

RELIGIOUS SOCIETY OF FRIENDS (QUAKERS) IN AUSTRALIA INCORPORATED

QUAKER PEACE AND LEGISLATION COMMITTEE

SUBMISSION TO THE NATIONAL HUMAN RIGHTS CONSULTATION 2009

This submission is presented by the Quaker Peace and Legislation Committee (QPLC), a national Committee of the Religious Society of Friends (Quakers) in Australia. It reflects longstanding concerns of Friends in relation to peace, justice and human rights.

Part A: Introduction

1. The emergence of the Universal Declaration of Human Rights in the early years of the United Nations Organisation (1948) was a great step forward in putting in writing some fundamental aspects of human aspiration. It was also an explicit formulation of the aims contained in the UN Charter at its beginnings – to promote friendly relations among nations, to affirm the dignity of the human person, and to foster social progress.
2. The Declaration has been the basis for some important treaties internationally and regionally, and has been incorporated into domestic legislation in many countries. At the same time, the ideals expressed in the Declaration have not had the extent of impact intended, even in countries which have formally signed on to the principles in the Declaration.
3. As envisaged in the opening words preceding the Articles of the Declaration, there is a need for ongoing commitment to reinforcing the principles with effective education. In addition there has to be legislation and protocols for governments, corporations and individuals.
4. Given the difficulties experienced by many people in achieving human rights today, and the hypocrisy evident in public policies and practices, the Declaration needs to be supported by a clearer rationale for the values it represents. Conor Gearty (from the London School of Economics Human Rights Centre, in an essay to mark the 60th anniversary of the Declaration) recalls that the origins of the idea of respect for human dignity come from our basic instinct for hospitality, for co-operation, for outreach to the stranger. This goes alongside the instinct of loyalty to one's own group, which may work against respect. He argues that social practices have to ensure that respect is embedded in the way communities operate.

Part B: Quakers and Human Rights

5. Since the creation of the Religious Society of Friends (Quakers) in the mid-17th Century, the movement has had a strong belief in the importance of principles such as equality, justice, freedom of conscience, self-determination, simplicity, integrity and community. These principles are consistent with the values expressed in the Declaration of Human Rights.

6. An indication of the way Friends approach human rights is given in the following statement made by British Quakers in 1986:

“People matter. In the end human rights are about people being treated and feeling like people who matter. We are reminded graphically of violations of human rights far away and near at hand. In ignorance or knowingly we all violate human rights. We are all involved in the exercise of power and the abuse of power.....At the international level we affirm our support of Friends World Committee for Consultation and other bodies in ensuring that the standards and ideals of the UN Universal Declaration of Human Rights are attained, that the world does not slip backwards. Above all we must take risks for God: look around us to the people who need help; listen to those who experience oppression; engage in the mutual process of liberation”.

7. In Australia, Quakers have been active in support of human rights. We have made regular public comments on such matters as – rights of refugees and asylum seekers, Indigenous rights, gender equity, equality for gay and lesbian Australians, removal of the death penalty. We protested at the denial of human rights imposed by the national anti-terrorism laws passed in recent years.

8. Quakers have also been involved in the Australian Forum of Human Rights Organisations (AFHRO) and have attended the regular Government-NGO Consultations in Canberra on human rights, organised by the Department of Foreign Affairs and Trade (emphasis on international aspects) and the Attorney-General’s Department (emphasis on domestic law and practice).

9. This submission has been prepared by the national Quaker Peace and Legislation Committee. As is our tradition, the submission does not bind all members, but represents fairly the weight of concern on this topic.

Part C: Comments on Terms of Reference and Key Questions

Which human rights and responsibilities should be protected and promoted?

10. In principle, all the rights included in the International Covenants - on Civil and Political Rights, and Economic Social and Cultural Rights – should be protected and promoted. They are comprehensive and thorough expressions of the Universal Declaration of Human Rights, and also reflect the fundamental

values endorsed by most religions and philosophies. In addition, we recognise the value of rights covered by other international treaties against torture, against employment discrimination, against sex and race discrimination against, and for the rights of people with disabilities

11. In the context of the world today, the rights that seem to be especially essential include – equality before the law, freedom from torture or inhumane treatment (including the death penalty), freedom of belief, thought and expression, peaceful assembly, fair trial, freedom from forced work, care of children, protection of minorities (especially Indigenous people).

