



Australian  
Human Rights  
Commission  
*everyone, everywhere, everyday*

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# **Envisaging a Fairer Australia: Everyone, Everywhere, Everyday**

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President, Australian Human Rights  
Commission

Don Dunstan Human Rights Oration  
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## **Introduction**

I would like to begin by acknowledging the Kurna peoples on whose land we meet this evening. I also thank Katrina for her warm welcome to country.

Additionally, may I thank the Don Dunstan Foundation for inviting me to give the 2008 Don Dunstan Foundation Human Rights Oration, and Professor Michael Barber, Vice Chancellor of Flinders University, for his warm words of introduction?

I would like also to acknowledge Professor Fred McDougall, Acting Vice-Chancellor of Adelaide University, The Hon Greg Crafter, Chair, Trustees, Don Dunstan Foundation and other Trustees of the Foundation, Mr Bill Cossey, Chair, Board of Management of the Don Dunstan Foundation, Ms Linda Matthews, Commissioner for Equal Opportunity, Ms Lowitja O'Donahue, other distinguished guests - including our Youth Speaker, Ms Bree Willsmore.

## **South Australia's human rights achievements**

It is wonderful to be giving my inaugural speech as President of the Australian Human Rights Commission in South Australia. Apart from being the place where I was born and raised, South Australia has a long and proud tradition of leading of human rights protection in Australia.

In 1894 South Australia became the first Australian colony to give women (including Aboriginal women) the vote and it was one of the first jurisdictions in the world to allow women to vote. It was the first jurisdiction to allow women to stand for election to Parliament.

The University of Adelaide was the first university in Australia to admit women to degree programs.

South Australia was also the first Australian state to introduce laws against discrimination. The first legislation of this kind was about discrimination on the grounds of race and ethnic origin and this led later to laws prohibiting sex discrimination.

And of course, between the years 1967-1968 and then, more significantly, from 1970-1979 South Australia had the privilege of being led by the visionary Premier whom we honour this evening.

## **About Don Dunstan**

The 1970s were the Dunstan Decade in South Australia. I commenced my career as a lawyer in the SA Government in the middle of this period. Don Dunstan's courageous leadership and his passionate pursuit of equality and social justice had a lasting impact on this state and its people.

His years in office saw a wide range of progressive social and cultural reforms that changed the lives of many South Australians.

His influence brought about the recognition of Aboriginal land rights in SA; the decriminalisation of homosexuality; the appointment of the first Australian female

Queen's Counsel and Supreme Court judge, Dame Roma Mitchell; the introduction of ground-breaking consumer protection laws and anti-discrimination legislation. He also used his influence within the ALP at the national level to advocate against the White Australia Policy.

Quite early in my time as a government lawyer I was fortunate enough to be included in the small team which accompanied Premier Dunstan to Canberra for what was then known as the Premiers' Conference. It was a great personal experience for me and I have a strong memory of the courteous and respectful way in which the Premier treated this very junior member of his team.

### **My experiences as a South Australian public servant**

It seems almost impossible to believe at this distance that I was one of the first women to hold a permanent position as a member of the Crown Solicitor's Office - and that at the same time there was at least one State in Australia where my status as a married woman would have disqualified me from doing so.

As many of you know, I was in the South Australian public service for approximately 13 years. It was during that time that I first faced the challenge of persuading decision-makers, including judges, to abandon gender stereotypes.

In an early case of this kind, I appeared for the government to challenge an employer's decision to dismiss its married female employees ahead of all other employees. The Court, like the employer, initially considered this decision to be socially responsible since the married women would have the least need to earn an income of their own. It was not an easy thing for me to persuade the Court that not all married men used their earnings to support their wives and children. I had to fight hard to argue that if you wanted to identify the members of a workforce who have the greatest financial need for a job you might want to make enquiries about their individual circumstances rather than rely on stereotypes.

### **Human rights stories I heard when I was a judge**

Fourteen years ago I became a Federal Court judge who listened to the types of arguments that I made when I was a government lawyer. When I was first appointed I was resident in Adelaide, and later I moved to Sydney (I digress to mention that my recent marriage to an Adelaide based man has given me an Adelaide home once again and I am greatly enjoying relearning my way around this lovely city.)

During my time as a judge I heard many cases that reminded me that human rights remain a live issue for Australia. It will not surprise you to learn that many of these stories were about people who had come to Australia seeking asylum, including cases about children whose mental health was rapidly declining as they were being held for unconscionably long periods of time behind razor wire.

But not all of the cases were about asylum-seekers.

