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A Human Rights Act for Australia: the people's campaign

If there is anything this country is crying out for, in relation to Human Rights protections it is political leadership. We simply don't see it on the national stage.

The Howard government is totally dismissive of human rights abuses, even or especially those created by its own laws and policies. The Opposition has not yet come to grasp what it is there for. Leadership on Human Rights would be a fine way out of its current quagmire, but sadly, it is otherwise occupied.

The campaign I am involved with, the *new matilda* campaign for a Human Rights act for Australia, has no official support.

It is a people's campaign, a community campaign.

It sprang out of the community's disgust with government actions against the vulnerable, and is now supported by a growing number of Australians all over the country.

Today, I hope we will attract more active participation this audience.

This campaign started in response to the concerns of the readers of *New Matilda*.

New Matilda is an independent online weekly magazine, devoted to truth and accountability in government, better public policy and participatory democracy. It is less than two years old and has a growing subscriber base of several thousand.

As soon as *New Matilda* started up, contributors and readers repeatedly expressed disgust and amazement at the practices in detention centres, the desperate plight of adults and children seeking our assistance, and other daily acts of government that flew in the face of international treaties on human rights.

Readers were aware of the major international conventions on human rights, and knew Australian governments over the years had ratified these instruments, yet government was behaving daily in complete contravention of these obligations. How could it be the case that the repugnant acts of government and its agencies were actually legal?

Australia had indeed signed and ratified international rights treaties, including the International Covenant on Civil and Political rights 1980, and the International Covenant on Economic Social and Cultural rights in 1976. But without embodiment in national legislation, these obligations, despite their moral force, have no force in law. The question was posed, if all this is legal, what could we do about it?

The answer was, to change the law.

In 2006, this is hardly a radical objective. Australia is the only western nation without constitutional or statutory protection of the rights of citizens. UK, New Zealand Canada have such protections and the ACT government has legislated a Human Rights Act for its citizens .The Government of Victoria is now committed to a Charter of Human Rights and Responsibilities. The Attorney General of Tasmania has announced an investigation into how Tasmanian human rights could be protected in law. We who are campaigning for a federal Act welcome these state and territory laws. They give essential protection against potential abuse of State government powers.

For those international conventions protecting our traditional rights to have full legal force here however we need a national act that embodies them.

We asked ourselves how in the current political climate how we could pursue such an act.

The Howard government is not only inactive here, but a determined ideological opponent and itself a persistent violator of human rights.

You may have noticed that Prime Minister John Howard in his Australia Day address took the opportunity to tell us that we did not need a human rights act in Australia. His remarks were not merely dismissive. They were seriously misleading. He chose, deliberately I assume, to repeat quite a few common misconceptions, and to make negative claims about the effects of such laws claims that are readily contradicted by the experience of those societies that now have the protection of legislation such as we are proposing

Look at his reasons for dismissing outright legal protection of our rights First he suggests that legal protection of human rights would damage our democracy:

politicians are elected to make decisions on behalf of the community... To draw these decisions away from the legislature and the executive and to

invest them in the hands of the judiciary would irrevocably change our society.

Perhaps. One might take issue with his apparently unqualified acceptance of the current performance of the parliament and the executive on human rights.

One might point for example to the recent record of the parliament on mandatory detention, or the new anti terror legislation with its intolerable Sedition provisions, and then to the performance of the executive in regard to asylum seekers, to Cornelia Rau, Vivien Solon Alvarez, or the stateless detainee Al Kateb, and wonder if you can accept the Prime Minister's complacency.

That however is another debate. Howard's reference to a transfer of powers from the legislature to judges is irrelevant to our proposal.

The *NM* draft bill establishes a new additional system of review which does include the courts, but it leaves the decision about what to do when human rights violations are found by the courts, to the parliament.

We are simply not proposing any transfer of powers. His warning is irrelevant.

The Prime Minister went on to accuse us of naivety, or worse, hypocrisy
History is replete with examples of where grand charters and lyric phrases have failed to protect the basic rights and freedoms of a nation's citizens

Maybe he could provide us with examples of such futile lyric phrases, but not in contemporary Western democracies, all of which except Australia now have legislative or constitutional protections of human rights in place, and all of which can demonstrate the practical benefit to citizens of these laws.

