentary;
- policy based on public good and grounded in values and principles;
- citizen power in decision making.

It believes that the Human Rights Act for Australia campaign is an opportunity to engage citizens in a campaign to improve Australian society and our institutions of government.

The website has encouraged discussion about the need for a Human Rights Act and is hosting its development.

New Matilda is located at [www.newmatilda.com](http://www.newmatilda.com)

## Members of the Campaign Committee

Susan Ryan is the Chair of the Campaign Committee. Susan was Senator for the ACT from 1975-1988. She became the first woman to hold a Cabinet post in a federal Labor Government. She was the prime mover behind the Sex Discrimination Act 1984, which grew out of a Private Member's Bill.

John Menadue AO, Chair of New Matilda, a former Australian Public Servant who was head of three Federal Government Departments, including Immigration and Prime Minister and Cabinet, also a Telstra Director and Chief Executive Officer of Qantas;

Spencer Zifcak is responsible for the drafting of the Bill. He is Associate Professor of law at La Trobe University, a Vice-President of the International Commission of Jurists (Australian Section) and Chair of the Charter Group, a peak human rights organization based in Victoria. He also writes regularly for New Matilda.

Hilary McPhee is a member of the New Matilda Board. She is a former publisher and Chair of the Australia Council. She is a Vice-Chancellor's Fellow at the University of Melbourne.

Dr Michael Henry from the Strategy Shop.

Associate Professor Terri Ann White, author and founder of the Institute of Advanced Studies at the University of Western Australia.

David Solomon, a contributing editor of The Courier Mail, Brisbane, a barrister and an author.

Rod McGuinness, General Manager of New Matilda

Nicholas Carney, former Executive Officer of the campaign and lawyer.

### **More Information**

If you would like to be on our Human Rights Act for Australia mailing list, or if you would like to help us with the campaign, please contact Helen Reynolds, Executive Officer of the Campaign, on (02) 92111635, or at [humanrightsact@newmatilda.com](mailto:humanrightsact@newmatilda.com)

Find us at: [www.humanrightsact.com.au](http://www.humanrightsact.com.au)