
Lawyers, social justice & public interest

*In the context of national change,
Julian Disney provides a checklist of many areas
ripe for the attention of public interest advocates.*

JULIAN DISNEY

It is a great pleasure to be here among fellow obsessives. (Only obsessives would be here on Saturday morning on a long weekend.) It is also a great pleasure to be among so many people who have achieved so much, and from whom I have received a great deal of stimulation and encouragement as we have worked together on different issues over the years. A great deal has been achieved by the public interest movement. I think we all know how much more remains to be done, but past successes give good ground for believing that we can continue to achieve important victories in the unending fight for social justice.

I shall suggest some matters which I think are of national significance but that have perhaps had less attention from the broad public interest movement than some other issues which may be of lesser (or at least no greater) importance. My selection of issues emphasises fundamental underlying causes of problems, and areas where we can take long-term preventive measures, in addition to shorter-term compensatory or rehabilitative responses. Both approaches – the short-term attempt to alleviate and the longer-term attempt to prevent – are very important. In fact, it is often desirable to be involved in each of these types of approach, because work in one of them commonly benefits from work in the other.

Some matters of context

I begin by emphasising three important aspects of the current Australian context.

The first is internationalisation of our economy and of other aspects of our community. Economic deregulation and rapidly developing technology have made us much more economically inter-dependent on other countries than we were even ten years ago; developments in the media and continued high levels of immigration have also meant that we are much more inter-connected socially with other countries. However, the extent to which this internationalisation is a recent phenomenon should not be exaggerated. It may be that now we are just changing from being part of the British Commonwealth to being part of the Asia-Pacific region.

The second part of the national context is that we are in a prolonged recession, with very high levels of unemployment which will be with us for at least the rest of this decade. In addition to the million or so people who are registered as unemployed, there are another one and half million or so people who are dependent on those unemployed people, who are unemployed although not officially recorded as such, or who are gravely under-employed.

The most crucial and depressing statistic is in relation to long-term unemployment. We will almost certainly have a half a million long-term unemployed (people who have been unemployed for more than 12 months) within a couple of years from now; there is not much chance of that figure dropping below 300,000 over the next five or six years. Twenty years ago, when the Henderson Inquiry into Poverty was conducted, long-term unemployment

was defined as six weeks or more, and there were only 3000 people who had been unemployed for 12 months or more. That starkly demonstrates the level of the deterioration over the past 20 years.

To give you some sense of perspective, only three years ago there were about 120,000 long-term unemployed people. The number has trebled already and it will almost certainly have quadrupled in another one or two years' time.

A third and related aspect of the national context is the growing divide between, to put it a little colloquially, the 'haves' and the 'have nots'. In particular, there is a growing divide between those people who have secure employment and housing and those who do not.

The factors which have aggravated the divide include the great increase in house prices, which even recent moderation has not undone. People who are in the housing market, or whose parents were in the housing market, have increasingly been able to get into a privileged position where they go further and further ahead from those who have not had that privilege.

One of the most profound social changes has been the increasing divide between the 'no job' and the 'two job' families. As the recession has taken effect, the loss of jobs has been much more severe among those families which previously had one job, rather than those which had two or more. There has also been growing wage inequality over that time, and this will become much

more profound under enterprise bargaining.

Against this background, let me turn to some areas that I think merit extra attention from the public interest movement.

Employment

Basic levels of unemployment benefits are in many cases below the poverty line. Moreover, the rules about eligibility for unemployment benefit are so vague that even if claimants had the resources to enforce the rules there would still be scope for almost uncontrolled government discretion. There is no realistic access in most cases to independent advice about unemployment entitlements. The extent to which unemployed people are really outside mainstream society and outside the legal system becomes clear if you contrast their position with that of more privileged members of the community who can get advice readily on things which are of relatively trivial significance.

Australia spends much less than most other developed countries on training and 'work experience' programs to help unemployed people. Savage income tests on social security benefits mean that unemployed people face a very high 'withdrawal rate': they lose as much from their social security payments as they gain from their wages. When there are so few opportunities for permanent full-time work, we need to be more encouraging towards part-time or short-term work. A number of current industrial awards or agreements unduly restrict the supply of that sort of work.

Another important concern is the new industrial relations regime of enterprise bargaining. There is a great danger that the union movement will continue working more effectively for those workers who are already privileged, but workers with less industrial strength (whether unionised or not) will be more at the mercy of exploitation.

The last point in relation to employment concerns the relationship between work and family responsibilities. We need to give greater attention to striking a balance between work on the one hand and parenting or other caring responsibilities on the other. The International Labour Organisation has a convention which contains a number of useful requirements in relation to work and family responsibilities. This convention

could be a fruitful area for attention by public interest advocates, to bring pressure to bear on employers who do not adequately respect the other responsibilities of their workers.

Taxation

Many people regard taxation as either a terminally boring subject or something that is merely to do with how much money is deducted before you see your wages or salary. Most public discussion about tax (except when the GST has dominated) tends to concentrate on personal income tax rates. Yet other aspects of the tax system have a profound impact on social justice, individual freedom and economic development.

