

**Abridged Submission to  
Standing Committee on Law & Justice,  
NSW Legislative Council,  
From  
Women's Electoral Lobby and Women Into Politics.**

We are pleased to be given the opportunity of making comment on this important matter. However, may we also point out that the gender composition of even this committee further illustrates the need for a Bill of Rights and confirms that Australia makes little attempt to implement CEDAW Articles 4, 7 and 8. (For your information, these refer to equal opportunity and political life).

After noting the terms of reference the submission reads:

The intent of our submission is to ensure that the rights of women and indigenous people are integral to any human rights legislation, which the NSW Governments might enact and that any legislation should consistent with general principles of justice, equity and respect for persons.

Women's Electoral Lobby and Women Into Politics suggest to the Standing Committee that it is not only appropriate and in the public interest to enact a Bill of Rights for New South Wales, but that such legislation is an eminently desirable mechanism to ensure that the rights of women and other disadvantaged and under-represented groups such as indigenous people and other culturally diverse groups are not overridden by governments or individuals.

Any NSW Human Rights legislation law should ensure that any extant legislation and any future legislation complies with it. We are therefore also of the view that a Bill of Rights should be taken into account when judicial officers and others are interpreting or administering the law and that this should be a legislative requirement in order that the courts and others 'construe legislation in a manner compatible with human instruments'. Any new legislation on human rights should specifically maintain the intent and content of Race and Sex Discrimination and equality rights legislation. Women will not be willing to forego their small hard won gains . The legislation should also allow for temporary measures to bring disadvantaged groups to a position of relative equality.

**The State of NSW could and should act on Human Rights.** This was the opinion expressed by The Chief Justice of NSW, James Spigelman, when speaking at a the annual CCL fund-raising breakfast in Sydney on November 23, 1999. As quoted in *Civil Liberty No. 182* - January 2000, he said that "The English Human Rights Act model could be so adopted by a single State. So long as the Commonwealth has not moved to incorporate the convention in Australia, no issue of inconsistency would arise. It is an option which is worthy of consideration." The power to enact a Bill of Rights then is within the State's jurisdiction.

**Australia has a hodgepodge collection of human rights legislation,** mainly non-discrimination/race and sex equality law both Federal and State, complicated by our federal system of government. We do not have guarantees of free speech, freedom of assembly or freedom from arbitrary arrest.

Australia is a party to a number of UN Human Rights conventions but has not always followed the signing with the appropriate domestic either federal or state legislation, or corrective measures. As well the existing legislation allows exemptions to cater for powerful interests such as the churches who are opposed to some aspect of human rights or else exempts 'private' organisations such as political parties from the generality of the federal and the state Acts. Neither the Federal or the State Acts attempt to implement the UN Covenant for the Elimination of All Forms of Discrimination Against Women, Articles 4, 7 and 8, concerning women's participation in public life.

The International human rights instruments to which Australia is a party include:

- International Covenant on Civil and Political Rights 1966 (ICCPR)
- Convention on the elimination of all Forms of Racial Discrimination 1963 (CERD)
- Convention on the Elimination of All Forms of Discrimination Against Women 1979 (CEDAW)
- Convention on the Political Rights of Women 1953
- Convention on the Nationality of Married Women 1957

**Australians and NSW citizens cannot leave protection of Human Rights to the ephemeral or vote catching whims of politicians.** While we now live in a liberal democracy, there is no guarantee that this will continue or that it will not be challenged by individuals, organisations and events. Globalisation may well make the hold on democracy tenuous in the nation state. Hansonism was an attack on liberal democracy. Talk back radio's arch conservatives frequently challenge liberal democratic issues and deride minorities. A current issue is the mandatory sentencing legislation in both the N.T. and W.A., which while on the surface applies to all, in fact directly affects individuals from the vulnerable and disadvantaged indigenous people in those states and which at the same time threatens the cherished tradition in our culture of the independence of judicial officers. Politicians were the perpetrators of this discriminatory legislation. Human Rights legislation would leave the arbitration and interpretation of rights to the independent courts.

Human Rights legislation will inhibit abuse of Human Rights, but will not abolish abuse. However, such legislation gives individuals and organisations access to redress. Individuals are often not part of an organisation and need the assurances that appropriate legislation provides when their rights are abused. Organisations that challenge the power holders also need their rights enshrined in law.

**Equal rights and the means of equal participation are prerequisites of the exercise of equal responsibilities.** Responsibilities and rights are not the same thing but rights bring with them the responsibility to act in accordance with the human rights of others.

Kieren Fitzpatrick, Director, Asia-Pacific Forum of National Human Rights Institutions HREOC, delivered a paper on April 24, 1998 which stated that "a number of professional studies since the late 1980s and early 1990s have indicated that approx. 1.3 million Australians do not have sufficient literacy skills for them to participate fully in the community. Many are in the workforce. Many more want jobs but have little chance of getting them without English language, literacy and numeracy skills. In the schooling system there are studies that have found that 60% of Australian high school children from poor families cannot read or write properly". His argument concerned the

interrelationship between education as a right and freedom of expression. However, these same statistics indicate that educational, economic, social and cultural rights should be enshrined in legislation. Such rights are basic to all citizens exercising social, political and economic responsibilities. To demand the exercise of ill-defined responsibilities from disadvantaged persons and groups may well be to further their disadvantage.

**Australians are loud critics of the human rights records of other nations.** Our politicians and our diplomats go bruited about human rights while not doing enough to ensure human rights in our country. When Australia is criticised by Amnesty International or the UN for apparent violations of human rights, our spokespeople all too often mount the tyrant's defense: that it is an internal matter. An NSW Bill of Rights might go some way to restoring Australia's credibility in the human rights debates both at home and abroad and begin the process of bringing Australia into line with international expectations.

'The structure of the legal systems in the United Kingdom, New Zealand, Hong Kong, Tanzania and Canada are all based on the British common law model and all these countries except the United Kingdom have instituted written Bills of Rights. The Philippines also has a written Bill of Rights, although their political history is marked by diversity and change. Written Bills of Rights exist in most countries in Europe' (p16 *Talking Rights: a Bill of Rights for Australians?* produced by the New South Wales Council for Civil Liberties, the Legal Aid Commission and the Victorian Council for Civil Liberties). The UK now has a Bill of Rights under consideration.

**New South Wales should pioneer state based human rights legislation in Australia.** South Australia and New South Wales pioneered anti-discrimination legislation in the mid 1970s. New South Wales could and should pioneer the implementation of Australia's obligations under the various United Nations instruments. Other State and the Federal Governments might be influenced to follow, as they were after the introduction of the state based race and sex discrimination law.

In conclusion, the Women's Electoral Lobby and Women Into Politics strongly urge the Standing Committee on Law and Justice to present a report which supports the introduction of a Bill of Rights for New South Wales, designed to enshrine human rights for all citizens of this State, including and expressly the rights of women and other disadvantaged groups.