

The 'rights' thing to do

By Eva Scheerlinck

The call for some form of legislative human rights protection has become more muted with the demise of the Howard government, almost as if there has been an enormous communal sigh of relief that such a debate is no longer necessary.

However, subsequent pronouncements by the Rudd government on security issues, and the continued secrecy surrounding the Haneef Inquiry (a matter about which the Lawyers Alliance has been vocal), should dispel this complacency.

The worrying thing is that the reliance on poll-driven policy and short-term expediency still appears to be a feature of the body politic, and one that enjoys a bipartisan approach.

It has been suggested that the call for rights is old-fashioned thinking, pre-September 11. In fact, the fight against terrorism makes it even more necessary to crystallise the protections we have and the freedoms that we hold dear.

The common law is a mighty instrument; however, it falls short when it comes to protecting basic human rights. For all its flexibility, it has been held time and time again that the common law does not create actionable human rights. At this stage, we cannot rely on parliament or the common law to protect our rights, so a safety net is needed.

Nay-sayers claim that a charter of rights will encourage judicial activism or encourage judges to become increasingly political in their approach. Such criticism must now be seen as empty given that, in jurisdictions where such legislation exists, such as the ACT or Victoria, there is no evidence that this has occurred. On the contrary, there have been positive developments in administrative and legislative scrutiny in those jurisdictions, producing better governmental practice, not floods of litigation.

Introducing human rights legislation to guarantee human rights protections is an opportunity to establish minimum standards, expectations and responsibilities. It is our legacy for future generations and it will positively influence policy, law-making, administration and human dignity in Australia.

This December marks the 60th anniversary of the United Nations Universal Declaration on Human Rights. We claim to be the nation of the 'fair go', and yet Australia remains the only Western democracy that has not enshrined human rights protections for its citizens.

As lawyers we are uniquely placed to contribute to such a debate. Only by actively contributing to a working model, and by holding the Rudd government to its election promise of broad public consultation on the issue, will fundamental human rights



protections become a part of our legal landscape.

But the Lawyers Alliance's commitment to enshrining human rights protections into our domestic law extends beyond just federal legislative reform. Each state and territory in Australia should see fit to do as the ACT and Victoria have done.

We need to encourage discussion and debate on the issue of human rights and how we protect them in Australia. We need to create a rights and responsibilities culture so that we extend human dignity and fairness to everyone. And, we need to be proud that anything less is not acceptable in Australia. ■

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