

**Transcript: Graeme Innes speech for PTC NSW Annual President's Dinner
12/06/07**

What are Human Rights?

I would like to begin by acknowledging the traditional owners of the land on which we stand.

Thank you for asking me to speak to you on the topic of human rights?

Now, this is an interactive process, so let's start with a quick three question quiz.

1. What challenge did Ronald Reagan issue to Mikhail Gorbachev on this day twenty years ago, and where did he issue it?

Answer: Tear down the Berlin Wall at the Brandenburg gate.

2. What event, important to Australian women, occurred on this day in 1902?

Answer: Granted the right to vote.

3. Who is Dennis Denuto - as seen on TV? A reluctant, but eventually effective, fighter for human rights.

Tonight, I will shed some light on what human rights means in the context of our daily lives in Australia. In doing this I will talk about the international instruments which set out the basic universal human rights, and then demonstrate how human rights are an integral and ubiquitous part of our laws and life.

Arguably Australia's most successful prime minister, and certainly its longest-serving, Sir Robert Menzies, said:

"By drawing attention to the existence of others and the rights of others, it has a lesson to teach to all sorts of people, from road-hogs and profiteers at one end of the numerical scale, to intolerant majorities at the other.

Here, indeed, is the final, though paradoxical truth; that although the essence of democracy is that the majority shall rule, democracy can never be the real instrument of freedom unless its majorities are constantly tender for the rights of their minorities.

The picture of our Elysium is not of a place where freedom is to the strong, but of a place where freedom is to the weak; where the majority will rule, but will insist upon the minority's right to disagree with them; where the humblest citizen will punctually and indeed reverently obey the law because, though it may be a poor thing, it is his own."

In this passage, Sir Robert is talking about democracy and freedom - two notions which are the cornerstones of our Australian society. What he also touches on is the notion of human rights, and the idea that, although a democracy is a place where the majority

rules, freedom is only attained where the majority constantly recognises the rights of minorities.

The same sentiments still resonate today, although some of the terminology may not be in vogue. Respecting and promoting human rights is essential to freedom and democracy. We can't call ourselves a free democracy without making human rights - the rights of all and thus the rights of minorities and disadvantaged groups - a focus.

So what are these human rights?

Human rights are the basic standards by which we can identify and measure inequality and unfairness. Human rights set out an agreed minimum standard for human treatment.

Those minimum standards are set out in international human rights declarations and conventions, to many of which Australia is a signatory.

Human rights are traditionally separated into different categories of rights. 'Civil and political rights' include rights to privacy, free speech, movement, political thought and voting, and to found a family. They are set out in the International Covenant on Civil and Political Rights.

'Economic, social and cultural rights' include rights to adequate food and water, health care and education. They are set out in the International Covenant on Economic Social and Cultural Rights.

There are also various categories of rights which are defined by the nature of the holders, such as the rights of workers, ILO documents; women, Convention on the Elimination of Discrimination Against Women; children, Convention on the Rights of the Child; minority groups, Convention on the Elimination of Racial Discrimination; refugees, Refugee convention; Indigenous peoples, CERD AGAIN; and people with a disability, Convention on the Rights of People with a Disability.

Human rights are a relevant consideration in law and policy making, and navigating our way in society. However, people shy away from the term 'human rights'. One of the reasons for this is that, although our laws include human rights protection, human rights are rarely referred to as such in Australian statutes. The Commonwealth, State and Territories anti-Discrimination Acts are the exceptions, as they do provide direct protection of human rights, mostly the right to be free from discrimination. In general, Australian statutes and the common law provide protection for rights by way of inference, or as an indirect consequence of something else within the statute.

