

# **NSW Young Labor Action Submission to the National Human Rights Consultation**

**Prepared and presented by Angus McFarland  
and Rose Khalilizadeh  
on behalf of NSW Young Labor Action**

**Young Labor Action represents the following Young Labor Associations in NSW:**

***Balmain / Marrickville Young Labor Association***

***Banks Young Labor Association***

***Bennelong Young Labor Association***

***Blue Mountains Young Labor Association***

***The Hills Young Labor Association***

***Hunter Young Labor Association***

***Newcastle Young Labor Association***

***North Sydney Young Labor Association***

***Parramatta Young Labor Association***

***Sydney Young Labor Association***

# Young Labor Action

## Submission to the National Human Rights Consultation 2009

### Introduction

Young Labor Action welcomes the Government's Human Rights Consultation. Human rights encapsulate basic values such as dignity, freedom and equality. They protect and promote an inclusive society. These include, but are not limited to, the right to liberty, to be treated equally by law and the right to practice any religion. Young Labor Action believes that there is currently insufficient protection and promotion of human rights in Australia. We have already witnessed examples of discrimination, unfair detention and inequality in Australia as a result of no checks and balances with respect to human rights. Therefore, we support the creation of a National Bill of Rights that codifies Australia's human rights obligations. This would ensure that the creation of policy, the drafting of legislation, the provision of services and the interpretation of legislation are consistently checked against a set of codified rights that enshrine the basic values that all humans deserve. We support the creation of a Bill of Rights for the following reasons:

#### 1. Protecting fundamental human rights

While Australia is a party to several international treaties on rights, *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and the *International Covenant on Civil and Political Rights* (ICCPR) these are not codified in Australian legislation. Legislators and courts are not bound to these international instruments. This submission commends the Victorian and ACT Governments in establishing their respective statutory Charters or Bills of rights, but recognises that these instruments are easily overridden by other legislation that may clearly abrogate human rights.

While some may argue that rights are already adequately protected in Australia by the Constitution, through the common law or through bodies such as the Human Rights Commission, this has not stopped abrogation of fundamental human rights. Several examples of this have been outlined throughout this submission as demonstrations of how rights are not protected in Australia and urgently require legislative attention.

The previous Government dramatically curtailed fundamental human rights and freedoms we as Australians had previously taken for granted. Examples of some policy initiatives where the Howard Government wound back basic human rights:

- Refugee policy and mandatory detention;
- Sedition laws that attacked free speech;

- The Northern Territory intervention and its blatant racial discrimination;
- The Australian Building and Construction Commission and equality before the law;
- Workchoices, AWAs and the right to join a trade union;
- “Anti-terror” laws, ASIO surveillance and the right to privacy and presumption of innocence;

## **2. Starting the human rights dialogue**

Human rights are rarely addressed in our political and legal systems and, when we refer to rights, it is often done in an ad hoc and arbitrary manner. This submission commends the Government’s consultation in its ability to start the discussion about human rights in Australia. However, more needs to be done to make human rights part of the common vernacular of Australian society.

By legislating for a Bill of Rights, it would lead to Australian society having robust dialogue about human rights and give us the ability to refer to a strong expression of human rights by the Australian Government. It would foster a continuing dialogue about human rights in all aspects of society and ensure that it is a strong part of all decisions that affect Australians.

## **3. Guiding decision-makers in creating legislation**

At the moment, regardless of the international rights treaties to which Australia is a party, the government can make laws that breach human rights. Examples of these include laws that require mandatory detention of asylum seekers, including children, or the Northern Territory Intervention legislation that discriminates based on race. Legislators need not have a mind to human rights when drafting policy or legislation, nor do they have to consider human rights in service delivery, nor do courts have to refer decisions to any human rights criteria. Without any sort of legal protection of human rights, our government is not bound to promoting and protecting human rights.

A Bill of Rights would provide checks and balances on each bill that is introduced in order to check that it does not breach the stipulated rights. It would also call for human rights compatibility statements for new laws and human rights impact assessments, ensuring that laws are consistent with human rights obligations.

#### **4. Examples of current issues where Young Labor Action believes a national Human Rights Charter could strengthen human rights and promote democracy in Australia.**

##### *a) The Northern Territory Intervention*

The Federal Government's policy of "Intervention" in remote Indigenous communities in the Northern Territory aims to protect the rights of children and women from sexual abuse. However, the "intervention" policy has simultaneously stripped away many fundamental human rights for Indigenous Australians in the Northern Territory, particularly by suspending the *Racial Discrimination Act 1975 (Cth)*, allowing Government officials and services to act in a racially discriminatory manner. We believe that a national Human Rights Charter enshrining the right to be free from discrimination on the basis of race would facilitate a better balance between basic civil and political rights for all Indigenous people and the important rights of children and women to be free from sexual abuse and violence.<sup>1</sup>

##### *b) The treatment of asylum seekers and refugees*

The treatment of asylum seekers and refugees has for some time been a human rights concern for many Australians. In particular the policy of mandatory detention, the inability for detainees to challenge their detention in courts, the lack of overriding legal guidelines relating to the fair treatment of refugees in detention and the use of bridging visas that restrict asylum seekers released into the community from being able to seek employment or access basic welfare services are significant human rights concerns that remain since the new Rudd Labor Government repealed some of the harsher elements of the previous Howard Government's refugee policy. A national Human Rights Charter would make our elected representatives more accountable for derogation of fundamental human rights in relation to the treatment of asylum seekers.<sup>2</sup>

##### *c) Same-sex relationship recognition and equality*

Same-sex couples are not considered equal before the law compared to heterosexual couples when it comes to relationship recognition. Young Labor Action supports full relationship equality for gay and lesbian couples in Australia. A Human Rights Charter which enshrines equality and freedom from discrimination for the gay and lesbian community will facilitate a greater rights-focused dialogue about why same sex couples should be entitled to the right to have their relationships recognised by Government agencies.

##### *d) The Australian Building and Construction Commission*

The coercive powers of the Australian Building and Construction Commission (ABCC) breach many basic human rights and fundamentals of procedural fairness. For example, the powers accorded to the ABCC do not require any warrant from a judicial officer or the

---

<sup>1</sup> Australian Human Rights Commission, 2009, Fact Sheet on "Human Rights and Aboriginal and Torres Strait Islander Peoples".

Attorney-General to compel a worker to be interviewed or produce documents. Furthermore, there is no ability to review ABCC decisions via the *Administrative Decision (Judicial Review) Act* in relation to rules of natural justice, improper use of power or suspected fraud. Finally, special coercive investigative powers in relation to a particular group of workers (in this case, construction workers) erodes equality before the law is a fundamentally discriminatory approach to workplace relations. A Human Rights Charter would restore balance in favour of fundamental democratic human rights such as freedom of speech and the right to silence.<sup>3</sup>

## **Conclusion**

Young Labor Action urges the Human Rights Consultation committee to support the establishment of a legislative federal Charter of Human Rights. Such a charter would enshrine, protect and promote important human rights for all Australians. A legislative model would not take any power away from the legislature, and would ensure that all new legislation goes through a “rights-dialogue” that will serve to protect human rights and strengthen our democracy.

---

<sup>2</sup> Australian Human Rights Commission, 2009, Fact Sheet on “Asylum Seekers and Refugees”

<sup>3</sup> G.Williams, 25 August 2008, speech to the “Forum on Industrial Laws Applying in the Australian Construction Industry”, at the National Press Club.