HUMAN RIGHTS UNDER LABOR

In 2007 human rights activists welcomed the return of a Labor government that promised to legislate for an Australian Bill of Rights, remove the evils of mandatory detention for asylum-seekers, enhance the role of the Australian Human Rights Commission and introduce new measures to advance our freedoms. Labor has clearly failed to deliver on this agenda.

 The promise to introduce a Bill of Rights, after extensive consultations that overwhelmingly endorsed the idea, was pushed aside, and the 2010 Human Rights education program replacing it was discontinued after a short period of operation. The draft legislation consolidating five anti-discrimination laws was so confused it had to be withdrawn. Most worrying, Australia's asylum-seeker policy has been so mismanaged that detainees now face a bleaker future than under John Howard, with over 5000 people, including children, in detention facilities.

 The confusion facing human rights policy has been created by Labor's attempt to redefine human rights to suit its ideological priorities. Anti-discrimination and egalitarian measures have been broadened and civil liberties neglected. This approach is illustrated by Labor's shocking attitude towards the media and freedom of expression. Most worryingly, our national human rights watchdog, the Australian Human Rights Commission, has embraced the government's ideological position.

 Australia's first Human Rights Commission was created by the Fraser government, with its initial function arising from the International Covenant on Civil and Political Rights. The five pieces of legislation focusing on egalitarian rights were added later. Despite its origins, our commission is missing in action when important civil liberties are under threat. Consider the 2011 prosecution of Andrew Bolt under the Racial Discrimination Act over an article he wrote about access to grants reserved for Aboriginal Australians. Given the significance of the case, one would assume that the Human Rights Commission would be interested in how the court interpreted the legislation, and would wish to assist with specialist advice. The case certainly met the commission's own amicus curiae guidelines, yet they made no representations to the court.

 The Human Rights Commission was also quiet when former attorney-general Nicola Roxon wanted to outlaw, as discrimination, any actions or words which have made others feel offended, and proposed shifting the burden of proof in discrimination cases from the accuser to the accused. It required former Whitlam adviser and former NSW chief justice James Spigelman to remind the commission in his Human Rights Day oration that "the freedom to offend is an integral component of freedom of speech", and that "there is no right not to be offended".

 The Australian Human Rights Commission also failed to argue, with sufficient vigour, for the freedom of expression when the government planned to create statutory media regulation in response to the Finkelstein inquiry into print media. It was left to Liberty Victoria, the NSW Council for Civil Liberties and other non-government organisations to identify the structural and conceptual flaws in the draft legislation, and to campaign against it.

In its December 2012 submission to the Senate Legal and Constitutional Committee about the Human Rights and Anti-Discrimination bill, the commission agreed with the government over the abolition of the position of Human Rights commissioner, and supported maintaining the existing positions dealing with discrimination.

 When the commission does take a public stance, it emphasises the limits to free speech, or focuses on discrimination or a range of social welfare issues. Approaching human rights this way contributes to a culture of dependency on the state and promotes a feeling of "victimhood", undermining the focus on independence and civic duty that arise from a strong civil rights culture.

 In the first major speech by the newly appointed National Children's Commissioner, Megan Mitchell she expressed her concerns about "socio-economic needs of certain vulnerable groups of children", missing the fact there are scores of federal and state agencies with the sole responsibility of looking after disadvantaged children. She did not speak about the freedoms that will impact on their lives: the right to participate in the political process, freedom of opinion or religion, and turned a blind eye to the imprisonment of numerous children in detention in Manus Island and Nauru. The rights of a 13-year-old girl recently accused publicly of racism were not mentioned.

 The dilemma is partly caused by the de facto abolition of the position of Australian Human Rights Commissioner, whose mandate was largely defined by the International Covenant on Civil and Political Rights. After my appointment as Human Rights Commissioner expired in 2005, there was no attempt to fill this position on permanent basis and by now it has disappeared from the commission website. This despite the position still being recognised by the AHRC Act of 1986.

 This was noted by the shadow Attorney-General George Brandis, who recently said "this government is engaged in a multi-front war against the traditional liberal conceptions of freedom of speech", and that Australia's human rights culture is being changed to reflect Labor priorities. It was heartening to hear Senator Brandis's promise to create a new position of "freedom commissioner" to focus on civil liberties and freedoms, especially on freedom of expression.

 Since 2007 the Human Rights Commission has pursued a highly selective and ideological agenda, and, as far as civil liberties are concerned, it has become the government's lap dog. A Liberal government needs to restore the balance between civil liberties and egalitarian rights, which can only be achieved by restoring the position of Human Rights Commissioner and the provision of powers to discharge their responsibilities. Such powers would require the enactment of legislation to incorporate the International Covenant on Civil and Political Rights into Australian law; just as we did in the past with international anti-discrimination instruments.

 Sev Ozdowski was Human Rights Commissioner from 2000-05