The People have spoken, and want a Human Rights Act for Australia

After 66 roundtables in 52 locations across Australia, 35,000 submissions and a national opinion poll, the National Human Rights Consultation Committee has released its report recommending a Human Rights Act for Australia. The report was launched by the Attorney-General, Robert McClelland, at a Human Rights Law Resource Centre event in early October, and was greeted with enthusiasm by the human rights community. The Consultation Committee, chaired by Father Frank Brennan, was launched on Human Rights Day, 10 December 2008, to "initiate a public inquiry about how best to recognise and protect the human rights and freedoms enjoyed by all Australians." The Committee has decided that while more education is the highest priority for improving and promoting human rights, Australia does in fact, need a Human Rights Act.

The Committee called for a "dialogue model" of human rights, which encourages the courts to alert the government and parliament to legislation that is inconsistent with human rights. It also recommended that the proposed act go further than the similar acts in Victoria and the ACT by granting individuals the rights to take legal action against federal "public authorities" (such as ministers, departments and federal agencies, and private organisations undertaking government tasks, such as employment agencies) for breaching their human rights. Public authorities would be obliged to act and make decisions in accordance with human rights.

Another innovation suggested by the Committee was that some economic, social and cultural rights should be included in a Human Rights Act. The role of ESC rights would be disappointingly more limited, however. For example, people alleging a breach of these rights would not be able to take court action. They would instead be able to complain to the Australian Human Rights Commission.

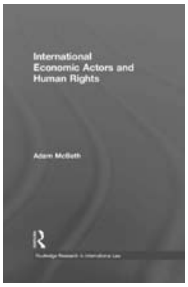
The proposed act would empower judges to interpret legislation compatibly with human rights if it is possible to do so without affecting the purpose of the legislation. Where such an interpretation is not possible, a judge would have to issue a declaration that a law is incompatible with human rights. This declaration would not invalidate the law, but the government would be required to respond to the declaration in parliament and explain whether it intended to change the law or not. A similar provision exists under the UK Human Rights Act, and since its enactment, parliament has always changed a questionable law based on a Declaration made by the House of Lords. The United Kingdom is bound by the decisions of the European Court of Human Rights, which places additional pressure on the UK Parliament to amend rights incompatible legislation. Australia is not subject to similar decisions and its parliament would not necessarily be under the same pressure.

While the recommendations have received support from a broad range of social groups, organisations and individuals, there has been spirited debate in the nation's media, particularly in newspapers and online. While those on both sides of the debate are receiving air time, The Australian newspaper is leading a concerted campaign against a national Human Rights Act. The paper and other opponents have attacked the Consultation as unrepresentative, despite the enormous number of submissions and the clear response to the Committee's independent national opinion polling (57% were in favour, and only 14% opposed). Other common claims are that a Human Rights Act would greatly increase litigation despite evidence from the UK, Victoria and the ACT showing that this is not true, and that religious groups would be threatened despite the fact that an act would protect freedom of religion.

The federal government has yet to respond to the Committee's report but has said it will do so before the end of the year. It is assumed, therefore, that the government will make clear whether or not it intends to pass a Human Rights Act before Christmas. Over the coming weeks, both sides of the debate will engage in furious lobbying of the government. The battle is far from over.

The Castan Centre submission to the Committee, and a separate submission by Dr Julie Debeljak, are available at www.law.monash.edu.au/castancentre/publications/submissions

Castan Centre Deputy Director's new book on global economics and human rights



International human rights law was originally designed to protect the inherent dignity of every human being from abuse by governments. But in an age of a global economy, where international institutions and multinational corporations operate on a global scale, beyond the reach of any one State, what is the role of human rights law? When individuals are killed, enslaved or tortured, when they are evicted from their homes or poisoned in the name of commerce or economic development, rather than at the hands of an oppressive government, can international human rights law still deliver accountability?

Deputy Director Adam McBeth's first book, *International Economic Actors and Human Rights*, recently released, addresses these questions. The book looks at the effect international economic actors can have on human rights and analyses how human rights law should address the impact these organisations have. The book analyses three different kinds of international economic actors, the World Trade Organization, international financial institutions (such as the World Bank and the IMF), and multinational corporations. Through his analysis, Dr McBeth shows the reader that while international human rights law could be interpreted to apply to these actors, changes to the way they operate and the current accountability mechanisms are needed. This book is a culmination of the research conducted for his PhD.