

and actual breaches of your rights.

Statutory Bills of Rights in the ACT, Victoria, New Zealand and the UK have led to increased awareness of rights in the public service and government practices.

MYTH 8

Bills of Rights protect the interests of minority groups at the expense of the majority.

No, their aim is the opposite. If they do that, they are not doing their job. They are aimed at ensuring a fair go for everyone, no matter who they are. The Human Rights Bill provides that the rights listed may only be limited by State laws that can be demonstrably justified in a free and democratic society. It sets out the factors to be taken into account in determining this, while specifying a smaller class of rights, such as the right to freedom from torture, slavery, systemic racial discrimination and arbitrary detention that are absolute.

MYTH 9

Bills of Rights endanger the right to religious and cultural freedom because it potentially limits rights to certain activities.

The Human Rights Bill explicitly recognises and protects the right to freedom of religion and belief. It will in no way limit those practising a religion, so long as they do not seek to actively harm the welfare or rights of others.

Indeed, it potentially enhances the right to freedom of belief, by requiring that everyone has the right to practice their beliefs, religious or otherwise, subject only to the principles of an expressly democratic society. Discrimination on the ground of religious or other beliefs is prohibited.

MYTH 10

Bills of Rights disproportionately favour criminals and/or anti-social activities, while victims suffer.

The proposed Bill of Rights aims to advance the democratic principles of fair access to justice for all. If we don't agree with exactly how these principles are working, statutory Bills of Rights enhance our opportunities for debating and advocating for a fair go for everyone.

A society is best measured by how it protects the vulnerable, the needy and the outsider, not how it delivers for the well-entrenched

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10 MYTHS ABOUT A HUMAN RIGHTS BILL FOR NSW

...AND WHY THEY ARE WRONG



MYTH 1

No one needs a Bill of Rights

A Bill of Rights is crucial to gives us all clear, cogent and accessible rights.

Human rights are often stated in vague, unenforceable terms, and are spread piecemeal in a mass of conflicting statutes and common-law principles. This means they represent different things to different people, leading to controversy, ambiguity and uncertainty. We need to clearly spell out just what we expect of the government, and a Human Rights Bill does this.

All States, including NSW, require adequate means for implementing International Human Rights laws which require a State to “respect, protect and fulfil” the human rights of all those within its jurisdiction.

Parliament protects some human rights by legislation but legislation can always be amended or repealed to limit or remove that protection. The common law (which is followed in judicial decision-making) protects some human rights, but parliament can still pass legislation that negates human rights.

Australians have no access to an effective remedy for some human rights violations at a Federal level.

Those whose rights are recognised as most at risk include children, the elderly, those with a mental illness or disability, Aboriginal Australians (particularly those in remote areas), minority religious and ethnic communities, refugees, immigrants, and those in detention. The Human Rights Bill seeks to ensure that everyone has the knowledge and the means to assert their human rights.

MYTH 2

A Bill of Rights is an attack on democracy by enabling courts to interfere with parliamentary sovereignty.

Not true. The Human Rights Bill allows for the opening up of dialogue between the courts, as an independent expert body, the Parliament, and ultimately the people, who are alerted if their rights are in peril. It prevents Parliament from operating in favour of vested interests that do not necessarily represent the public good.

Determinations by courts, that government action is incompatible with human rights, draws the public's attention to such issues, and the opportunity for community agitation for change is enhanced.

MYTH 3

A Bill of Rights means government legislation and policy will be determined by unelected judges.

This is not the case. The Human Rights Bill permits the court to determine that legislation or policy is not compatible with human rights, but this determination does not strike down the offending law. It is up to Parliament to decide whether it wants to change the legislation or policy accordingly.

All the Court is doing is drawing our attention to the incompatibility: a dialogue is thus established between the Court (acting in the interests of guarding our human rights) and the Parliament. The Parliament then has the onus of justifying its actions. The matter becomes one for public debate and resolution according to the principles of democracy.

The Court is an expert independent adviser drawing on the body of expertise and experience accumulated by national and international courts and tribunals.

It is worth noting that since the ACT Human Rights Act was enacted in 2004, the Supreme Court has made only one statement of incompatibility.

In addition the Human Rights Law Centre, points out that '[s]ince its introduction, the Victorian Charter has only been considered in 1.48% of all Victorian reported judgments and substantively considered in 0.58% of all cases (see <http://www.hrlc.org.au/files/Further-HRLC-Submission-to-the-Review-of-the-Victorian-Charter.pdf>).

The major impact of the Charter, like other statutory Bills of Rights, is on legislative and policy decision-making by the public service, pre-empting the need for litigation.

MYTH 4

A Bill of Rights is really designed by lawyers to provide work and make them rich.

This is not the case. In fact, most human rights lawyers work pro bono (for free). It is mainly in the area of commercial law practice that they make large amounts of money.

This myth infers that any lawyer contributing to public debate and reform is totally selfish and incapable of making objectively beneficial contributions to the furtherance of human rights. Dentistry is a clearer path to riches than becoming a human rights lawyer.

MYTH 5

Anyway, by specifying rights, a Bill of Rights limits the rights we have by excluding others.

No, the Human Rights Bill specifically provides that its list of rights is not exhaustive of the rights a person has under either domestic or international law, and does not limit or distract from any rights not specified in the Bill.

MYTH 6

The Human Rights Bill defeats its purpose. By specifying rights, a Bill of Rights ends up narrowing them. It is better to have broad, non-legislative statements of rights that cover a wider field of activity, to which we can aspire.

Not if you want to ensure results. Broad declarations, such as the UDHR, are good for setting standards and have their uses, but we need to go further. Governments aspiring to be good are not enough: the proliferation of declarations of rights that governments around the world fail to honour is testament to this.

To be effective, rights should establish clear, workable obligations that governments can put into effect and that citizens can insist on. The proposed Bill of Rights is a strategic plan to achieve a nominated outcome: the enjoyment of specific, fundamental and important human rights.

MYTH 7

Bills of Rights don't work anyway. Look at breaches of human rights around the world.

A Bills of Rights being abused in another country does not mean it cannot have a positive effect in NSW. The fact that a statement of incompatibility will not necessarily change the government's actions does not mean the Bill won't have the potential to do good. There will be more awareness of human rights within government and the community, and more opportunity to make the government accountable for potential