

**Rights, hearts and minds:
Towards a national culture of Human Rights**

Speech by Catherine Branson QC,
President, Australian Human Rights Commission
The Bob Hawke Prime Ministerial Centre/Graham F Smith Peace Trust
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Introduction:

Thank you for your kind introduction.

I wish to start this evening by acknowledging the Kurna people of the Adelaide plains. On behalf of the Australian Human Rights Commission, I pay my respects to their elders past and present and extend a special welcome to any of them present at this event held on their traditional lands.

I also wish to thank the Bob Hawke Prime Ministerial Centre and the Graham F Smith Trust for their invitation to participate in this evening's event – one which, in my view, reflects a shared desire to contemplate Australia's potential. Whether 'working for peace through the Arts' in the footsteps of Graham Smith; whether encouraging an audience to 'think, connect, act' as the Hawke Centre does so well; or whether seeking to protect the human rights of 'everyone, everywhere, everyday', the ambition of the Australian Human Rights Commission – our collective aim is to engage with ideas and with community in the public interest..

This evening, therefore, as I approach the end of my time at the Commission, I wish to talk about harnessing this ambition for the benefit of human rights.

Australia and Human Rights

Australians have often been at the forefront of international human rights recognition. As a founding member of the United Nations, for example, Australia helped lead the development of the Universal Declaration of Human Rights. More recently, at the national level, the Australian Government was prepared to commission a National Human Rights Consultation.

This consultation documented a widespread call for more robust rights protection, including the adoption of national human rights legislation. The Australian Government response, the *Human Rights Framework*, deferred the question of legislative protection to a 2014 review. Instead it committed to:

- education initiatives, including improving understanding of human rights within the public sector and a modest increase in resources for the Commission, which we have largely applied to web-based initiatives
- a Parliamentary Joint Committee to scrutinise legislation for compliance with human rights obligations
- a requirement that each new law be accompanied by a statement of compatibility with our human rights obligations
- the combining of federal anti-discrimination laws into a single Act and

- the development of a new National Human Rights Action Plan.

The wheels of government turn slowly, obviously, but the benefits of these initiatives *are* beginning to be seen. Certainly, the Commission has, with some exceptions, observed a greater awareness of rights in the public sector; as well as better dialogue between government and bodies such as the Commission.

Positive signs – Constitutional Reform and OPCAT

A question remains, however, about how quickly we are moving towards better human rights protection in Australia. Without a doubt there are positive signs, one being progress towards Constitutional recognition of Aboriginal and Torres Strait Islander peoples as this country's original inhabitants. As you will know, our nation's founding document does not currently provide this recognition, a formal invisibility compounded by the additional fact that it *does* recognise the possibility of the States restricting the right to vote on racial grounds, as well as allowing the passing of laws that discriminate on the ground of race– not just against Aboriginal and Torres Strait Islander peoples, but against any racial group.

During the course of last year, however, a member of the Commission, Mick Gooda, the Aboriginal and Torres Strait Islander Social Justice Commissioner, participated in an Expert Panel which encountered widespread support for change on these issues. In its unanimous report to Government, the Expert Panel recommended the rectification of these longstanding failings and called for bipartisan support to work towards a successful referendum. Reform of this nature would certainly signal – not only to Aboriginal and Torres Strait Islander peoples, but the rest of the world – that our identity is founded on recognition of the human dignity of our nation's first peoples.

Meanwhile, movement towards the implementation of the *Optional Protocol to the Convention against Torture* (OPCAT) is a similarly promising development. Torture, cruel or inhumane treatment may not accord with most people's experience of daily life in Australia. However, we have a responsibility to ensure the proper treatment of some of the most vulnerable individuals in Australia, those who are deprived of their liberty. The purpose of OPCAT is to prevent mistreatment of people deprived of their liberty, such as those in prisons, immigration detention facilities, or closed psychiatric facilities, for example, through regular, independent monitoring of the conditions of their detention.

Certainly, the Commission's own experience confirms that visits from independent organisations can contribute to pragmatic – and often immediate – improvement, from a simple change in accommodation to respond to a person's medical condition, through to improvements to a whole facility. In a rather wry example, in 2010 the Commission was visiting the immigration detention centre in Leonora, Western Australia, when one Sri Lankan asylum seeker remarked upon the rapid completion of a new crèche just prior to our visit, observing:

Maybe you could visit more often? ... Even if you don't ... perhaps you could write and inform them that you are coming?

