

Calling for an Australian Bill of Rights

By Helen Reynolds, Executive Officer of the New Matilda's Human Rights Act Campaign.

In recent years, laws have been passed which significantly undermine our legal system. Australians can no longer expect the right to a fair trial, the presumption of innocence or freedom from detention without being charged.

We have mandatory detention for asylum seekers, anti-terrorist laws incorporating preventative detention, control orders and sedition laws, and more recently, highly invasive phone-tapping and email interception laws.

The New Matilda Human Rights Act for Australia campaign reflected growing concern at these developments and was launched in October 2005 around a draft Human Rights Act prepared by leading human rights and legal experts.

The draft Bill was refined following widespread community consultation and is being relaunched with the commencement of the lobbying phase of the campaign now focussed on generating support in the community and amongst parliamentarians.

The Northern Territory relaunch, held in Darwin on July 21, featured Senator Trish Crossin, Sharon Payne (CEO of NAAJA), Susan Ryan AO (Chair of the Campaign), Colin MacDonald QC, Tony Fitzgerald (NT Anti-Discrimination Commissioner) and Charlie King (from *ABC Radio*).

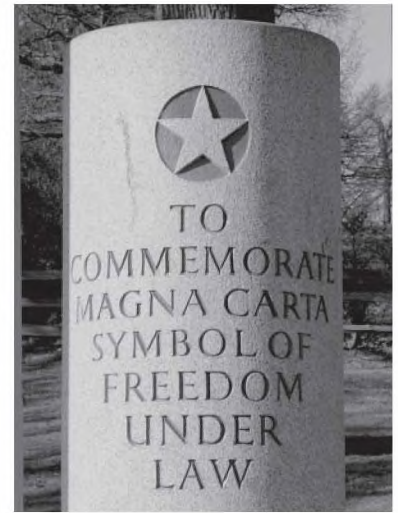
The aim is to have the Bill introduced in parliament before the end of 2006, as a Private Members Bill sponsored by representatives from all parties, in both houses.

For more information visit www.newmatilda.com/humanrightsact

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

By Susan Ryan AO, Chair of the New Matilda Human Rights Act Committee, speech notes for the Darwin launch Friday 21 July 2006.

It is very important to our campaign to get the views, and, we hope, the support of Darwin people. I am delighted that we have so many community leaders here tonight prepared to speak in support of our



campaign and I look forward to introducing them to you.

We are here to invite you all to become part of new Matilda's community campaign for a Human Rights Act for Australia.

OUR CAMPAIGN; WHY AND HOW.

In Australia, citizens, refugees and temporary visitors used to believe something very important: that we were living in a modern democracy and as a result, our basic human rights were guaranteed.

Was this belief correct? Sadly, no.

For most of us, mainstream, reasonably well off members of white Australia, it was true that we had no cause to worry about our basic rights.

But, for more and more members of our society outside of the mainstream, for Aboriginal Australians, increasingly for migrants and refugees from the Middle East, and for the mentally ill, this was not true. They did have something to worry about, and this situation has gotten worse.

We now know that the human rights of all Australians can be undermined, and we now realise that we need a national law to protect those rights.

Our campaign is aimed at getting our national parliament to pass a law that will protect our traditional political rights.

WHAT ARE THESE RIGHTS?

You will recognise them. They are rights we all used to take for granted:

- * the right to vote,
- * freedom of movement,
- * the right to a fair trial,
- * equality before the law,
- * the right not to be detained without charge,
- * freedom of religion,
- * freedom the practice one's culture.

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We also want to see a guarantee of our economic, social and cultural rights such as, freedom from poverty and homelessness, the right to work, to education and to health services.

Can we take these rights for granted?

No we cannot. We need a law to protect them.

That is why we have started a community campaign, a people's campaign for a Human Rights act for Australia.

WHY AT THIS TIME?

In the past, for most of us in Australia, those rights I reminded you of have been implemented in practice, sometimes by specific laws but in general through the common law.

Things have changed and the common law is no longer enough.

Vulnerable adults and children, those who have been kept in detention, the mentally ill, those from different cultures who are struggling economically, are no longer adequately protected by common law.

Indigenous Australians continually have their civil and political rights undermined, and in many cases, such as in remote areas, cannot exercise the right to work, to housing, to health and to education because government has failed to provide adequate services.