One example was about the right of Commonwealth public servants to exercise their right to freedom of expression. In their capacity as private citizens these public servants wanted to participate in the day of action protesting proposed changes to workplace laws – a classic example of freedom of association and expression. Yet

senior public officials thought it was appropriate to restrict their capacity to take the recreation leave or 'flex' leave to which they were entitled.

Another case, now known as the 'annoying laws' case, was about NSW regulations giving police the power to control the behaviour of people who might annoy the Pope and other Catholics who were in Sydney for the week-long World Youth Day celebrations. The regulation clearly restricted the right of people wanting to express their views about the attitude of the Catholic Church to sex before marriage, contraception, abortion and gay and lesbian relationships.

A third case was about choosing an appropriate aged care facility for an elderly man who had migrated to Australia from China late in his life. The decision-maker did not think it important to place him in a home that could provide the Chinese food that he had eaten all his life or a home that was close enough for his wife to travel and take him his food.

My experiences as a judge left me persuaded, as they did my predecessor the Hon John von Doussa QC, that in Australia we have legislatures that are insufficiently rights-conscious and bureaucracies that are insufficiently rights-sensitive. I don't mean to suggest that our government is on a mission to breach human rights principles. But I most certainly mean to suggest that, currently, human rights are hardly a flicker in the eye of most law-makers and decision-makers. That has to change.

Last month, I left the Court to start a five-year term as President of the Australian Human Rights Commission and it is in that new role that I speak to you to this evening.

### **Human rights: everyone, everywhere, everyday**

I have become the President of an organisation that has a new and powerful vision statement. That vision statement is:

*Human rights: everyone, everywhere, everyday.*

Although this vision statement was adopted by the Australian Human Rights Commission while it was under the leadership of John von Doussa, I was immediately attracted to it. It reminds us that human rights are not just for foreign countries suffering under totalitarian regimes; human rights have current relevance for us all. They are important in ensuring that Australia is a democratic, fair, inclusive, tolerant and secure society.

I am in complete agreement with Professor Conor Gearty who, in his 2005 Hamlyn Lectures, described human rights as one of the great civilizing achievements of the modern era. He was, no doubt, looking back to the adoption of the Universal Declaration of Human Rights by the United Nations 60 years ago.

Human rights provide the framework for a decent society. They also provide the framework for a peaceful society. After the Second World War, the international community came to recognise that freedom and equality were critical to world peace. We are also learning to appreciate that human rights are equally critical to a just and secure modern nation.

But it is clear to me that not everyone is persuaded about the importance of human rights.

### **My personal conversations about human rights**

On learning about my appointment as President to the Australian Human Rights Commission many of my colleagues, friends and acquaintances started talking to me about their views on human rights.

I learnt that some of my friends and colleagues feel as I do about human rights.

For example, one person told me a story about becoming a godparent. She took the role of being a 'moral compass' for this child seriously but she did not subscribe to any particular religious faith. A little perplexed about what to do, she decided that when her god-daughter was born she would give her a copy of the Universal Declaration of Human Rights because, in her words:

*To the extent that there is any one document that sums up what I believe in, it is the Universal Declaration of Human Rights.*

I immediately wished that I had thought to do the same when I became a godmother.

But there were other stories that surprised me. A former judge, whose judgments had been a model for sympathetic understanding of the plight of the disadvantaged, wrote to me after my appointment as President of the Commission was announced. He said that he looked forward to hearing from me, after I had been in office for a while, whether there was a continuing need for the Australian Human Rights Commission and whether my time was being taken up dealing with mere trivia.

And of course my personal conversations are but a small subset of the conversations that are going on in Australia about human rights.

### **Questions about the importance of human rights**

When the Rudd Government was elected last year it promised to conduct a national consultation on the protection and promotion of human rights in Australia. In anticipation of these consultations there have been many conversations, debates and lots of commentary about the importance of human rights and human rights protections in Australia.

Some of the commentary suggests that human rights are an abstract legal idea constructed by and for a legal intellectual elite.

I have certainly asked myself whether the language of 'human rights' is too legalistic. I can see how that could be the case for some. On the other hand, there is strong evidence that using the word 'rights' can be seriously empowering for those who have trouble getting their voices heard.

Other commentary suggests that human rights could actually be a threat to our democracy. Those commentators suggest that lawyers and judges peddle the idea of human rights and human rights charters because they are drumming up work – and power – for themselves.

