

“The refusal to frame a human rights act ignores the will of the people.”

– *Father Frank Brennan, chair of the consultative committee appointed by the government*

The most significant event of 2010 in terms of liberties, freedoms and human rights in Australia was the rejection in April by the Australian Government of the core recommendation of Brennan Committee: that Australia should have a Bill of Rights.

Attorney-General Robert McClelland has boasted that the 2009 National Human Rights Consultation, led by Father Brennan, was "the most extensive consultation on human rights in Australia's history". It is all the more disappointing, then, that the AG's reasons for rejecting a Bill of Rights were fallacious and self-serving. He told the National Press Club that a legislative charter of rights was not included in the government's human rights response *"as the government believes that the enhancement of human rights should be done in a way that, as far as possible, unites rather than divides our community"*. This is spurious polly-speak, an excuse for inaction. A Human Rights Act required a very strong advocate in the Ministry, a committed leadership and bipartisan support. It had none of these, so it failed.

Instead, all the Rudd/Gillard gang can produce is a "Framework". That is, of course, what you have before you have a robust, protective house against attacks on liberties. The government has squandered a unique, once in a generation opportunity. Its latest wishy-washy iteration is a paltry "Action Plan" (stemming from a Framework, sitting on the rubbery base of a rejected nationwide consultation, from a 2004 Action Plan), on which they are now working to give birth to "the beginning of the development of a draft of the baseline study". Rather pathetic, really.

It all smacks very much of prevarication: a government at best feebly committed to proper protection of human rights is in reality more dedicated to political expediency and jingoistic popularity polls. If a bill of rights could be draped in a flag, saluted and marched up and down, Australia would probably have two, tomorrow.

Civil Liberties Australia's view is that the upcoming "Action Plan" is yet further gumph, which will espouse meaningless rhetoric. The government expects continuing input at no cost from voluntary groups with no support whatever to them, so it can tick the "community consultation" box for appearance's sake. Mr McClelland, you have already consulted the community: when the community told you what it wanted, you rejected the community's desires.

The government, through Justice Minister Brendan O'Connor, has also rejected a modest CLA proposal to slightly amend the criteria under which entities can be granted funds from the Proceeds of Crime bucket. This money is dragged back from criminals when it is identified as being ill-gotten gains. The addition of one line in the legislation would have enabled civil liberties and human rights groups to mount campaigns and projects from these funds. Instead, the ever growing bucket of off-Budget cash is used to fund things like massive CCTV installations (which the Minister claims "prevents" crime). The government was not prepared to do even this, which would be no cost to the normal Budget.

From the Brennan Committee's consultation, the headline reform proposal was recommendation 18, which couldn't have been clearer:

“The Committee recommends that Australia adopt a federal Human Rights Act.”

While there are divergent views in the community on the merits of a Human Rights Act, the popular response was overwhelming. And the bitter response to being ignored by the government is also deep and profound.

I can do no better than to quote at length some subsequent statements by Father Brennan, who went into the consultation process as sceptical, but came out a year later convinced of the feeling in the community for a bill of rights:

“The Rudd government has baulked at the recommendation for an Australian human rights act that would allow judges to assess Commonwealth laws, policies and practices for human rights compliance”.

Just what has this ignorant government ignored? More than 6000 people who sat down for a two-hour, two-way conversation with members of the Brennan Committee in more than 60 community roundtable discussions across the country. There were 35,000 people who took the trouble to send in a submission, and 87% of the 33,356 who expressed a view about a human rights act were in support of one. The overwhelming majority of those who attended a community roundtable supported such an act, and the independent research from a Brennan Committee-initiated, random telephone survey of 1200 people turned up 57% in support, 14% opposed and 30% undecided. The McClelland comment about a 'divided community' is judged for the fallacious cop-out that it is, in light of these figures.

Brennan said, after the government's rejection:

“We thought it appropriate to make recommendations about what would be workable in light of the public concerns and requests, honouring the principles of parliamentary sovereignty and federalism. We knew our task was politically charged once so many citizens wanted to focus on the question of whether Australia should have a human rights act. The Coalition parties were opposed. The Labor Party was divided...”

“Meanwhile, politicians on both sides of the chamber will continue to espouse the suspension of the Racial Discrimination Act for interventions on indigenous communities and the protracted detention of asylum seekers. Meanwhile, claims are put on hold and inhumane detention occurs in inadequate facilities, such as at Curtin, and we have rushed into law national security provisions that leave many uneasy about the civil liberties ramifications.

“Injecting human rights discourse into public discussion and law-making about contested issues often helps ensure Australia remains a great place for most of us to live”.*

During 2010, CLA continued to battle for people's rights in other areas: in terms of CLA administration, the major achievement of 2010 was a new computer database system for finances and membership, developed by Webmaster Lance Williamson in cooperation with Treasurer Kevin Popple and CEO Bill Rowlings. The new administrative system is streamlining and blending membership and financial records. We have to be mindful that some members may not be as comfortable with electronic dealings, so there is a need to guard against a fall off in membership throughout 2011 as we transit to the new way of doing things online. We hope to welcome onto the board a director with specific membership duties, but please feel free to email, to the President, the name and contact details of anyone you think we might approach to become a member. president@cla.asn.au

Successful collaborative networking continued with Australian Privacy Foundation, Friends and Families of Drug Law Reform, the Human Rights Commission, the Law faculties of the Australian National University and the University of New South Wales, the Law Council of Australia and Law Societies and Bar Associations, as well as other civil liberties groups (through sending the monthly *CLArion* newsletter, to keep them aware of our activities).

One major ongoing issue is monitoring of COAG** and SCAG*** and trying to keep an eye on the 40-plus other Ministerial Councils which operate in similarly unconstitutional, undemocratic and secretive ways. CLA has made some gains in having this fundamental shift in governance acknowledged: we hope in 2011 to make some progress in having corrections put in place.

The Fifth National Indigenous Legal Conference was a successful interstate gathering hosted by the ANU Law School during the year. The President and CEO participated in this extremely informative, and eye-opening event as session chairs. An attempt for CLA to sponsor the attendance of two indigenous students from Cairns' James Cook University didn't eventuate, but avenues were opened for future collaboration, and CLA's sponsorship assistance was used to good effect in facilitating other aspects of the conference.

Kristine Klugman, President

* Father Frank Brennan, SJ, is professor of law at the Australian Catholic University's Public Policy Institute and adjunct professor at the ANU. He chaired the 2009 National Human Rights Consultation Committee. His quotes are from *The Age* 21 April 2010

** Council of Australian Governments

*** Standing Committee of Attorneys-General

NOTE: A full report on CLA activities can be found in the 2010 annual report on the CLA web site.

CLA Civil Liberties Australia A04043
Box 7438 Fisher ACT Australia
Email: [secretary \[at\] cla.asn.au](mailto:secretary[at]cla.asn.au)
Web: www.cla.asn.au