

AUSTRALIAN BILL OF RIGHTS – THE ACT AND BEYOND

KEYNOTE ADDRESS

WEDNESDAY, 21 JUNE 2006

CHIEF MINISTER JON STANHOPE

- Professor Hilary Charlesworth – Regulatory Institutions Network
- Professor George Williams UNSW and Chair of the Victorian Human Rights Consultation Committee
- Graeme Innes, HREOC Human Rights Commissioner
- Dr Helen Watchirs, ACT Human Rights Commissioner
- Renee Leon, Chief Executive ACT Department of Justice and Community Safety

I acknowledge the traditional owners of the land we are meeting on, the Ngunnawal people. I respect their continuing culture and the contribution they make to the life of this area.

A particularly warm welcome today to our Victorian colleagues, as they embark upon a journey we in the ACT began two years ago. I trust that you will find your first years as rewarding as we have. And not just rewarding, but *challenging* too. As we have discovered, the simple existence of a

Human Rights Act demands action, not just attitude, behavioural change, not just buzzwords.

I must say that the ACT's own *particular* challenges during the terrorism debate had made me wonder whether perhaps the impetus for other state-based bills of rights might have been weakened, whether the issue might perhaps have been relegated until more peaceful, less controversial times.

It gives me great comfort and great hope for our shared future that this has not been the case, and that, if anything, the momentum for better protection of human rights is greater now than at any time in recent memory. Not just in states such as Victoria, but nationally, and right across the political divide.

The paradox is, of course, that while the impetus and momentum might be greater, so are the stakes.

Right now, our Federal Government, for unexplained reasons, in the face of no imminent or looming crisis, is contemplating an overhaul of its treatment of asylum-seekers so lacking in basic humanity, so obnoxious, that even the Coalition backbench cannot sit quietly by.

Right now, for the first time in a decade and a half, Indigenous Australians have been left without an elected organisation through which they can articulate their concerns and determine their own futures. There is barely an identifiable face of Aboriginal leadership left on our television screens and our national policy-making is taking on a troubling, paternalistic complexion.

Right now, David Hicks is sitting in a cell in Guantanamo Bay, with no prospect of a fair or speedy trial, and with his best hope of eventual freedom

being the relinquishment of his Australian citizenship. If ever there was an indictment of a nation's duty to advocate on behalf of its own people, this is surely it.

Right now, the democratic rights of the people of the ACT to legislate on a matter well within their jurisdiction, is being subjected to a most brutal and cynical exercise of federal political power since the advent of self-government, with the squashing of the Civil Unions Act.

The human-rights landscape is therefore a confused one. While hope glimmers on one horizon, on other fronts the darkness seems as impenetrable as ever.

Certainly the darkness must seem to dominate for the ACT's same-sex couples, who have just been sent an explicit message that they are second-class citizens in the eyes of their fellow Australians.

In overturning the Civil Unions Act the Federal Government has done something I never imagined I would see an Australian government do in this century. It has deliberately and wilfully reinstated a form of discrimination that had been removed by another democratically elected government.

Of course, in squashing the Civil Unions Act the Commonwealth has gone further than this. It has also explicitly stated that every single man, woman and child in the ACT is — and should be — a second-class citizen too.

Even the checks and balances written into Section 35 of the Self-Government Act appear to have no practical value. How else can we explain the fact that when directly asked by the Speaker of the ACT Assembly to exercise the power granted to him by that Section to request amendments to

the Civil Unions Act, the Governor-General concluded that he could do no more than rubber-stamp an order from the Prime Minister — even when that order constituted a blatant and cowardly attack on democracy?

On the basis of a bald and unproven assertion that an ACT law offended against the Commonwealth Marriage Act, the Federal Government has taken up the most blunt and undemocratic bludgeon at its disposal.

It didn't challenge the ACT law in the courts. It knew it would not, and could not, win.

But that little complication was easily overcome. Indeed, that little complication actually allowed the Federal Government to adopt an altogether more odious approach. It let it take a course of action that guaranteed it would win, by allowing it to keep shifting the parameters of the debate.

Let there be no misunderstanding here. At no time did the Federal Government let the ACT Government know how it could amend this law in order to save it. One has to assume that this refusal was strategic and quite deliberate, allowing the Federal Government to persist with its campaign to overturn the law no matter *what* the ACT Government did to satisfy its concerns, no matter how many dozen amendments were made.

Even now, with the law wiped off the books, the rules keep subtly shifting. Now, the Commonwealth seems to be saying that *any* law that involves a *celebration* will offend against its sensibilities and therefore fail its test.

The message to same-sex couples could not be clearer. By all means live as couples, but do it in the dark, in the shadows, out of sight. There will be no ceremony, no public affirmation and above all, no celebration.

I cannot help but wonder whether the events of recent days would have followed the same inexorable path if Australia had had a bill of rights.

Surely there would have been some expectation of greater intellectual and legal rigour on the part of our federal parliament.

Surely there would have been at least the barest of acknowledgments that this was an issue that had a human-rights context.

Perhaps there would have been an expectation that the Prime Minister should have to justify his actions. Perhaps he would have been asked to explain on what objective grounds he believed it was appropriate to discriminate against his fellow Australians on the basis of their sexual orientation.