Enduring concerns

Despite progress, however, Australia still struggles to give wholehearted recognition to the most marginalised groups in our society. Improving conditions in detention, for example, does not change the simple fact that, with no provision for court challenge of the need for their detention, some asylum seekers continue to be mandatorily and indefinitely detained in our immigration detention facilities.

As the Commission has long argued, this system itself breaches international human rights standards, particularly the right to be free from arbitrary detention. Meanwhile, prolonged and indefinite detention of already vulnerable people in remote locations contributes to potential breaches of other fundamental rights and has seriously detrimental impacts on detainees' mental health.

I don't want to say much more about immigration policy as I am speaking here in Adelaide on that topic next week. However, before moving on, I do want to tell you one small story.

I recently had the opportunity to speak in Canberra with a security expert from Norway. He was visibly shocked to learn that significant numbers of asylum seekers who come to Australia go straight into detention. He said that this couldn't happen in Norway. When I inquired why, he said that the people of Norway wouldn't accept the detention of people who had not been convicted of any offence. Norway, I learnt, maintains open accommodation, spread around the country, for approximately 19,000 asylum seekers. I have been reflecting ever since on why it is that Norwegians apparently value individual liberty more than Australians?

Connecting hearts and minds

We know that it is often those least connected with the mainstream of a society that are most vulnerable to breaches of their human rights.

This is hardly a new insight. Certainly, this audience understands that the distance between mainstream Australia and the experiences of asylum seekers, for example, can perpetuate policies that would never be accepted were they applied closer to home. What I also suggest this evening, however, is that a distance exists between our understanding of human rights as relevant to marginalised communities; and those values which we perceive as culturally or personally relevant to mainstream Australia.

Many concerned individuals have observed, as Bryan Stevenson, founder of the Equal Justice Initiative in the US, recently did, that 'you judge the character of a society by how it treats the poor, the incarcerated, the marginalised'.¹

I could not agree more, yet this is not how most societies define themselves. Identifying a disconnect between America's view of itself as forward thinking on the one hand, and the injustice that persists in so many of its communities on the other, Stevenson observed the need for difficult aspects of a nation's identity to be integrated into the lives of all its citizens – a connection between minds and hearts, as he described it, or an 'orientation of the spirit'.

Certainly, if a nation's culture resides in the hearts of its people, to borrow words attributed to Mahatma Gandhi, then we in Australia need to make this connection between what we *know* to be the value of human rights, and what we believe to be personally important to *us* – as

individuals, and as a wider community. We need to orient Australia's collective spirit – towards the protection of the marginalised, the incarcerated, and the poor; towards an identity founded, heart *and* mind, on the recognition of human rights.

If we were to do this – if the call for greater protection of human rights were to stem not from a sense of international obligation, but from a broad cultural imperative - perhaps we, like Norway, might detain only those asylum seekers whose individual circumstances make it absolutely necessary. Perhaps we might work *with* Aboriginal and Torres Strait Islander communities to address the problems they experience. Perhaps more of us would call racism for what it is when we see it.

We need to get better, then, at promoting human rights for what they really are – the basic expectations we have for how we, our families, and indeed everyone else as well, ought to be treated. In short, we need to ensure that those concepts of fair play and the fair go, so central to Australia's self-perception, are limited neither in their promise, nor in their fearless and generous application.

Wouldn't this be a better and more complete story to tell of ourselves – a national culture built not just on the positive characteristics of mainstream Australia, but on the wholehearted embrace of the importance for the respect of human dignity?

Towards a national culture of human rights

How, though, can we make the protection of human rights our national *modus operandi*?

Many, of course, believe that a statutory response is the answer and, certainly, studies of the Victorian experience suggest that benefits are to be had from a legislative mechanism. Victoria's *Charter of Rights and Responsibilities*, which requires consideration of human rights at the policy development and decision making levels of government, is reported to have contributed to very tangible improvements not only in overarching policy, but in individual cases of access to public housing and to mental health and disability services to name a few.ⁱⁱ Similarly, in the United Kingdom, a recent inquiry highlighted numerous examples of how statutory human rights protections can be a catalyst for a culture where human rights concerns are at the forefront of government decision making.ⁱⁱⁱ

Despite the apparent public support for a similar mechanism at the national level, however, the proposal met with quite clear bi-partisan resistance. This means that, while it is essential that the 2014 review of the Human Rights Framework takes this issue seriously, there may well be no movement on this issue.

What I have learned in my time as President, however, is that formal mechanisms will not resonate without a strong national culture of human rights as their foundation. By this, I mean without the Australian people seeing respect for what we call human rights as important.

