

Putting a bill of rights on the agenda

TWO YEARS ago, an Amnesty International survey revealed Australians' ignorance. Sixty-one per cent of people mistakenly believed Australia had a charter or bill of rights that protected their civil liberties.

Australia is the only democratic nation in the world that does not have such an instrument. However, that might soon change.

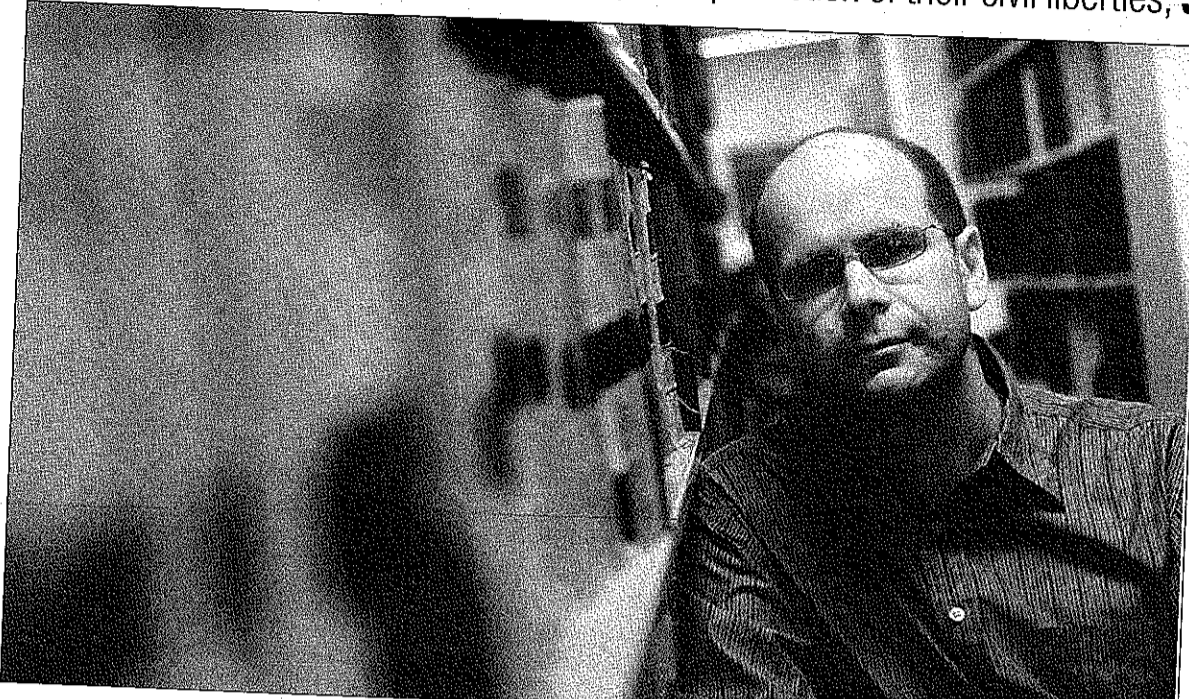
It is understood the Attorney-General, Robert McClelland, will announce a consultation process on an Australian bill of rights on Wednesday. The date is significant as it is international Human Rights Day and the 60th anniversary of the Universal Declaration of Human Rights. This charter, thought to be the most translated document in the world, was developed in an attempt to ensure the human rights violations committed during World War II never happened again.

It recognises that the little girl stricken with cholera in Zimbabwe has the same inherent rights as the most powerful individual on the planet; that "all human beings are born free and equal in dignity and rights". Its themes of fairness, non-discrimination and justice rise above culture and tradition.

Australia was one of the eight nations that drafted the Universal Declaration in 1948. However, its 30 articles have never been enshrined in Australian law.

