



post thumbnail

Legal Rights Persistently Undermined By Parliament

Publish Date:

February 2017

Legal right	Breaches at end of 2015	Breaches added in 2016	Breaches repealed
Burden of proof	47	2	0
Natural justice	94	2	2
Right to silence	33	10	0
Privilege against self-incrimination	116	7	2
TOTAL	290	21	4

The IPA's latest report, the *Legal Rights Audit 2016*, was today featured in the legal affairs section of [The Australian](#) (\$):

An audit of federal legislation has found that the erosion of fundamental rights by the nation's politicians shows no sign of ending despite the expenditure of millions of dollars on publicly funded human rights agencies.

... "The extent to which legal rights are being eroded poses a significant threat to the rule of law in Australia," the audit says.

... The growing erosion of legal rights is outlined in a report that calls for the repeal of all breaches of fundamental rights and urges politicians to show greater respect for the rule of law by refusing to pass bills that breach fundamental rights. "The research we have conducted shows the critical state of fundamental legal rights in Australia," said Simon Breheny, the IPA's director of policy who co-authored the report with Morgan Begg.

"It is of deep concern that the problem Australia faces when it comes to fundamental rights is getting worse and it does not seem as though there is any end in sight."



... The report says fundamental legal rights are necessary to achieve justice within the legal system and act as a vital constraint on the coercive power of the state. On the burden of proof, it says difficulties experienced by prosecutors in proving the elements of an offence or civil remedy are an insufficient justification for reversing this right.

Mr Breheny said it was disappointing that nothing practical had been done to reverse the erosion of rights — despite an inquiry by the Australian Law Reform Commission and statements by Attorney-General George Brandis.

“It is deeply concerning that we have the apparatus of the state — in the form of the Australian Human Rights Commission — actually championing legal rights abuses rather than recommending changes to the law that would protect our fundamental freedoms,” he said.

“The best example of this is that the Human Rights Commission is basically set up to enforce anti-discrimination law rather than defending our fundamental freedoms.”

This could be seen from the fact that the Human Rights Commission strongly supports “speech-restricting provisions” such as section 18C of the Racial Discrimination Act. That provision makes it unlawful to offend, insult, humiliate or intimidate people because of their race, colour or national origin.

Mr Breheny noted that the Human Rights Commission also favoured a proposal from the previous federal Labor government that would have reversed the burden of proof in human rights and anti-discrimination law.

“That is just unforgivable, particularly when the problem, as our research has shown, is as significant as it is,” he said.

You can see the [charts from the article here](#), and read the [whole article here](#) (\$).