

## **Speech to celebrate Human Rights Day 2001 – the tenth anniversary of the implementation of the Anti-Discrimination Act (Qld)**

Today we celebrate 10 years of the enforcement of human rights under the state Anti-Discrimination Act in Queensland. I'll try to resist the powerful urge to reminisce about the fascinating cases I was fortunate to hear or the extraordinary and often courageous people I met during my time as a member and president of the Anti-Discrimination Tribunal.

The questions I would like to pose on this auspicious occasion are: Where were we then, where have we come to and where are we going? Ten years ago we embarked together on a great journey with boundless optimism. Queensland was almost the last state to get its own Anti-Discrimination Act and while that meant that many wrongs had gone unrecognised, the positive side of it was that we had a more comprehensive and more simply expressed piece of legislation than anywhere else in Australia. Within the past year, I have been fortunate enough to visit South Africa twice to speak to judges about the implementation of their Equality Act. Compared to that Act, for example, the Queensland Act is still a model of clarity and comprehensiveness.

Ten years ago, it appeared to me that we embraced the principles set out in the Anti-Discrimination Act as a society which prided itself on being inclusive and tolerant. In spite of the occasional set-back and the often unthinking or deliberate discrimination that the Act uncovered, I have always been bolstered by the belief that, as a nation, we were made up of inclusive, tolerant and democratic people. In my less optimistic moments these days, I am not so sure of that.

And yet Australia has continued to develop and change with no great cracks showing in our social cohesion. We have become a very diverse nation, while retaining our core values. In 1999/2000, more than 92,000 people moved to Australia to reside here permanently. The largest proportion of these, some 33%, were from Asian countries. We have become more urbanised people which means we are more exposed to living side by side with people with different cultures and traditions.

Men and women now live much longer than we did 100 years ago. The average life expectancy of a woman in the last 100 years has changed from 55 to 81 years and for men, from 51 to 76 years. Reduced infant mortality

rates and more people living longer, generally means more people likely to be living with disability.

Patterns of marriage and parenting have changed. Almost one in three babies are now born to parents who are not married to each other, whereas 100 years ago only 6% of births were ex nuptial. In the 1970s, only half of those babies had their paternity acknowledged. Now, almost all of them do. Reproductive technology has changed our expectations of who can bear children and in what circumstances. Being gay or lesbian no longer means giving up the capacity to reproduce, although it would appear that the right to do so is still the subject of debate.

The level of identification with Christianity in Australia has dropped usually because of a lack of identification with any religion. But Australia, like the rest of the Western World, now has to come to terms with its lack of historical understanding of Islam and the aspirations and history of the Muslim people. We also have to debate whether or not human rights are indeed universal as recognised by the United Nations or a Western construct, as argued by some conservative forces.

Recently, the debate in the indigenous communities has shifted to include reference not only to the necessity to recognise and give full effect to rights, but also to have an open debate about responsibilities and the disastrous social effects of passive welfare and substance abuse on Aboriginal communities.

We are generally more highly educated than 35 years ago when I left school. With increasing education, comes greater awareness of rights and the ability to articulate and advocate for those rights.

All of these changes are likely to affect the nature of complaints made to the Commission in the future, with a growing emphasis on age, race and disability discrimination as well as discrimination on the basis of religion, national origin or sexuality. Unfortunately, the present extremely high percentage of sexual harassment claims in Queensland, shows how far we have yet to go in the most basic of human rights.

What is the way forward for the recognition and enforcement of human rights? It is, no doubt, time to review and reconsider the Anti-Discrimination Act. In particular need of review, arguably, are

discrimination on the ground of lawful sexual activity, transgender issues and workplace bullying, which does not amount to sexual harassment. Sexual harassment is just one particularly nasty form of workplace bullying. Consideration may also need to be given to social and economic rights, a topic not yet tackled in Australia.

Is there another step we can take to ensure the protection of human rights? There seems little doubt in my mind, that the most effective way forward in enforcing human rights is through a debate about the introduction of a legislative Bill of Rights. Some of the arguments in favour are obvious. The relatively ready acceptance of the recognition and enforcement of rights under the Anti-Discrimination Act, makes it a good model for a Bill of Rights. The advantages of such a bill being in legislation rather than entrenched, is the ease with which it could be introduced and subsequently adjusted to meet changing needs and expectations. The most significant advantage, in terms of the health of our polity, is that a legislated Bill of Rights does not transfer matters of social, moral and political policy from the legislature, where it belongs, to the courts, where most believe does not belong. It would allow each arm of government to perform its proper role of guarding the rights of citizens under the law.

The debate is one which ought to engage citizens interested in the enhancement of human rights. In the end, of course, the decision on whether we should have such legislation is one for the Parliaments of the nation.

So where have we come to and where are we going? Elizabeth Evatt<sup>1</sup> wrote recently:

“Australia has a good human rights record. It has a strong and stable democracy, based on respect for the rule of law.”

But in my view we can and should do better. While we can be very proud of what we have achieved over the last ten years, we must engage in open debate about how to do better.

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<sup>1</sup> “*Australia’s Performance in Human Rights*” (2001) 26 *Alternative Law Journal* 11 at 15.