

## The Australian Journal of Human Rights Symposium on Marginality: introduction

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The international community has come a long way in recognising the importance of human rights since the establishment of the Universal Declaration of Human Rights in 1948. The current challenge is ensuring that all persons and groups in society are able to effectively exercise their fundamental human rights. Marginalised groups are those members of society who do not fall within the typically dominant groups that influence decisions about laws and policies affecting people's rights. Defining marginalised groups may therefore be contentious and political; however, by analysing people's access to and enjoyment of their rights, it becomes clear what groups are marginalised in society, and in what ways.

The United Nations Population Fund (UNPF) has indicated that marginalised groups comprise a significant component of the global population — for example, persons with disabilities comprise 10 per cent or 600 million people; indigenous people total 370 million in 70 countries; and an estimated 175 million people are international migrants. Other marginalised groups include ethnic, racial and religious minorities and castes; women; and children. Marginalised groups are generally worse off across most indicators, and largely remain voiceless and invisible, frequently left out of national policies and laws, despite their ongoing struggle against discrimination, poverty and social exclusion (UNPF *Report on the State of the World Population 2005*).

This symposium on marginalised groups contains articles that explore the experiences of refugees, women, homeless persons, Indigenous Australians and young Pacific Islanders.<sup>1</sup>

### Refugees

Claudia Tazreiter explores the situation of asylum seekers who are deported from Western states. Tazreiter evaluates the marginal position of asylum seekers from a

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<sup>1</sup> This introduction relies on abstracts provided by the authors published in this issue. I would like to thank the previous student intern, Barbara Slusarczyk, for developing the concept and soliciting articles for this symposium.

human rights perspective by considering the civil and political rights, as well as the social, economic and cultural rights, of asylum seekers. Tazreiter argues that these individuals are left without rights by the practice of return and deportation. Through a case study of Australian practices of return and deportation, the role of non-government organisations in human rights monitoring is investigated.

Fiona Martin then highlights concerns about obstacles in the way of persons coming to Australia who wish to claim refugee status under the Refugee Convention. She discusses the provisions of a number of international conventions, including the Convention on the Rights of the Child and the Refugee Convention and their interaction with the provisions of the *Migration Act 1958* (Cth). Martin argues that the lack of assistance and guidance provided to persons seeking refugee status under the terms of the Refugee Convention is of particular concern where those persons are within detention centres and therefore isolated from the Australian community and particularly isolated from the support of members of their own ethnic community and from legal advisers. Her paper further discusses these issues in the context of children who seek refugee status in Australia, both where they are accompanied by parents or guardians, and where they arrive alone.

### Women

Stephen Tully's article considers how women are marginalised in Australia through their exclusion from financial services. It evaluates the prospects for employing the paradigm of human rights to address the continued exclusion of women from financial services in Australia by referring to the right to credit as an aspect of women's socioeconomic life and their right to access agricultural credit in the rural context. Tully examines state party reports submitted under the Convention on the Elimination of All Forms of Discrimination Against Women to consider four obstacles impeding women's access to credit: lack of land ownership, their marital status, so-called sociocultural barriers and the commercial practices of financial institutions. Tully argues that these obstacles are replicated to varying degrees in the local context. The existence and ambit of a human right to access financial services for women in Australia can be derived from an analysis of consumer credit law, orthodox contractual principles and antidiscrimination legislation. Although the relevant jurisprudence yields important debtor entitlements and the obligations of credit providers, it also suggests several substantive and procedural obstacles hampering the common law development of that right. More explicit resort to a human rights framework, as illustrated by other jurisdictions, is warranted and justifiable.

**Indigenous Australians**

Gary Foley and Tim Anderson's article examines how land rights are the just claim of a long historical movement, driven by Aboriginal voices of resistance to dispossession, supported at times by non-Aboriginal Australians, and fiercely opposed by the major beneficiaries of dispossession — those controlling the giant pastoral and mining companies. This opposition, combined with a narrow legal argument and illusions about the role of Labor, have created myths over land rights in Australia. 'Native title' has been wrongly equated with land rights, and the origins of those rights are often misunderstood. Indigenous land rights gain support from the first article of the International Bill of Rights: the right of a people to self-determination, to control their natural wealth and resources and to maintain their means of subsistence (International Covenant in Civil and Political Rights/International Covenant on Economic, Social and Cultural Rights, Art 1). This article aims to set land rights in a proper perspective, and to explain the central role of Aboriginal voices in the land rights movement.