12. We note that in Australia, certain rights are protected under the Constitution – such as the right to vote, just compensation for acquiring of property by the Commonwealth, trial by jury, freedom of religion, and the right to challenge decisions of government. Federal and state legislation also covers some rights – e.g. anti-discrimination, children’s rights. Common law includes the right against self-incrimination, suing for false imprisonment, presumption of innocence in criminal trials, and presumption of standard of proof of beyond reasonable doubt in criminal cases. Some Indigenous land rights have been protected through native title acts.

13. We acknowledge the role of the Australian Human Rights Commission and the range of State and Territory tribunals that help to monitor and enforce human rights standards.

Are these human rights currently sufficiently protected and promoted?

14. The human rights legislation in Victoria and the ACT – the only Australian jurisdictions with such statutory provisions – emphasises civil and political rights. In Victoria’s case, the legislation is entitled the Charter of Human Rights and Responsibilities Act 2006, and it has been evaluated recently in a speech by Justice Kevin Bell of the Supreme Court (20 Nov 2008, *Australian Institute of Administrative Law*). He argued that the legislation enhances the democratic process by ensuring that government agencies act consistently with the Charter, that legislation must be compatible with the Charter, and that interpretation of legislation must be compatible with human rights principles. In the ACT the legislation similarly has a direct impact on the drafting of legislation. Justice Bell concludes that such public recognition of human rights principles is important in reinforcing community attitudes.

15. The question of sanctions to enforce human rights is an ongoing one. In current legislation, there is provision for the handling of complaints using conciliation, referral to other agencies, or reporting to Government officials (eg Attorneys-General). For example, under the ACT law, an impartial conciliator can help the parties reach a legally binding agreement, or if the matter is unresolved the Commissioner may refer it to a tribunal. The 2007-8 annual report of the ACT

Human Rights Commission indicates that it needed to seek legislative changes “to enable the Commission to deal more efficiently and effectively with complaints... to provide the Commission with greater discretion...to provide a power for the Commission to refer complaints to other statutory office holders.” The ACT Act was amended accordingly in 2008. The Victorian Act already gives the option of matters being referred to the Supreme Court.

16. There has been an increasing number of voices expressing concern that Australians are inadequately protected from their human rights. In particular, the legislation on the treatment of asylum seekers, which mandated detention, and the anti-terrorism legislation, which allowed people to be held without charge for extended periods, have been seen as examples of excessive intrusion by government into the rights of individuals.

17. George Williams, the academic lawyer from the University of NSW and ANU, has pointed to the judgements of the courts that allowed the detention legislation to be accepted as lawful, despite its effect in denying human rights. This resulted from the inability of the courts to judge legislation against any standard of fairness or justice. He has argued that this shows the need for a charter of rights to prevent basic freedoms from being violated (*ABC radio talk*, 23 August 2007).

18. The Human Rights Commission has commented on the continuing difficulties facing asylum seekers detained by Australian authorities. A media release on 13 January 2009 by the Human Rights Commissioner Graeme Innes highlighted findings of a recent report showing that children are still being held, the length of asylum seekers’ detention is too long, and poor facilities are common at detention centres. Graeme Innes called for (a) minimum standards for conditions and treatment to be legislated, (b) amendment of the Migration Act so that detention is the exception rather than the norm and decisions subject to legal review, (c) detention at Christmas Island to cease, and (d) the recommendations of the national inquiry into children in immigration detention to be implemented.

19. The anti-terrorism laws passed by the Federal Government over several years have pushed the boundaries of human rights protection. As the Eminent Jurists Panel of the International Commission of Jurists concluded in a report in February 2009 (*Terrorism, Counter-terrorism and Human Rights*) after a three-year survey of anti-terrorism laws in many countries including Australia:

“...terrorism sows terror, and many States have fallen into a trap set by the terrorists. Ignoring lessons from the past, some States have allowed themselves to be rushed into hasty responses, introducing an array of measures which are undermining cherished values as well as the international legal framework carefully developed since the World War II....it is time for the international community to re-group, take remedial action, and reassert core values and principles of international law”.