How are we to achieve such a culture? The first thing to acknowledge, I suggest, is that it is much too important to leave just to governments.

In much of the education work of the Australian Human Rights Commission we are concentrating on 'bystanders'; those who, for example, see a young person being bullied or harassed; those who hear a work colleague being taunted because of his race; those who know

that ill-informed and prejudicial statements are being made about the capacity of a mature age woman. At the Commission we are persuaded, and experts support us in this, that if individuals increasingly step forward and say: 'this is not OK; this is not how we do things in our workplace, our school, our community', this will prove a powerful impetus for changed behaviour – and eventually for changed attitudes leading to changed discourse. In this way we hope to contribute to cultural change within individual workplaces, individual schools and within individual institutions.

What I would like to suggest here is that we additionally reflect on what is being said, not only close by us, but also in the wider public sphere. The Inquiry that the Commission is currently conducting into the Commonwealth's treatment of young Indonesian's suspected of people smuggling is providing us with some disturbing insights into the ways in which a particular style of public discourse can influence attitudes and ultimately undermine respect for human rights. In this case, the human rights of a particularly vulnerable group – young people, possibly minors, away from their families and outside their country of nationality. The findings of the Inquiry will have to await the publication of our report, but it seems likely that we will find that decisions of Commonwealth departments and agencies affecting this group were influenced, quite possibly unconsciously, by the highly negative public discourse surrounding people smuggling.

In so many instances, of which this is one, there are choices about the public stories that can be told. In the case of the young Indonesians, there is one story about the evil of people smuggling and about calculating young people who come to Australia and tell lies about their age to get lenient treatment that they don't deserve. An alternate story is about vulnerable, poor young people from remote Indonesian islands struggling to support themselves and their their families; young people who, as is common in many parts of the developing world, may very well not know their precise age, and who are tricked into agreeing to crew boats by offers of sums of money irresistibly large to them. In some cases the true story might be somewhere in between - but there is little hint of this second story in the public discourse.

In a democracy we all have the capacity, particularly if we work together, to influence public discourse. We can turn off certain radio stations – if enough of us do so, their revenues will drop significantly. Perhaps even better we can complain to the regulatory authorities if their presenters make inflammatory and offensive comments. We can write to or speak with our politicians to express concern about the justifications being offered by them for their policy choices and the language in which they choose to speak about them. Ultimately we *can* hold politicians accountable at the ballot box.

If we truly want greater respect for human rights in this country we need to do these things, and we need to do them together. Only in this way will we start to achieve an all-embracing respect for human rights in our country.

There is a limit to what even a strong and effective national human rights institution can do alone. I believe that the Australian Human Rights Commission is such an institution but our work needs your support.

What the Commission has to offer is not only its willingness to speak up about issues that may be contentious or unwelcome, but its capacity to signal the worth of that conversation. This may, I believe, be the Commission's greatest responsibility – to use the strength of its position, like the strength of a forum such as this, to engage Australians in a shared purpose.

My appeal to you, therefore, is that we work together to foster protection of human rights as a national imperative; that we endeavour to cultivate a national soil in which progress on human rights may be more likely to flourish.

Though the Commission has a role in leading this task, ultimately we are *all* answerable, each person here possessed of opportunities to talk more openly about human rights. In particular, here in South Australians where we have a history of fighting for rights including the right to equality, surely we can provide the lead for a national discourse for human rights.

Conclusion

As I finish my term as President of the Australian Human Rights Commission, it is clear to me that there is much of which Australia can be proud in its pursuit of freedom, justice and peace, those conditions so central to the message of Universal Declaration of Human Rights . Equally, there is much that still needs to be done.

Most clearly of all, I believe a national culture of respect for human rights might change our approach to those issues which challenge us the most– those that shadow the more positive aspects of our collective identity. While formal human rights protections are important, I believe that their power will only take full effect when the value of human rights is cemented in both the hearts and in the minds of the nation.

ⁱ Viewed at www.ted.com/talks/bryan-stevenson-we-need-to-talk-about-an-injustice.html on 4 April 2012.

ⁱⁱ See, for example, the Human Rights Law Centre's submission to the Review of the Victorian Charter of Rights and Responsibilities at <http://www.hrlc.org.au/content/topics/victoria-charter-of-human-rights/hrlc-submission-review-charter/> last viewed on 19 March 2012.

ⁱⁱⁱ Human Rights Inquiry, Report of the Equality and Human Rights Commission, 2009, at <http://www.equalityhumanrights.com/human-rights/our-human-rights-work/human-rights-inquiries/our-human-rights-inquiry/>.