There was none of this. The questions remained unasked. The justifications ungiven. The debate never even began. There was just a single, brutal blow, by executive fiat, accompanied by an admiring twitter from conservative columnists and the Murdoch press.

How I wish Mr Howard, or some of those gleeful commentators, could have sat with members of Canberra's gay and lesbian community on the day the ACT Government announced it intended to legislate for civil unions. He would have seen middle-aged couples in tears, knowing that their 20- or 30-year partnerships would at last be accorded the respect given to the relationships of their next-door neighbours and their work colleagues. He

would have witnessed the joy of ordinary folk who had just received assurance that their lives, their loves, were as valuable and as worthy of recognition as the lives and loves of everybody else.

On that day, human rights were not abstract. They were personal and particular. And neither I nor anyone in my Government believed for one instant that by extending a basic legal recognition and a basic respect to same-sex couples we were in any way diminishing the value of our own unions, our own loves. The institution of marriage, the institution of family, is surely not so fragile as that.

Human rights can never be abstract. They are *lived*. They inform our sense of self, our sense of each other.

That doesn't mean they cannot, at times, be confronting. They lead, in some cases, to conclusions that have the capacity to scare us. They remind us, for example, of our common humanity with the mass murderer and the terrorist. But they also remind us, more gently, of our common humanity with those who speak and dress differently, worship differently and love differently.

Once we accept that rights are not abstract, we must also become conscious that they need not be static either. Whether we believe our human rights to be conferred by God or by man, we know that they are not fixed in time.

We live in a changing world, where a scientific advance, a new medical procedure, a new food crop or a new form of electronic communication has the capacity to profoundly influence our individual or collective ability to engage in the life of the community or access resources. A right that might

have been a dream in one century is within general reach a few decades later.

Internationally, our concept of human rights has evolved and matured over more than half a century of jurisprudence and more than half a century of geopolitical and technological change.

One of the big arguments in favour of legislative rather than constitutional bills of rights in such times as these is that there is less risk of rights ossifying or becoming irrelevant over the years.

Here in the ACT we were conscious that our Human Rights Act, like any other law, might be imperfect at first draft.

That's why we committed ourselves to a 12-month review of the Act, and to another review at the five-year mark. We wanted to know how well our dialogue model was working in practice. We wanted to know whether the range of rights enshrined in the ACT was broad enough, or whether other rights ought to be included. We said we intended to explore the need to protect economic, social and cultural rights for example, and in the 12-month review we have done so.

This first review is just about complete and I believe that the chief executive of the Department of Justice and Community Safety, Ms Renee Leon, will speak about it in more detail later this morning.

I personally don't need the evidence of a formal review in order to be convinced that the Human Rights Act has had an impact on governance in the national capital.

Over the past two years I have been part of a daily rights dialogue — in the Cabinet room and outside it. So has every one of my fellow Government MLAs. Within the bureaucracy, a growing number of public servants are consciously and explicitly having regard to the human-rights implications of their work and their decision-making.

A consideration of human rights is now at the heart of our policy-making. Compatibility is the new litmus test for our law-making. More than 100 Bills have been scrutinised and a constant flow of submissions and advice through the Human Rights Unit has quietly but profoundly affected the work of government, without fuss and without disruption, invisible for the most part to the broader public.

The Human Rights Act has helped us determine what safeguards are needed when we subject Canberrans to emergency electroconvulsive therapy.

It has helped us decide that prisoners ought *not* be deprived of the right to vote, no matter what restrictions are imposed elsewhere by politicians eager to brand criminals as beyond all entitlements, beyond redemption.

The Human Rights Act has helped us look rationally and dispassionately at the issue of whether the onus of proof might be reversed for defendants in criminal cases.

It has informed our decision here in the ACT to pursue with our Aboriginal and Torres Strait Islander community a new model for an elected representative body for the post-ATSIC era.

It has helped us avoid the knee-jerk law-making which sees some jurisdictions give in to the temptation to enact new laws on the back of a single dreadful crime or a single judicial misadventure.

Small steps, some might say.

I suppose it depends on one's interpretation.

If one is looking for landmark court cases, our Human Rights Act has given rise to none.

On the other hand, it last year became a catalyst for an astonishing national debate that saw the notions of security and human rights collide. And this year it allowed my Government prove that it was possible to have tough anti-terrorism laws without sacrificing the very things we cherish about our way of life – respect for the rule of law, the right to a fair trial, the right to liberty, the right to freedom of speech.

I wonder how that terrorism debate might have proceeded, if we had had a national bill of rights. And I wonder, even in the continued *absence* of a national bill, how *future* such debates might develop, once more and more states adopt their own charters.

This year, it's Victoria. Soon, perhaps, it will be Tasmania or NSW.

In time, I truly believe, the process will be unstoppable. We *will* have a national bill of rights and our national discourse on matters of the most profound significance, matters that go to the heart of what it is to be human, will be altered forever.

Thank you to the organisers of today's Conference – the Regulatory Institutions Network and the Human Rights Act Research Project here at the ANU, and the Gilbert and Tobin Centre of Public Law at the University of NSW. Thanks too to the Centre for International and Public Law at the ANU and the Human Rights and Equal Opportunity Commission.

I fear that I speak this morning to a converted audience. My consolation is that the audience grows bigger each time one of these conferences is held.

Thank you for again allowing me to be a part of your discussions.