20. A major threat to human rights in recent times has been generated by the intervention in the Northern Territory Aboriginal communities by the Federal Government in mid-2007, on the basis of reports of widespread sexual abuse of children. We share with many a deep concern that the suspension of the Racial Discrimination Act – a law designed to protect Indigenous Australians - has led to a violation of human rights for people living in Aboriginal communities, and that the local people have had minimal involvement in decisions about their lives.

21. Whilst some Indigenous representatives have welcomed some aspects of the intervention – eg extra police resources, bans on alcohol – there has been opposition to the extra government control over prescribed communities, and to the resulting removal of the right to self-determination. There appears to be little recourse for those people to redress what they see as grievances resulting from the intervention. There is a fear that they will lose land rights and be unable to control access to their communities.

22. The current Government's own review of the intervention (in October 2008) stated that "...addressing specific concerns of Aboriginal communities does not require the exclusion of fundamental human rights such as the Racial Discrimination Act". Tom Calma, the Aboriginal and Torres Strait Islander Social Justice Commissioner, in a speech given on 12 November 2008 (*Essentials for Social Justice: The Future*) saw the Government's review as an opportunity to re-engage with Indigenous communities and give them a role in determining their own futures. He also drew attention to ongoing Indigenous initiatives, and in particular to a significant Aboriginal men's health gathering held in Alice Springs in July 2008 at which Aboriginal men accepted greater responsibility for building safer communities.

23. Bishop Greg Thompson of the NT Anglican Church was reported in *The Canberra Times* (8 March 2009) as saying that the intervention took place insensitively, as for example when it literally took over space occupied by a well-established Women's Spirituality Centre in Santa Teresa (a community south-east of Alice Springs) and replaced it with occasional mental health worker visits. He pointed out that "the Church along with other agencies and government must remember the past and seek to find genuine partnerships for a better future". He said the intervention meant well but did not engage people in ways that would galvanise and sustain healthy change.

How could Australia better protect and promote human rights?

24. There is a strong case for a national human rights framework that would underpin all legislation. The Australian Human Rights Group (AHRG) which represents more than 60 organisations, has put the case that "Australians need to have their human rights better recognised and protected" and have advocated a legally enforceable Human Rights Act passed by the Commonwealth

Parliament. We acknowledge the reasons given by the AHRG for supporting legislation that will:

- (a) set out fundamental rights that should be protected;
- (b) improve government decision making
- (c) reflect widespread support for legislative protection of human rights;
- (d) bring together all the rights currently protected;
- (e) enhance our democratic responsibility to protect the rights of others.

25. Tom Campbell, of the Centre for Applied Philosophy and Public Ethics at Charles Sturt University, put the position in the following terms:

“The impressive and important work done by such agencies as the Australian Human Rights Commission, the Commonwealth Ombudsman and various administrative tribunals would be significantly enhanced by the existence of a national bill of rights. It would also enable us to build on the long-standing Australian tradition of parliamentary committees, by creating, for instance, a joint parliamentary committee on human rights with a brief to scrutinise proposed legislation in the light of the bill of rights, promote human rights causes and press for improved human rights legislation.” (*The Canberra Times*, 16 December 2008).

26. The Australia 2020 Summit, convened by the Federal Government in April 2008, included in its final report (Chapter 10, p.369) the following statement: “The group believed that Australia should more effectively implement its international human rights obligations domestically, including through a statutory Bill of Rights and accompanying proposed new legislation with an international law impact statement”.

27. The Australian Human Rights Commission has been advocating a statutory charter of rights, as a way to strengthen a human rights culture in Australia. On its website www.humanrights.gov.au the Commission details the value of such a law in promoting greater awareness of human rights within Parliament, the government bureaucracy, the courts, private agencies and the wider community. It sees the laws in Victoria and the ACT as precursors of national legislation, and as having worked well. Similar laws are being proposed in WA and Tasmania.

28. In relation to enforcement, the Human Rights Commission says that a national charter of rights would provide individuals with greater access to remedies for breaches of human rights by means of conciliation and legal remedies such as injunctions, or action in the courts, and the right to seek compensation. This would strengthen the impact of human rights standards on public policy and practice.