HOW DID THINGS CHANGE, SO MUCH FOR THE WORSE?

The changes have been caused by government reactions to a number of terrible global events.

First, mandatory detention of asylum seekers introduced in 1992, was a government response to a wave of desperate human beings, arriving in Australia, fleeing wars and other horrors in parts of the Middle East, seeking our help, but arriving without official documentation.

Mandatory detention was the wrong policy to begin with, when it was brought in by a Labor government.

The way in which that wrong policy of mandatory detention has been conducted over the last decade by the Coalition government has led to many violations of international human rights treaties. Even though Australian governments over the years had signed those international human rights treaties, without national legislation embodying the protections, there were no protections.

Hence we had terrible episodes of cruel treatment, of adults and children in detention.

Then, in response to horrendous acts of terrorism around the world, the Federal and state government passed rafts of anti terror legislation, necessary perhaps, but without any statutory consideration the negative effects on rights such as the liberty of movement, the right not to be detained without charge, the right to a fair trial and the right to freedom of speech.

Most recently the Federal Government has introduced into parliament a law to excise all of Australia's borders from the Migration Act, thus denying all future asylum seekers the protections of Australian law, instead condemning them to hopeless and maybe permanent detention in Nauru.

And all of this has been done without parliament giving due attention to international conventions on human rights already ratified by Australian governments.

If we, like all other western democracies had in place a national law embodying our obligations under international human rights treaties, a Human Rights Act for Australia, parliament would have checks and balances against anti terror laws, and provisions of the Migration Act, where they undermine human rights.

Such a law would make the parliament more aware of human rights at all stages of law making, and more likely to insist that the executive, the public service, would act in accordance with those legislated human rights.

A Human Rights Act for Australia is not a radical or extreme proposition. It would only bring Australia into line with all other western democracies. In the UK; in New Zealand; in Canada, the community is protected by national laws. Why not in Australia?

There is no good answer to that question. The Federal Parliament has the power to enact such a law. It simply refuses to do it. Our Prime Minister tells us he is fiercely opposed to such a law, but gives as his reasons only a completely wrong and misleading complaint that power would be transferred from politicians to judges.

In fact under our proposed law, this would not happen.

Courts would have a review role, but any changes to law would be made by parliament.

The law we are proposing would strengthen the role of parliament in protecting human rights, surely a basic responsibility.

If parliament at this stage won't act, we believe the community will.

Our Human Rights Act campaign started in response to the concerns of the readers of New Matilda.

New Matilda is an online weekly magazine, devoted to better public policy and a stronger democracy.

As soon as New Matilda started up, contributors and readers 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.

If these repugnant acts of government and its agencies were actually legal, then the challenge was to change the law.

We asked ourselves how in the current political climate how we could pursue such a reform.

Inspired by the readers of New Matilda, 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.

Last October we published this draft bill, and invited public input and comment, on newmatilda.com, and through public forums throughout Australia.

We have had discussions with dozens of community, ethnic, civil liberties and church groups, and 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 have welcomed the chance to consider and comment.

Now we are holding our final consultation in Darwin. After this we will refine the draft bill. We will then relaunch it; 13 August, 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. In the absence of national

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PRESIDENT'S REPORT

Reflecting on the year that was cont...

sent the culmination of an enormous effort by a number of people. The National Model project, which has been a collaboration of the Standing Committee of Attorneys-General (SCAG), the Law Council of Australia (LCA) and its various constituent Law Societies and Bar Associations, had its infancy when Ian Morris was President of the Society. Our CEO, Barbara Bradshaw, has played a very significant role, participating in the National Practice Working Group of the LCA, and co-ordinating liaison with the NT government and Department of Justice.

The commencement of the new legislation will undoubtedly present some challenges for NT practitioners, and there will be an extensive education program starting off in the late part of 2006 so that you can be prepared for the key elements. Among these will be the compulsory continuing professional development (CPD) requirements; enhanced costs disclosure obligations; adjustments to disciplinary arrangements; and fairly significant alterations to trust accounting. While some of these things will require some getting used to, and may not be without their teething problems, we are confident that the new legislation will bring the profession into the 21st century in many respects.

