

OPINION PIECE FOR THE AUSTRALIAN ON REFORMING AHRC
19 January 2017

The Australian Human Rights Commission (AHRC) should not be abolished. Australians whose rights are being breached or who are unlawfully discriminated against deserve protection. AHRC is responsible for advising parliament on human rights breaches. It also has a role in addressing individual complaints. Furthermore, it has a statutory responsibility to raise public awareness of human rights.

Any review of government actions or laws or any decisions to redress individual discrimination by the AHRC must reflect the existing law, be fair to all concerned, proportionate, speedy and involve a degree of common sense. The AHRC must be seen to be non-partisan, well-versed in its jurisdiction and community standards, and demonstrate procedural fairness and balanced judgement.

Unfortunately, the AHRC has not been displaying such virtues lately.

Allegations have been made that its flagship 2014 national inquiry *"The Forgotten Children"* was politically motivated. In fact, the inquiry was initiated only after the Abbott Coalition government won power and not during the Gillard Labor government when illegal boat arrivals and the tragedy of drownings at sea were at their peak; there were some 1,200 children in immigration detention in December 2012 with numbers rising to 1,773 in August 2013.

It has also been suggested that the AHRC's complaint handling processes may on occasions reflect the organisation's political bias, bureaucratic mismanagement and failure to inspire public confidence. The procedural inadequacies in its handling of the Queensland University of Technology students' case are well documented. There have also been, rightly or wrongly, accusations of abuse of process through the solicitation of certain complaints and the payment by one of the QUT students to settle a matter which should have been dealt with in a more transparent and expeditious way. There are also allegations about censoring public debate, for example, in the Bill Leak case.

Despite the above problems the AHRC has become popular within "progressive" circles as a champion of political correctness willing to break the rules to deliver "social justice". Unfortunately, it has at the same time lost the confidence of many ordinary Australians and of the government. This impacts adversely on the AHRC's ability to do its job and arguably compromises its mission to make human rights values part of everyday life. Where the national discourse on human rights threatens to become derisory and contemptuous due to the AHRC's actions, immediate change is called for.

What can be done to restore the standing of the AHRC in the broader community?

A radical option would be for the government to push the reboot button. This was done by Labor Attorney General Gareth Evans in 1986 when he decided to replace the Fraser government's Human Rights Commission Act 1981 with new legislation. The net result was the creation of a new commission with Dame Roma Mitchell not reappointed, all Human Rights Commission staff losing their jobs, commission offices moving from Canberra to Sydney, Justice Marcus Enfield being appointed president and new staff appointed.

A less radical approach could involve a number of measures.

To start with, it would help if human rights legislation better reflected community standards. For example, Section 18C of the Racial Discrimination Act 1975 deals with sensitivities and hurt feelings, reverses the onus of proof by requiring the respondent to argue why the law was not breached and

requires judges to ignore community standards while determining liability. I would also suggest clarifying and strengthening the protection of civil liberties and freedoms in the legislation.

Second, the AHRC legislation made the president primarily "*responsible for managing the administrative affairs of the Commission*". The current president appears to have adopted both the function of the president and that of the Human Rights Commissioner – she has even advocated for the abolition of the Commissioner's position. This has led to unnecessary confusion between the president's managerial and advocacy roles. An appropriate candidate needs to be secured to return the role of the president to what it was in the past. Clearly, the days of political activism need to be over for the AHRC to regain the public's trust. Human rights belong to all Australians and should not be monopolised by the political left.

Third, the AHRC president is the person solely responsible for the handling of complaints. Improvement in this area does not require a change to the legislation but rather a less revisionist interpretation of the legislation which clearly states that procedures should "*not disadvantage either the complainant or the respondent*" and allows the president to terminate any complaint when it "*is not unlawful discrimination*" or is "*trivial, vexatious, misconceived or lacking in substance.*" A person able to improve the administration of the complaint handling process is needed.

Fourth, significant resources are needed for community education to ensure that Australians are on the same page as the AHRC when it comes to their understanding of human rights. The AHRC education website requires updating and more vigour in its marketing. For instance the AHRC's YouTube page shows numerous videos, many having less than one hundred views, with the ability to comment disabled. In addition to the continuation of anti-racism work, a focus on education for democratic citizenship and an increased understanding of civil liberties warrant resources.

The impact of my 2004 "*A Last Resort?*" inquiry also suggests that human rights education outcomes are achieved through the involvement of broad civil society in AHRC inquiries. The changes in public opinion resulting from the 2004 inquiry put pressure on the government, led to a change in the law and resulted in children being released from immigration detention. Similarly, the involvement of civil society into the conduct of the 2005 "*Not for Service*" inquiry opened Medicare payments to GPs for mental health services. As in any democracy, public support for human rights is an important factor directly linked to the effectiveness of human rights outcomes.

Only when the AHRC has regained the broader trust of the civil society that it serves will it be able to protect the human rights of all Australians (including minorities) and effectively deal with discrimination.

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