The Prime Minister need only consult his friend and Coalition of the Willing partner, UK Prime Minister Tony Blair to discover how a modern Human Rights Act, the British enacted theirs in 1998, does work in the interests of citizens, without pumping up unelected judges or clogging up the courts.

His other dismissals can be summed up in one word- complacency.

The Opposition, despite the great history of Labor governments supporting and acting on UN conventions is disappointingly silent.

The Chifley Government took part in the drafting of the Universal Declaration of Human Rights, 1948 with its delegates Bert Evatt and Jesse Street making major contributions.

The Whitlam government in recognition of international as well as national obligations enacted the Racial Discrimination Act 1975.

The Hawke government, as one of its first actions, ratified the Convention on the Elimination of all forms of Discrimination against Women, and on this basis enacted the wide ranging and continuously effective Sex Discrimination Act 1984.

Kim Beasley, Kevin Rudd, Julia Gillard and all other leadership aspirants, where are you in this tradition? Time to get moving. We are waiting...

No, we are not waiting. We are campaigning. Despite the intransigence of the government, and the passivity of the Opposition, there is a way forward.

Inspired by the readers of *Newmatilda* we formed a small committee and prepared a draft bill that embodies all major civil and political rights, and economic and cultural rights set out in the UN conventions.

We have published this draft bill, seeking public input and comment, on newmatilda.com and held public forums throughout Australia.

We have had discussions with dozens of community, ethnic, civil liberties and church groups, and even some members of parliament.

Why did we prepare a draft bill and publish it in this way?

We wanted to get a genuine community debate going, to help educate the community about rights and to highlight for parliament what could and should be done.

We were convinced that it would be much more practical and fruitful to debate human rights law with an actual bill out there for consideration than trying to discuss these matters in abstract.

Our open and consultative approach is working. Citizens welcome the chance to consider and comment. They find this a welcome contrast to the way they are treated under the Howard administration.

Our draft bill does not do anything new or untried.

It defines human rights as those set out in the major international conventions. It covers traditional civil and political rights: freedom of speech, of religion, the right to vote, the right to a fair trial, the right to equality before the law, the right not to be detained without charge, the right to liberty, protection from torture and cruel and inhuman or degrading treatment.

We have also included economic, social and cultural rights: the right to social security, education, health and work. This group of rights is resource dependant and the Courts will need to treat them differently. We are therefore particularly interested in the community's views on including these rights.

The rights are to be protected through a variety of mechanisms

Interpretation: section 50 requires courts to interpret legislation in a way that is compatible with the rights in Part 3.

Declarations of Incompatibility: The court may declare incompatibility, in which case the parliament and the government must respond.

The Attorney General must within 6 months table the declaration in parliament with a written response explaining what action, if any is intended and reasons.

This dialogue between the courts and parliament leaves the law making power with parliament but adds a highly effective level of scrutiny and strong accountability.

Parliament:

All legislation coming before the parliament must be measured against the rights set out in the act. Where there is incompatibility the AG must report and explain and parliament will determine any action.

A joint standing committee of parliament will monitor and make recommendations on all human rights matters and the implementation of the Act.

Remedies: where the courts find illegality on behalf of public authorities they may award remedies.

Members of the Public: may bring proceedings in the Courts against any public authority which has acted in a way which is incompatible with human rights

It will be clear to you that if all these provisions were law, the recent violations of human rights, those inflicted on detainees, on Cornelia Rau, on Vivien Solon, or Al Kateb and many others would have been prevented or mitigated. And many of you would have been very busy.

After extensive consultation we will refine the draft bill.

We will then relaunch it; we plan, in July this year, in Melbourne.

We are lobbying all parties for its introduction into parliament as a Private Member's bill with cross party support.

We hope to have the bill in the parliament this year.

The campaign can succeed, as long as we get extensive community support. We have no doubts about our capacity to frame a practical, effective and sustainable Bill, but to turn that bill into law we need active support from right across the community.

Shortly before Justice Michael McHugh retired from the High Court, in reflecting on the Al Kateb case, where the High Court found it had no power to prevent the detention for life of a stateless asylum seeker, Al Kateb, Michael McHugh urged

“the informed and the impassioned to agitate the parliament for legislative reform”.

That is what we are doing. That is the core of our people’s campaign for a Human Rights ACT for Australia. Please join us.