

Introduction

Implementing human rights in Australia

Robert McCorquodale*

Human rights envisage, and provide a vehicle for, the full development of every person's capacities and the use of those capacities for the service of all. They envisage the flourishing of groups and of the members of those groups. And they contain important messages for the life of each of us. Each one of us can bring human rights to life for others as well as ourselves.¹

In this conclusion to his book, *Bringing Human Rights to Life*, Peter Bailey reminds those who work in the field of international human rights of the importance of education about human rights. With this in mind, a conference on Implementing International Human Rights was organised by Hilary Charlesworth and Robert McCorquodale from 5-6 December 1997 at the Australian National University in Canberra.² Earlier versions of the papers that comprise this volume of the *Australian Journal of Human Rights* were presented at this conference.³

The aims of this volume are to assess the success and limitations of the implementations of international human rights standards in Australia and to consider strategies to enhance the protection of human rights in Australia.

Strategies suggested to improve Australia's implementation of human rights include:

- An urgent need for education in Australia about human rights and the international human rights processes. Every person must receive this education, from those making (and advising on) claims of human rights violations to government officials, as well as in schools, in the community and in institutions such as the legal and health systems. This education is also needed to address misinformation about

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1 Bailey P *Bringing Human Rights to Life* (Federation, 1993) p 259. Peter's contribution to implementing human rights was celebrated by a dinner in his honour during the conference.

2 The invaluable support of Hilary Charlesworth and Christine Evans as well as a number of others in the Faculty of Law at the Australian National University is gratefully acknowledged.

3 All the papers published in this volume have been updated, as far as possible, at least to the end of 1998.

international human rights, to clarify what human rights are and to recognise that human rights include economic, social, cultural and collective rights.

- The need for human rights training of those involved in any process where human rights issues may arise. This would include training of administrative decision-makers, judges and those in non-governmental and other community organisations.
- Increasing the use of international human rights standards in all decision-making, particularly by State organs. This can be fostered by direct reference to international human rights treaty provisions by courts, in legislation and by human rights becoming a central focus of policy making by governments, corporations and other institutions and organisations, as well as by the increased use of international human rights standards by those interacting with decision-makers (including in courts).
- Transparency and accountability in the international human rights reporting process. This should include increased and more effective consultation by government with non-governmental organisations and academics as well as widespread dissemination of reports. It would also include the dissemination of Treaty Council discussions and regular reviews of the treaty-making process.
- The creation of a network of those involved in international human rights and a sharing of information within and beyond this network. This would assist in the provision of advice and assistance on the international human rights processes to complainants and their advisers and may increase the use of those processes.
- The development of accessible mechanisms for human rights protection in Australia. This should include a legislative or constitutional charter of rights. Whichever way was chosen, it is vital that this occurred as soon as possible so that human rights in Australia are better protected. This mechanism should also facilitate compliance by Australia with its human rights treaty obligations, reduce the number of complaints about violations of human rights brought against Australia to international fora and provide judges and other decision-makers with clear guidelines and standards and so avoid reliance on their own ideas of community values.
- An increase to the funding and resourcing of the international human rights bodies.
- A reconsideration of the Administrative Decisions (Effect of International Instruments) Bill 1997 and the proposed changes to the Human Rights and Equal Opportunity Commission, in its decreased funding, reduced role and the amendment of its name to include 'Responsibility'.

- Addressing the violation of human rights of indigenous Australians. More specifically, there is concern about the proposed amendments to the *Native Title Act 1993* (Cth) and the lack of an apology by the government about the stolen generation.

In regard to the last concern, the following resolution was passed by consensus by the participants at the conference and is endorsed by the editors of this journal: 'We, as Australians, apologise to indigenous peoples for Australia's lack of compliance with, and neglect of, international human rights standards and express our willingness to advocate in the future to inform legal and public opinion on Australia's human rights obligations'.

It is evident from these concerns that there is a considerable distance to travel before international human rights can be considered to be implemented in Australia. Successive Australian governments have allowed a wide gap to develop between their international statements on human rights and the domestic implementation of those rights. This gap was noted by the High Court in the *Teoh* case,⁴ where Mason CJ and Deane J said:

[R]atification by Australia of an international convention is not to be dismissed as a merely platitudinous or ineffectual act, particularly when the instrument evidences internationally accepted standards to be applied by courts and administrative authorities in dealing with basic human rights affecting the family and children. Rather, ratification of a convention is a positive statement by the Executive Government of this country to the world and to the Australian people that the Executive Government and its agencies will act in accordance with the Convention.⁵

There are also many challenges to international human rights itself, such as the process of globalisation and the desire by some to dismiss human rights concerns in the interest of pursuing trade.⁶ Yet the steady, if slow, infiltration of international human rights standards that is occurring through the legal and government systems; the fact that over 120 people with an interest in international human rights attended this conference; and the sense of optimism (despite many set-backs in recent times) by those participants, offers hope for the future. It is still possible to bring human rights to life in Australia. ●

4 *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

5 See above at 291. Toohey JJ took a similar approach (at 301).

6 See Jones M and Kriesler P (eds) *Globalisation Human Rights and Civil Society* (Prospect Media, 1998); McCorquodale R with Fairbrother R 'Globalisation and Human Rights' (1999) 29 *Human Rights Quarterly*; and (1998) 4(2) *Australian Journal of Human Rights*.