The process of reconciliation in Australia is then scrutinised by Elizabeth Moran in her article that begins by charting the rise of reconciliation in international politics as a backdrop against which Aboriginal reconciliation should be understood. Moran then explores what reconciliation means in Australia; who has framed the debate; the extent to which these meanings have been accepted, contested or transformed; and, finally, how effective this program has been to date. Most commentators agree that, as it stands, the process of reconciliation in Australia is 'off-track' (Senate Committee Report 2003). A lack of national leadership is generally blamed for this situation. However, this article argues that the very idea of reconciliation is flawed, and in the existing legal and political framework of Australia, is unsuitable. In particular, the article focuses on the interrelationship between law and reconciliation and suggests that reconciliation assumes the creation of a public space in which issues such as national identity and collective memory are debated. However, such assumptions are inappropriate in a country in which Aborigines continue to live on the margins of mainstream society. Thus, reconciliation in Australia as it currently stands should be rejected, in favour of focusing on achieving substantive rights and justice for Aborigines.

**Young Pacific Islanders**

Kirsty Ruddock considers the marginalisation of some Solomon Islanders by focusing on the impacts of Australia's Pacific 'war on terror' through its intervention in the Solomon Islands. Ruddock focuses on the Australian intervention in the Solomon Islands and the impacts of that intervention on the human rights of some

Solomon Islanders. In particular, the article highlights the difficulties caused by the immunity from prosecution of the Regional Assistance Mission Solomon Islands (RAMSI) and the impacts on the rights of prisoners as a result of RAMSI's influence in the prison system. It also focuses on how the law-and-order emphasis of RAMSI has contributed to the harshness in treatment of juvenile offenders and other minor offenders.

Kylie Anderson uses the results of a pilot study undertaken on human rights within the Pacific Island region to gauge young Pacific Island people's views and awareness of human rights. More than 100 young Pacific Island people were surveyed on their views and knowledge of key human rights instruments and areas, which revealed the need to reorient perceptions and human rights education within the Pacific Island region.

### **Homeless persons**

Tamara Walsh then studies the relationship between social exclusion and rights violations in the context of homelessness. Walsh considers the results of a survey of homelessness service providers in Queensland to conclude that a rights-based approach alone will not guarantee either social inclusion, or a realisation by homeless people of their human rights. An examination of social exclusion theory is considered, in the hope that it might offer alternative suggestions on how the social inclusion of homeless people could be enhanced. The paper argues that, although it appears that social exclusion theorists diverge in their characterisation of the causes of and solutions for social exclusion, three conceptions can be gleaned from the broader literature, which are applied to the problem of homeless persons' social exclusion.

Alan Morris considers the situation of older private renters in Sydney, showing that for those older renters who are forced to live in unsubsidised privately rented dwellings, everyday life is extremely difficult and government policy in regards to providing affordable housing is seriously flawed. Most older private renters suffer financial stress and general hardship, a situation contrasted to people of similar age who own their own home. Morris argues that the Commonwealth Rent Assistance policy is not working, as it is not giving older renters access to affordable accommodation and does not allow those older Australians who are not homeowners or who have not managed to access public housing the chance to live out the last chapter of their lives in dignity.

### **Welfare recipients**

Terry Carney finishes the edition with a review of how recent neoliberal reforms to Australian social security and labour law privilege individual industrial bargaining and adopt a 'job-first' policy for welfare recipients, which exposes them to greater market pressures. This builds on earlier Howard conservative government reforms, such as the privatisation of job-matching services; insistence on mutual obligation and workfare expectations of social security clients; and intensification of loss of payment penalties for compliance breaches. This article examines the extent to which social security decision-making in Australia is favourably influenced by international treaties, which include social security among the social and economic rights sought to be protected. It is argued that rights to social security are of their nature weak and sometimes internally conflicted, but this is compounded by their more limited purchase in Australian law. Consequently, international law has been of less assistance in protecting social security rights within Australia than is the case internationally. ●

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