A general problem is that our tax system does not raise much money. Australia is now the lowest taxing country in the OECD. We could increase our overall revenue by 50% and still be below the average of developed countries. While many public interest advocates spend vast amounts of time advocating to obtain relatively small amounts of public money for particular purposes, there is a desperate shortage of people fighting for policies which will increase the overall size of the public purse. Much more energy needs to be devoted to these macro-economic, macro-budgetary issues.

Major problems arise from the fact that the 'family home' is exempt from almost all forms of tax, particularly capital gains tax and land tax, and from the pension assets test. This causes profound economic and social damage. It is also anti-home ownership over the longer term. The most damaging impact of this 'favoured' treatment of housing is to divert an excessive share of national resources away from the kinds of trading activities which we need to assist with our balance of payments.

Another area for major tax reform is superannuation. It is a grossly unfair system in its present form. In effect, it provides 'upside-down' welfare with huge amounts of assistance through tax concessions for high-income people and little or nothing for low-income people. It costs the public purse more than it saves and it is very intrusive in people's personal choices: a person can save for retirement and have a very generous form of tax concession, but cannot save for early needs in life such as partial withdrawal from paid work (perhaps to

parent or retrain) without being taxed too heavily.*

Urban and regional development

A third area for the public interest is urban and regional development. We have an unusual distribution of population in Australia. We are about the most urbanised country in the world in terms of the number that live in cities, while a very small proportion of our population lives in middle-sized cities or towns.

A high national priority should be to strengthen the number of substantial provincial cities that we have in Australia and to stop the relentless sprawl of the two largest cities. This may sound too interventionist, but if we removed some of the main distortions in the tax system and in the way we charge for infrastructure like sewerage, water and other facilities on the urban fringes, many of those urban fringe suburbs would not exist.

People who live in the urban fringe suburbs must not be neglected: some of the greatest hardship in Australia is in those areas, and they should be a very high priority. An equally high priority, however, should be to remove the distortions which have aggravated the urban sprawl, and to encourage regional development, particularly towards northern parts of Australia.

There are a variety of ways in which this can be done. One of the most important is to strengthen the regional institutions and other forums for interaction which enable a degree of regional consciousness and regional thinking to develop. We also need a longer-term approach by governments towards the provision of community services. In the short term it may cost more to provide services in some of the provincial cities; in the longer term it will avoid some of the growing economic and social inefficiency of the larger cities.

Asia

Engagement with Asia in both economic and social realms should be as high a national priority as any, if not the highest.

The only really bright spot on our economic horizon is that we are next to the major growth areas in the world.

*On this point see also the article by Gig Moon on p.24 - Ed.

Distance is of enormous importance to patterns of economic and social development. We must rapidly increase our degree of engagement with Asia. All community organisations should be thinking how they can do this, because we need engagement to range across the whole community, not just a relatively elite sector.

We need to work with other countries to strengthen regional and global institutions which can regulate, in the public interest, the multi-national businesses and other forces which are currently immune from such constraints.

Access to information

When we introduce new services in the non-government or government sectors we often do so in a way which is effectively inaccessible to those people who are most in need of them. The worst forms of disadvantage are caused or perpetuated by lack of access to timely and comprehensible information.

Drafting needs to be done by someone who is outside the system, and then checked by an insider to make sure it is not seriously inaccurate.

We need to make more use of modern technology. Videos, in particular, have some special advantages by comparison with some other means of communication: they can be used 'anonymously'; they can be self-paced and, by comparison with audio or written material, they are likely to be more effective in communicating how to do some things (for example how to fill in a form).

Access to justice

The current rigidity of the division between barristers and solicitors is deeply damaging. The Bar's prohibition on partnerships and on employment of barristers by other barristers greatly restricts the number of people who are likely to be able to work as a barrister, and particularly impacts adversely on women.

However, in abandoning the current division or even in keeping the status quo, there is the danger of a much worse form of structural rigidity within the profession. To give professional associations de facto control over the numbers who enter their sector of the profession, and over the criteria for designated success within specialisation, is very dangerous.

Another important issue is the role of non-lawyers in the regulation of the profession and in delivering legal services. It is clear that legal services are increasingly going to be delivered by a wide range of people; lawyers will not continue to have the extensive monopoly over legal services that they have enjoyed for so long. Some non-lawyers may do a better job in some areas than lawyers because they may have had more specific experience or education in the area in question, and also may bring with them special qualities or values.

The Legal Profession Advisory Council, which was legislated for in New South Wales some years ago but has not yet been set up, could be an important body through which non-lawyers would have some impact on the way in which the profession operates. It should be established urgently and with strong, independent members.

On methods of dispute resolution I note that the impact of the High Court's decision in *Mabo* may be seen as a vindication of the role of courts in society.

However it took ten years to get to that decision, including an enormous amount of voluntary work and financial support from lawyers involved in the individual case. *Mabo*, in itself, should not be seen as a victory by, or a vindication of, the general court system. Quite the reverse – in many ways it emphasises the need for much greater use of alternative dispute resolution. Incidentally, it is rather striking that it seems to be only when judges retire that they feel able to start using the methods which they regard as best suited to resolving many disputes.

We need to improve our systems for administrative review, especially at the State level. There are still very few States which have any form of significant administrative review, and the Commonwealth Administrative Appeals Tribunal, despite some recent improvements, is an unduly traditionalist body. There is still much scope for improving the access to forms of review for challenging government decisions.

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