

Government gives human rights a low priority

Opinion, by Centre Director, Professor Sarah Joseph

The Federal Government's formal response to the National Human Rights Consultation Committee's Report contains welcome initiatives focused on reaffirmation, education, engagement, protection, and respect for human rights. However, a key word is missing from that list: accountability. In that regard, it is utterly regrettable that the government has chosen to reject the Committee's cornerstone recommendation that it introduce a federal human rights charter. Australia will therefore continue to stand alone as the only Western democracy without comprehensive legal protection of human rights.

The government's initiatives are largely focused on "catching" human rights problems at the beginning of the legislative process, and instilling a governmental culture which respects human rights. The former is to be achieved via stronger legislative scrutiny of legislation with regard to its human rights compatibility, and the latter is to be achieved by education and training. These are all worthy initiatives, but nothing has been done to strengthen external accountability mechanisms if human rights abuses should actually arise. Indeed, the modest suggestion that the substantive powers of the Australian Human Rights Commission be enhanced (eg by way of the inclusion of more human rights treaties such as the ICESCR within the formal scope of its powers) was not even taken up. The safety nets at the beginning of the legal process provide no remedy with regard to the application of legislation at the other end of the process.

And such abuses will inevitably occur, despite the government's assurances that Australia is really doing quite well in the human rights arena. In the questions which followed the Attorney General's announcement, Mr McClelland was asked whether the many vulnerable Australians, such as the homeless and Indigenous peoples, would agree with him. McClelland's answer was odd. He responded that many of the people who disparage Australia's human rights record are those who do not suffer from any such abuse. Of what relevance is that statement? Was he implying that the said vulnerable peoples are really quite happy with Australia's human rights record, and that their voices are being usurped by out-of-touch "elites"? After all, demonization of so-called "elites" was a favourite pastime of the anti-Charter

lobby (ironic, given that their ranks included undoubted elites such as a former NSW Premier and our immediate past Prime Minister). Most worrying, the Attorney-General seemed to be ignoring the many tales of human rights abuse on a personal scale which were presented before the Committee.

The "Charter of rights" debate has thrown up some familiar furbies. Most common was the argument that a Charter would transfer too much power to unelected judges. This argument seems to imply that an "unelected" judge is a bad thing. Yet the unelected nature of our judiciary is a strength: a judge cannot be independent and impartial if he or she is elected. In any case, under the Committee's proposed Charter, Parliament was always going to retain the final say over human rights matters. It could have reversed interpretations that it did not like, and could have ignored a judicial declaration that a law was incompatible with human rights.

The huge majority of the people who contributed to or were surveyed during the National Human Rights Consultation favoured the enactment of a human rights charter. In fact, the level of response to the Consultation was the largest in Australia's history. So what, one wonders, has caused the government to reject the key recommendation arising from that Consultation? After all, the arguments against charters of rights are not new – the government would have been aware of them prior to establishing the Consultation process. The Attorney General merely stated that a Charter would "divide the community" with little elaboration. But the decision not to enact a Charter has disappointed many in the community. The Attorney General implicitly indicates that the views of those against are more important than the views of those in favour.

Alas, the government's response, as well as other recent acts such as the suspension of asylum applications from Afghanistan and Sri Lanka, and its pursuance of internet censorship, indicates that human rights have been given a very low priority during this election year. In largely retaining the "safe" status quo, the government has chosen to deny to Australians rights of redress when their human rights are abused. The human rights framework will apparently not be reviewed until 2014, an attempt (hopefully unsuccessful) to banish the issue from the next parliamentary term.

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