Other challenges for the year ahead will include dealing with what will undoubtedly be a continuing focus on Indigenous social and legal issues, and I commend those practitioners who have indicated their willingness to participate in an Indigenous Issues Committee – the Society will benefit from having the expert input of practitioners working in Indigenous justice when being called upon for comment and participation by government and the media. Changes in law (including tort law, CVA, and unfair dismissal to name a few) affecting the nature of legal work in the private profession, along with price-sensitivity among consumers of legal services, will also present a continuing challenge for those operating legal practices and those working in them. The legal profession has always been known for its resilience and creativity though, and I trust those qualities will allow legal practitioners to meet the challenges of the year ahead successfully.

political leadership, the community can act to get the parliament to do its job, to protect the traditional rights of all in Australia.

We are here to invite the people of the Northern Territory to join us.

An idea whose time has come... a Human Rights Act for Australia

By Colin McDonald QC, William Forster Chambers, Darwin.

A speech delivered at the Northern Territory launch of New Matilda's Human Rights Act for Australia Campaign held on Friday 21 July 2006 at the theatre of the Museum and Art Gallery of the Northern Territory.

Tonight, on the edge of the Arafura Sea on a cool Dry Season evening in the civilised space of the Museum and Art Gallery of the Northern Territory, we come together to discuss and endorse an idea born out of the anxiety and despair of the last ten years. Tonight, by our presence and participation we are engaged in the launch of an important idea in contemporary Australia. The idea is not new, but it now has an urgent contemporary resonance. Tonight we come together to launch in the Northern Territory an idea whose time has come – a Human Rights Act for Australia.

I am honoured and proud to have been invited to participate in this launch. The invitation, which I readily accepted, caused me to reflect on the experiences we have witnessed recently in Australia, especially here in Australia's north. Recent experiences of those of us who live in Australia's north attest so eloquently why Australia now needs a statutory Human Rights Act of a kind advocated by the New Matilda Campaign.

The idea of a Bill of Rights for Australia is not new; it has been the subject of debate in Australia in the past. Those against an entrenched statutory or constitutional Bill of Rights pointed to Australia's then justifiably proud history of protection of liberties under the common law and our protections against majoritarianism in the Senate and the Australian Judiciary which -shapes the common law and interprets statutes consistent with the common law and international standards. A decade ago the 'Noes' prevailed.

Not so today in light of what we have witnessed over the last ten to twelve years. Profound changes have occurred in Australian society such that the checks and balances assumed in the debate a decade or more ago no longer operate:

- The Government now controls the Senate.
- The UN Human Rights Committee has found in no less than ten reported decisions that Australia has been in breach of the fundamental human rights of persons living in Australia.¹
- The Australian Government has not acted on the recommendations or findings of the UN Human Rights Committee and effectively ignores the procedures under the First Optional Protocol and used by Australian and others living in Australia seeking to have the violations of their human rights vindicated.²
- The Australian High Court has demonstrated itself to be incapable of achieving a balance between basic civil liberties and executive action. In *Al-Kateb v Godwin* (2004) 219 CLR 562 the High Court, not having any Bill of Rights to use like all other final Courts of Appeal in the Western world, was unable to interpret the Migration Act in a manner that avoided the indefinite detention of a stateless man and thus prevent the possibility he spend the rest of his life in detention without any Court supervision. The result was described as "tragic" by one of the majority. The case of *Al-Kateb* highlights the decline of the judiciary as an effective bulwark of safeguarding individual human rights and its limited capacity or preparedness to keep a check on government action that contravenes human rights.

I first read *Al-Kateb v Godwin* with Father Frank Brennan SJ sitting around a pool at Sanur Beach, Bali just after meetings with the East Timorese Truth and Reconciliation Commissioner, Isabel Gutteres. So appalled and so concerned were we with the implications for human rights which flowed from the majority judgments in *Al-Kateb*, what more could we do to register our protest and alleviate our powerlessness, but order more Bintang beer, dingin sekali of course!

- Australian citizens have been wrongly deported or taken into immigration detention and subjected wrongly to incarceration due to blunders and mistaken decisions by DIMIA officers.
- Australians not even suspected of any crime can have their phones tapped by Commonwealth officers.
- Concerns expressed by many, including the Law Council of Australia, about the raft of anti terrorism laws introduced as part of the "war on terrorism" have been found by the Security Legislation Review Committee in its Report of June 2006 to be justified. The Committee (picked by the Government) found that some part of the amendments introduced to the Criminal Code appeared