News

"Freedoms" report catalogues human rights breaches

When the Abbott government came to power in 2013, "freedom" was a hot button issue, framed especially by the heated debate about racial discrimination laws.

Fast forward a little over two years, and the government's signature review into laws that infringe "traditional rights and freedoms" was released with little fanfare.

The Australian Law Reform Commission's (ALRC's) Report, *Traditional Rights and Freedoms – Encroachments by Commonwealth Laws,* was a comprehensive review of which Australian laws are likely to infringe a list of rights deemed traditional by the Attorney-General, George Brandis. Many of the big rights are included in the list of course – freedom of speech (which the ALRC calls the freedom *par excellence*), fair trial rights, freedom of religion, freedom of movement, freedom of association etc. However, there were some **major omissions** including privacy, personal liberty, and freedom from torture and other forms of cruel, inhuman and degrading treatment and punishment. To ignore one of the best-established common law rights protections (*habeas corpus*), presumably on the basis that its inclusion might lead to further criticism of the Government's detention policies (for asylum seekers, refugees and suspected terrorists), is really inexcusable. It must also be noted that economic, social and cultural rights (other than the right to property) are ignored altogether.

The ALRC found that some of the supposedly traditional rights listed by the Attorney-General are surprisingly recent in origin, and others are uncertain guarantees at best due to vague jurisprudence. Overall, their scope is unjustifiably narrow compared with even Australia's **core obligations** under international human rights law.

Even against the Attorney's carefully curated list, the ALRC found a great many potentially unjustified encroachments among current Commonwealth laws. In particular, it presented evidence that migration and anti-terror laws inpinge on multiple rights and freedoms. Also figuring prominently was legislation which makes the Government's life easier by, for example, placing the onus on defendants in criminal trials, imposing strict/absolute liability, providing for compulsory questioning of suspects, immunising authorities from liability, excluding judicial review of government decisions and actions and inappropriately delegating legislative power to the executive. However, possibly to the Attorney's disappointment, very few encroachments on freedom of speech and freedom of religion were found (despite **The Australian's take** on the report).

The Final Report only confirms that section 18C of the *Racial Discrimination Act*, which **arguably kicked this whole inquiry off**, might be slightly too broad – a fact already acknowledged by rights experts, including the Castan Centre. Workplace relations laws were found to be possibly contrary to international norms, but not common law freedom of association. The report also notes that there is "no obvious evidence that Commonwealth anti-discrimination laws significantly encroach on freedom of religion."

Various criminal and national security laws, on the other hand, were found to have significant potential to offend freedom of association, freedom of movement, fair trial rights, property rights and more. Laws relating to advocacy for terrorism and disclosing intelligence operations were also recommended for review due to freedom of speech concerns.

None of this will come as a surprise to anyone with more than a passing interest in human rights in Australia: organisations such as ours regularly shine a light on laws that infringe human rights, and even official parliamentary bodies have documented the issues. The Parliamentary Joint Committee on Human Rights examines all new Commonwealth laws for compatibility with Australia's international human rights obligations, and other bodies including the Senate Scrutiny of Bills Committee play a (more limited) role. With the combined work of all the scrutiny committees, the Government already has most of the information it needs on the rights compatibility of legislation – a fact pointed out by the ALRC.

Nevertheless, having the encroachments catalogued so comprehensively (the final report runs to nearly 600 pages) serves as a reminder of just how many potentially rights-infringing laws are on the books, and provides the government with a handy catalogue of the most concerning ones.

When the Attorney-General tabled the report, the accompanying media release said that the Government is "committed to preserving and maintaining the freedoms which underpin the principles of democracy." However, its practice (both legislative and administrative) to date has greatly expanded the scope of such encroachments, and it has continually sought to remove or undermine relevant oversight and advocacy for reform (you can find the details in **our submission to the inquiry**).

In 2014, the Government announced a 'war on red tape', and followed up with its 'omnibus repeal day.' Might we see something similar in response to the many encroachments on our democratic rights and freedoms identified in this report? The Attorney has written to his fellow Ministers asking them to 'carefully consider what action might be taken.' Let's hope they care as much about rights as they do about red tape.

The gap isn't closing in the NT

When Prime Minister Malcolm Turnbull released the 2016 'Closing the Gap' report in February, the Castan Centre also released a study on the Northern Territory Intervention's impact on this signature government policy. Our report is a damning assessment, and the numbers shocking. While the prime minister's report attempted to accentuate the small gains that have been made, it still managed to ignore some issues, including one of the biggest: the rate at which Indigenous Australians are incarcerated.

Currently, incarceration rates for Indigenous Australians are not covered by the Closing the Gap goals, even though they have risen by 41% in the Northern Territory since the Intervention began. One figure that particularly stands out is that Indigenous Australians make up only 3% of the population but about 27% of the prison population. This is significant, as negative contact with the justice system can be a large contributor to disadvantage.

The Northern Territory Intervention was introduced in 2007 by the Howard Government and, although it has been amended since, it survives to the present day under the name "Stronger Futures".

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