The term human rights, also conjures up images of leftie, touchy feely ideas. To quote from Dennis Denuto "as seen on TV" in The Castle "It's the vibe, its Mabo, its the Constitution". But the Castle, as well as being a very funny movie which captures and exaggerates some Australian traits which some of us might find a touch embarrassing, actually demonstrates the importance of human rights as one of the foundations of

Australian society. I admit it- I'm a Castle tragic - and as my family will tell you, I quote from it far too often. But for those who have missed the experience, it's the story of a quintessential Australian family whose house is to be resumed to make way for an airport extension. And what Bud Tingwell does, as the barrister who puts Darrel Kerrigan's case to the High Court, is epitomise that often used, and sometimes abused, concept- the fair go. And that's what human rights is really all about- that whoever we are, or whatever we believe, we should all get a fair go. And this needs to be taken into account when making decisions, drafting laws, or forming policy.

As Human Rights Commissioner, I could continue to extol the virtues of human rights in the abstract. But instead, let me demonstrate what 'human rights' is by telling you some stories. Stories where, although the words human rights aren't used - human rights breaches lie at their core.

The right to found a family

The International Covenant on Civil and Political Rights, to which Australia is a signatory, provides the right to found a family. This, I am sure you would agree, is a fundamental human right -one which forms the core of the Australian ethos. Just listening to government policy, particularly coming up to an election, one can see the importance that is placed on the family in Australian society.

However, in Australia, some people are not treated equally in their attempts to form a family. Many of our laws, both state and federal, do not recognise two parents of the same sex, and their children, as a family unit. As a result of this lack of recognition, these families do not receive financial benefits which flow to families with parents of the opposite sex.

Currently, the Australian Human Rights Commission is conducting a National inquiry into discrimination against same-sex couples in accessing financial and work-related entitlements. The report from this inquiry will be tabled in parliament later this year. And we have learned that there are more than 60 laws on Australia's statute books which discriminate against same-sex couples. As part of our inquiry we held hearings all over Australia, and heard many stories which centered on peoples human right to form a family, among other rights such as the right to non-discrimination.

In one of our hearings, Sally and Monica told us that they have been in a same-sex relationship for more than 13 years and they have a baby girl.

They told us they are just like their heterosexual friends who are in long-term relationships and have mortgages and families. Yet laws treat them differently.

As the non-biological parent, Monica has no legal rights over their child. Despite the fact that Sally's family would expect Monica to raise their child if Sally died, they cannot find a legal mechanism that clarifies Monica's status.

Under current superannuation laws, Sally cannot nominate Monica to receive her benefits when she dies.

They do not have access to the same income tax benefits that opposite-sex parents have.

Medicare does not treat them as a "family unit" for the purposes of the Safety Net, and when Monica takes their child to the doctor, she has to worry about being questioned because she is not listed on the same Medicare card. Technically, she can't authorise treatment.

Monica and Sally's right to form a family is impinged upon, as they are prevented from accessing services and benefits. The treatment also constitutes discrimination based on sexual orientation - another human rights breach. And it's just because of who they love.

Mandatory detention

Australia maintains a mandatory detention policy, which requires that all those who come to our shores without authorisation are detained in immigration detention centres. They must stay there until they are either granted visas, or removed to another country. Often, these people are asylum seekers, people who have left their own families, homes and countries to seek protection as refugees in Australia. I don't know how many of you here have left your country of origin, but you probably did so because you wanted to. Even so, it's not an easy thing to do. Imagine how much harder it would be if you left because you had to.

As a signatory to the United Nations Refugee Convention, and the 1967 Protocol relating to the Status of Refugees, Australia has an international obligation to assess the refugee applications of each asylum seeker who reaches our shores.

Australia has also agreed, as a signatory to the human rights conventions mentioned earlier, to uphold the human rights of those who arrive in Australia seeking protection. The International Covenant on Civil and Political Rights, to which Australia is a signatory, provides that a State should ensure that each person be free from arbitrary detention. The International Convention on the Rights of the Child, to which Australia is a signatory, provides that children should only be put in detention as a last resort.

Yet we have a policy which mandatorily puts adults in detention, and which, until two years ago, mandatorily put children in detention as well. And this is a policy supported by both major political parties in the name of strong border security.

