

ABSTRACT

2007 Law Week Oration

'Does Australia need a Bill of Rights?'

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Australia has played a central role over the past sixty years in supporting human rights and in encouraging the development of an international system to protect human rights. Australia has done a lot to advance human rights and freedoms over the years. So much so, that in 2000 the Secretary-General of the United Nations identified Australia as a "model member" of the United Nations.

However, Australia's international reputation as a champion of human rights has been tarnished over recent years. There are numerous domestic illustrations of our failure to give the protection of human rights the appropriate priority and emphasis in the development and implementation of public policy. Recent decisions by the High Court concerning immigration, race relations, and indefinite detention for habitual criminal offenders provide clear examples of current deficiencies in the protection of human rights within Australia.

Any debate about the state of human rights within Australia leads inevitably to the question of a national Bill of Rights. The fact that we are one of the only Western countries in the world without a Bill of Rights must certainly raise questions about our true commitment to the human rights standards that we have ostensibly accepted over the years by way of numerous international treaties and conventions. The evident short-comings of Australia's present system of rights protection, many of which have become more apparent in recent years, means that the question of a Bill of Rights is taking on a new urgency.

Recent developments in a number of areas of law have highlighted the ease with which human rights concerns can be side-lined within Australia and have emphasized the pressing need to address this problem through the adoption of a national Bill of Rights. Certainly, a Bill of Rights in itself does not guarantee respect for human rights. There are many examples of gross abuses of human rights occurring within regimes that ostensibly provide their citizens with the protection of a Bill of Rights.

But in a society such as Australia's, a Bill of Rights would not be operating in isolation. It would instead be supported by democratic government, an independent judiciary, an independent press and a culture that values respect for human rights. In such an environment a national Bill of Rights would reinforce our national commitment to respecting human rights, would provide an increased level of entrenched protection for human rights, and would offer individuals a mechanism through which they could defend those rights against government intrusion.

By expressly outlining the minimum human rights standards that governments are required to meet in its dealings with individuals, a Bill of Rights would also assist in improving both government policy making and administrative decision making. It would require governments to view all decisions through a human rights framework and provides a clear standard against which governments can evaluate both proposed legislation and administrative actions. In a more general sense, a Bill of Rights would enhance Australian democracy by promoting a stronger culture of respect for human rights, and being an important educational tool. A Bill of Rights would also reflect the international obligations that Australia has already assumed voluntarily through our signing of human rights treaties such as the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.