29. We consider that the implementation of a statutory charter of rights nationally would enhance confidence among Australians that their rights are to be

respected. We see this as requiring an education process alongside any legislation, and envisage the allocation of government funds for this.

30. We also feel that raising awareness of human rights through a statutory charter would have valuable effects in drawing more attention to the international treaties which enshrine the major human rights. As one of our members has put it, those treaties are “inspiring and useful, firstly because they present a vision for humanity which is inclusive, peaceful just and caring, and secondly because they weigh what is necessary for each person to have a whole and normal life and for communities to nurture and support the rich potential of each member”. (Helen Bayes, *This We Can Say*, 2003)

31. There have been some expressions of scepticism that a charter or bill of rights would detract from Parliamentary democracy. However, as Dr John Warhurst (Political Science, ANU) has pointed out (*The Canberra Times*, 17 December 2008), there is an ongoing interaction between the different arms of government, statutory bodies, the political parties and the media. “Our system of government develops new policies best when they flow from a mix between so-called elites, like public servants, academics and business leaders, and the general public. It is an iterative process of initiative and reaction overseen by the government(s) of the day. Our best protection as citizens comes from an interaction between various institutions, not by setting up a false dichotomy like Parliament versus the courts”.

Part D: Conclusions

32. The protection and promotion of a culture of human rights in Australia is essential to our long term viability as a caring community. We believe every effort is needed by governments, parliaments, courts, police, non-government agencies, and individuals to give greater priority to the observance of human rights standards.

33. We see great value in a statutory recognition of the basic human rights outlined in the Universal Declaration of Human Rights and the related international human rights instruments. We believe such recognition would hold governments more effectively to their stated commitment to human rights when they legislate and administer policies. It would also raise the profile of human rights and provide a benchmark for better outcomes for all people. Similarly, signing and ratifying the Declaration on the Rights of Indigenous Peoples would be an indication of Australia’s commitment to strengthening the observance of international human rights standards.

34. The Government should carry out what the Federal Minister for Indigenous Affairs Jenny Macklin promised on 27 February 2009, and reinstate the Racial Discrimination ACT which was suspended at the time of the intervention into the Northern Territory Indigenous communities in 2007. In addition, the Government should follow the request of the UN Human Rights Committee (2 April 2009) that

Australia “should redesign the Northern Territory Emergency (NTER) response measures in direct consultation with the Indigenous peoples concerned, in order to ensure that they are consistent with the Racial Discrimination Act 1995 and the Covenant (on Civil and Political Rights)”.

35. We see considerable value in having a Parliamentary Human Rights Committee to monitor proposed legislation against human rights standards, to review existing legislation, to raise awareness among MPs, and to hold public servants to account for implementing appropriate human rights provisions in legislation.

36. We would like to see complementary legislation on human rights in each State and Territory, along the lines already established in Victoria and the ACT.

37. We support the strengthening of the Human Rights Commission and similar State and Territory bodies in their role of monitoring and promoting human rights, dealing with complaints, and helping educate the community.

38. We propose that human rights material be included in the brief of the national curriculum being developed by the Commonwealth, and that appropriate educational material be made available for the media to use in raising awareness of human rights (for example in the form of community service announcements).

39. We regard it as essential that there be comprehensive training programs for those charged with carrying out the implementation of human rights standards, notably public servants, court officials, police and educators.

40. There should be an immediate review of specific areas of legislation and executive policy to assess their compatibility with international human rights standards – especially immigration detention, anti-terrorism and Indigenous policies. We support the idea of an international law impact statement being attached to new legislation.

41. Timely reports should be made to UN bodies by the Government on the implementation of UN treaties on human rights, and funding should be made available for ‘shadow’ reports by the NGO sector. We are pleased that Australia has made a standing offer to UN human rights experts to visit and assess the ‘health’ of our human rights standards. We are disappointed that Australia chose not to attend the post-Durban Racism conference in Geneva in April 2009.

42. Australia should work with other countries in the Asia-Pacific region to strengthen the implementation practices of all countries, to share ideas and resources, and to learn from the actions of others. This is particularly relevant in the context of the Universal Periodic Review instituted by the United Nations Human Rights Council, to examine every four years the human rights policies and practices of all member states of the UN.

Canberra
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