

## SEMINAR M – FAIR GO OR FAIR GAME

### Getting it Right! – Perspectives on Delivering Human Rights Protection in WA

#### Key themes / issues / questions arising from discussion:

##### Giz Watson MLC – Greens WA

- The need for a human rights act for WA
  - o Are rights digressed, who checks, who cares, who understands
  - o Specific impacts on indigenous and youth Eg move-on notices, Northbridge curfew, 'three strikes' legislation
  - o Anti-terror laws, transgression of civil rights, liberties and possibly also new IR laws
  - o Legislation and government execution of law should be mindful of human rights,
  - o Bill of rights – would protect in law fundamental freedoms, recognise universal human rights
  - o Arguments for and against need to be explored and debated
- Best process to protect human rights
  - o Could introduce a bill and follow parliamentary processes
  - o Alternatively/better to have an informed community debate
  - o Informed community consultation, accessible language, translation of issues and stories, opportunity for indigenous people to be involved in the debate about issues that concern and effect them
  - o Why consult? Right to be involved, to have discussion about rights in a changed and changing political environment, create consensus, develop community ownership, discuss competing rights, methods, raise awareness of political history re rights
  - o We can follow the process of consultation in Victoria, 84% support better protection

##### Lucy Fiske – Centre for Human Rights Education, Curtin University

- ACT was the first to introduce HR Act, Vic has a draft and WA is considering one
- The Howard Govt is opposed to a human rights act
- CHRE commend the progression of a HR act for WA
- Need HR protections, Australia is the only western country that doesn't have equivalent protections
- Democratic systems are founded on the principles of rights and freedoms to allow us to reach our full potential as human beings
- It was hoped that governments and democratic systems would guarantee those rights and freedoms, but unfortunately can be marginalised by the 'tyranny of the majority', it is not sufficient on its own to uphold rights, and other countries have recognised this failure
- Notion of 'preventative detention' contravenes numerous rights
- HR act is not a magic solution, still inequality and HR abuse where HR Acts exist
- Debate is around whether or not we should have an act as opposed to how can we best protect the human rights of all Australians

- HR are often thought of as very external to us, some rights such as health care, housing, welfare are incorrectly presented increasingly by govt as privileges instead of fundamental rights
- Will an act cause policies to be reviewed and shaped around rights? Housing, environmental protection, legislation, institutional racism etc
- Who will be protected, eg asylum seekers and refugees in detention
- Suggestions for implementation: Office of Human Rights or independent commission to report to premier and cabinet, 4 roles: policy review, individual complaints, research and community education

### **Jim McGinty – Attorney General**

- Time has come for a national charter of Human Rights, historical reluctance was discriminative and is outdated, federal would be desirable but not forthcoming
- Historical view is that it is up to parliament to uphold rights
- States deliver services, and it is appropriate for them to have state bill of rights, would effect people who receive govt services and interaction eg policing, services etc
- WA has been more offensive to HR than other parts of the country, discrimination, absence of equal treatment of all citizens, eg gay and lesbian law reform removed discrimination from legislation, family courts etc
- Equal say in government election, removal of malapportionment (one vote – one value legislation for Legislative Assembly)
- WA Govt has moved to establish rights in legislation that were controversial but fundamentally important
- Alternative model to Judicial overview – Attorney General certificate must accompany all legislation for a HR check, and courts required to favour HR interpretation, declaration of incompatibility - legislation can be remedied by parliament if judiciary find HR breach, office or commission
- Proportionality of rights, eg freedom of speech balanced against defamation
- Benefits of the model
  - o Breeds human rights culture
  - o Informed political and public debate, substance rather than incompatibility
  - o Democratic, political judgment that there will be more public support than for the capacity of the unelected judiciary to overturn legislation
- Calling for support and assistance in progressing a HR Act for WA

### **Questions/Discussion**

- HR are indivisible, it is a furfy to say that civil and political rights don't have costs and economic, social and cultural do
- We should not shy away just because it may be expensive or difficult
- Rights to protest been further protected since 1 Jan 2006 by removing ability for corporations to sue for defamation

- Rights for mentally ill people, no right to vote, no choice of treatment, must accept all treatment etc – how will an Act effect them? It may or may not open up opportunities for them to challenge
- Will HR Act give opportunity to intersect commonwealth activities in WA – eg mandatory detention – apparently not
- How will consultation be done appropriately? Eg HREOC
- Things that can happen today: move-on orders are being abused, ought to be investigated by AG office

## **Resolution**

The delegates in attendance at the WACOSS Conference 2006 propose the following resolution...

That the WA government and its parliamentarians better protect ALL human rights at all levels in WA through;

- installing a human rights culture into the public service,
- community education on human rights,
- extensive community consultation with all members of the WA society, for the preparation of a WA Human Rights Act, and
- introducing a Human Rights Act or Charter that reflects the outcome of the community consultation.

As human rights are indivisible, we urge to government to include not only civil and political rights, but also economic, social and cultural, environmental and collective, and other rights.