



A 'FRAGMENTED AND INCOMPLETE' PATCHWORK OF HUMAN RIGHTS

Australia is one of the few developed economies in the world to have avoided a recession following the 'global financial crisis'. After a substantial injection of government spending, projected significant declines in employment are being wound back and improved prospects for economic growth are being trumpeted. This has led to a strange sense of complacency in national political life, as we emerge from the GFC and return to a state of 'normality'. This is manifested in numerous ways, including the complete inability of the political class to address the risks posed by climate change with anything like the seriousness they deserve, the continued national obsession with property prices and interest rates, and the marginalisation of important social justice issues.

In September 2009 the National Human Rights Consultation Committee, chaired by Father Frank Brennan, presented its report to the federal Attorney-General. In a passage which succinctly highlights the strange state of blissful ignorance prevailing in Australia in 2009, the Committee states that:

[M]ost people think their human rights are adequately protected. But it also revealed that most people have little knowledge of how those rights are protected; they tend to assume that, because they have never felt their rights to be threatened or violated, the rights must be protected under the law.

At the same time, there is general recognition that there are some people who 'fall through the cracks' and are in need of greater protection. After listening to the stories of those people and reading hundreds of submissions detailing the shortcomings of the current system, the Committee concluded that there is a patchwork of human rights protection in Australia. The patchwork is fragmented and incomplete, and its inadequacies are felt most keenly by the marginalised and the vulnerable.

Australia has agreed to 'respect, protect and fulfil' a range of human rights at the international level, but the current legal and institutional framework falls short of this commitment.

This issue of the Journal engages with aspects of the 'fragmented and incomplete patchwork' identified by the National Human Rights Committee Report, critiquing current practices and providing constructive suggestions for reform. Each article addresses important questions about 'rights' and the role played by the State in their recognition and enforcement.

Internationally, does Australia possess the necessary characteristics to be a flag-bearer of human rights and, if so, how can this be most effectively realised?

Domestically, the prospect of moving towards a legislative basis for human rights is challenged at every level. Evidence abounds of an inability to transcend, in a meaningful way, the colonial foundations of this country.

Existing institutional mechanisms for enforcing rights, including discrimination tribunals and access to legal aid services, do not work nearly as well as they could. In the realm of civil liberties,

concerns are raised by the encroachment of preventative tools such as 'control orders' and police agencies exercising wide-ranging powers under terrorism legislation. Even allowing for the passing into history of 'the war on terror', the fog of politically justified curtailment of individual liberties continues to hang low.

The examination of different aspects of human rights in this issue presents a stark reminder of the significant work to be done in addressing the position of the 'marginalised and the vulnerable' in our community. Despite the apparent ambivalence of mainstream Australia as to whether specific human rights legislation is required, there remains a very real concern that citizens can be, and are, subsumed into a vacuum where the laws fail. This is regularly demonstrated through the eternal problem of homelessness in our society, media portrayals of certain minority groups, such as boat people, bikies, terrorists or paedophiles. Public perception of these groups is that they are undeserving of basic human rights laws, because of their behaviour.

This misses the basic presumption of human rights: everyone, no matter what they've done, or where they've come from, is entitled to equitable treatment before the law. And when the laws themselves fail to ensure this occurs, the result is complacency in the face of neglect.

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