Professor of law at the University of NSW and visiting fellow at ANU, George Williams, chaired the inquiry that led to the Victorian

Australians are largely unaware that they lack protection of their civil liberties, **JENNA HAND** writes



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- George Williams, left, professor of law at the University of New South Wales and visiting fellow at ANU

Charter of Human Rights and Responsibilities 2006. He believes Australia's lack of human rights protection is problematic.

"We've been great at recognising and protecting other people's rights [elsewhere in the world] but we're unique in the democratic world of not protecting our own people's rights," he says.

"Australians take it for granted that their rights are protected. It means the Government can get

away with not actually protecting people's rights. When it really hits people is when they do need their rights protected and they find out it doesn't exist."

The president of Australian Lawyers for Human Rights, Susan Harris Rimmer, says a human rights act is needed to protect vulnerable members of society who are not able to advocate for their own interests. "When the Government is about to make a

new law, the last thing on their mind is how it's going to affect some marginalised individual," she says.

Williams cites Australia's policy of detaining all asylum seekers as an example of law that should not have passed had we had a charter of rights. Adults and children were locked in prison-like detention centres, sometimes for years. Many suffered depression, post-traumatic stress disorder, anxiety

asked to pass the same legislation.

"At the time the ACT was the only one with a human rights Act and it made some small but important changes to that legislation," she says. "The fact that the ACT had a human rights Act meant it had to do a bit of thinking. Before they tabled the legislation they had to have a human rights compatibility statement done and it influenced what they thought. The legislation still got passed but the really rough edges were taken off... MLAs realised it was hard to justify detaining people and not letting their families know, or detaining children."

Notable opponents of a bill of rights include former premier of NSW Bob Carr, former Liberal MLA Bill Stefaniak, Archbishop of Sydney George Pell and Opposition Leader Malcolm Turnbull.

Commonly cited arguments are that it would create a culture of litigation, transfer power from elected representatives to judges, and, if constitutionally entrenched, eventually become a fossilised, outdated piece of legislation.

Williams and Harris Rimmer support a human rights Act that could be altered by Parliament - similar to the ACT Human Rights Act 2004 - but are opposed to a constitutionally embedded document that could only be changed through a referendum.

Harris Rimmer describes it as a "risk-management tool".

"The idea is when the executive comes up with a new policy or piece of legislation, there is a human rights compatibility statement done beforehand, before it gets anywhere. If there is a big human rights issue, you figure it out up front."

Williams rejects the argument that having a bill of rights would mean more litigation. "In the United Kingdom, the increase in litigation was less than half of 1 per cent. It's so small as to be almost statistically insignificant. That's because this isn't a court-centred model.

"Where you will find big increases is in properly debating things in Parliament."

The Government is expected to undertake a six-month consultation process starting early next year.

We might see the format of an Australian human rights charter in the second half of 2009. Until then, though, get ready for a heated debate.

When the Government is about to make a new law, the last thing on their mind is how it's going to affect some marginalised individual. This is a way of making sure those people get a chance to have their issues talked about. It's not perfect, but it would be more democratic than the system we have now

- Susan Harris Rimmer (right), president of Australian Lawyers for Human Rights



and nightmares. Only in 2005, after a damning report from the Human Rights and Equal Opportunity Commission and strong community pressure did the Government cease detaining children.

Had human rights been considered as the law was being drafted, much harm could have been avoided.

The same was true in the Northern Territory. Mandatory sentencing laws introduced in 1997 stipulated punishments for minor property offences - 14 days imprisonment for the first "strike", 90 days for the second and 12 months for the third. In one case, a 21-year-old Aboriginal man was sentenced to a year in jail for the theft of cordial and biscuits worth \$23. The UN Committee on the Elimination of Racial Discrimination found the law to have a "racially discriminatory impact" and it was repealed in 2001.

More recently, Harris Rimmer says the Anti-Terrorism Bill (No 2) 2005 eroded Australians' human rights. It increased police powers to question and search people, introduced new sedition offences, control orders and preventative detention laws which forbade detained people from informing their family of their whereabouts. Each state and territory was

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