The Australian Human Rights Commission opposes Australia's mandatory detention policy, on the basis that it breaches Australia's human rights obligations. By this I do not mean that we should not have the capacity to put unlawful immigrants in detention - of course we should. But it should not be mandatory it should be time limited, and an independent court or tribunal should be able to review the necessity for it.

Consider, Ronald Deng, who has been in immigration detention for 3.5 years. He overstayed his visiting visa from China, and is now awaiting a review of his failed application for asylum. He claims that if he is returned to China, he will be persecuted as a result of his religious beliefs - he is a member of Falun Gong.

Ronald told us that there are times when he considers self-harm or suicide, but that he has never made an attempt at either of these. He is regularly monitored by the Mental Health team at the detention centre, but states that his mental health situation will not improve while he remains in detention, is uncertain of the result of his application, and does not know when that result will be received. All of the medical wisdom supports these assertions, so as well as detaining people we are impacting on their mental health.

Alternatives to holding Ronald in detention include alternative detention within the community, the grant of a residence determination, or the grant of a bridging visa. We don't have to accept everyone who arrives on our shores, but we could at least deal with them a little more compassionately while we're making our decision.

Finally, let me talk about something close to my heart - The right to vote. If I said to you that there were 300,000 Australians who do not get an independent secret ballot in Commonwealth and State elections, you would tell me - as my nine-year-old daughter is wont to do- that I didn't know what I was talking about. But you have one of those three hundred thousand standing in front of you- I have never had an independent secret ballot. Someone else has always filled in my ballot paper, hopefully in the way I directed.

Until five or ten years ago this was an inevitable - if unfortunate - consequence of my disability, and the fact that those who count the votes were too bloody lazy to learn Braille. But now there is technology available to change this situation- so my right to a secret ballot (a fundamental human right) is only prevented by the inaction of politicians, who have to change the laws to make it possible. You will no doubt be pleased to hear - not as pleased as I am I can assure you - that the laws have been changed so that a trial of electronically-assisted voting will take place for people who are blind or vision-impaired at the next federal election. I will be able to exercise my right to an independent secret ballot for the first time, and to quote the late Big Kev, "I'm excited". This human rights breach is being remedied.

I congratulate the responsible minister, Garry Nairn, for addressing this issue. I'm sure it was done for all of the right reasons. But perhaps my comment to him, during our discussions, that at 2000 blind and vision-impaired people per electorate, this was more than his current majority, may have got us over the line. Doing the numbers, and success in political parties, have always been close bed-fellows.

Just three stories; I haven't talked of the women affected by balancing work and family; the teenagers being bullied at school, or harassed by move-on orders; the older Australians and Australians with disabilities who cannot access many of our buildings, and many, many more.

As you can see, International Human Rights are relevant to Australia in many different ways. They help us to shape the kind of society we live in.

The development of international human rights instruments over the past 50 years have heightened awareness around the world about these issues. The fact that our rights are enshrined in numerous instruments, many of which are legally binding, is testament to the weight with which they are accorded, and the high esteem in which they are held by the international community.

These instruments set universal standards against which national governments and individuals alike can measure their own compliance, and compare it to that of others. Even when there is disagreement over the precise meaning, nature or scope of a particular human right, the fact that such a dialogue exists at all demonstrates the widespread recognition of, and concern for, fundamental universal human rights.

Eleanor Roosevelt said-

"Where, after all, do universal human rights begin? In small places, close to home- so close and so small that they cannot be seen on any map of the world. Yet they are the world of the individual person: The neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works. Such are the places where every man, woman and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world."

So, whether you're a woman whose career has changed because employment or promotion was refused due to pregnancy; a man who has been treated differently because of his race or religious beliefs, or Darrel Kerrigan, who's Castle was being taken for an airport extension, human rights have a role in all of our lives.

Thanks for the chance to talk with you tonight.