I have little patience with this argument. It seems to me largely to miss the point. Human rights are about the kind of society we want to live in. Judges don't make our society; they are more like umpires. Dwelling on the power that human rights laws give to judges is a little like dwelling on the power that the rules of a football game give to the football umpire.

In all football codes, the game is determined by the rules. The rules create a particular kind of game, and one in which no player is exposed to unacceptable danger. The role of the umpire is entirely subsidiary; it is to make sure that the rules are respected.

By rather imperfect analogy, when thinking about the rules for our society, it seems to me that we need to identify the kind of society we want to live in, develop the rules to help us create that society, and then, and only then, consider the role of the judges, lawyers and police who may be required enforce those rules.

### **The kind of society I want to live in is a society based on human rights**

I want to live in a democracy where everyone counts because of who they really are, not because of a label put on them - a consumer, a worker, a voter in a marginal electorate

I want to live in a society where everyone can take advantage of his or her abilities and where everyone has a real say about the world they live in – be they an Aboriginal or Torres Strait Islander person, a person of Muslim faith, a person with disability, a parent wanting leave from work to care for a child, a newly-arrived refugee, a person in a same-sex relationship, a young person, an elderly person or anyone else.

I know I'm not alone in wanting this kind of world, and the kind of world I am talking about is based on human rights.

I believe that we will have a society of this kind if:

- those who make our laws are respectful of human rights
- those who make decisions under those laws are respectful of human rights and
- we as members of the Australian community are respectful of human rights and live by them each day in our interactions with others.

While Australia is in many ways a wonderful country, this is not a country where human rights are part of our everyday vernacular, our everyday consciousness or our everyday business. Human rights are not enjoyed by everyone, everywhere, everyday. There are times when I don't feel as proud of our society as I would like to.

### **The right to a secret vote**

Let's take what appears to be a basic example – voting. I can't imagine that there is anyone in this room who would disagree that they want to live in a society where

every single adult Australian can vote – in secret – to decide who will govern our country.

Most of us know that it took until 1965 for Aboriginal and Torres Strait Islander peoples throughout Australia to be able to vote in federal elections. And it wasn't until 1967 that they were counted in the census.

But many of you may not know that even today, many Australians cannot exercise their right to a secret ballot.

If you cannot read and fill in a ballot paper, you need to ask someone else to help you. This means that any person who is blind or has a vision impairment gives up their right to a secret vote. This is also a problem for people who cannot fill in a ballot paper using a pencil due to physical disability.

Can you believe that the Human Rights Commissioner, my colleague Graeme Innes, had his first secret vote only last year – and that is because he was lucky enough to take part in a trial electronic voting pilot for people with vision impairment? In this technological era, it astounds me that we have not been able to use technology to provide people with this basic right.

The type of society that we can all be proud of is a society where all Australians, including people with disability, can have a secret vote.

### **The right to participate in decisions that affect us**

But a well functioning democracy is about more than the right to vote. It requires that everyone can contribute to public discussion on the topics on which we seek political consensus.

I want to live in a society where we all have the opportunity to influence the decisions that directly or indirectly affect our lives and our community – the right to participation.

The failure to involve Aboriginal people in the design and implementation of the Northern Territory Intervention is its major weakness and will continue to be a major barrier to its effectiveness.

As the Australian Human Rights Commission has emphasised on many occasions, the issues facing remote Aboriginal communities will only be solved if the members of those communities have a real sense of ownership and involvement in programs for change.

This is where human rights can have a real impact. Human rights are about giving a voice to everyone, no matter who we are.

Using a human rights framework to solve social problems involves a fundamental shift from imposing solutions on others (the traditional welfare model) to empowering and engaging people to create their own solutions. The human rights approach gives people a say, and is far more likely to result in effective, relevant and lasting solutions.

## **Social inclusion is about human rights**

The importance of participation by all Australians in our society has been captured by the federal government's social inclusion agenda. Social inclusion, the government says, is about enabling everyone to play a full role in all aspects of Australian life. But in order for this to happen, at the very least people must be able to secure a job; access the services they need; connect with family, friends, and local community; and have their voices heard.

So while the actual words are not used by the government, social inclusion is all about human rights. Social inclusion depends on people being able to enjoy their right to work, their right to health care, the right to participate in society, their right to live in the community without discrimination and other fundamental human rights.

## **Social inclusion for Muslim communities**

Regrettably social inclusion is some way off for a number of different groups in our society. Some of those groups include people of the Muslim faith.

I believe that everyone wants to live in a community where no matter what your religion, you can get a fair go. Yet in Australia we have seen demonisation and alienation of our Muslim communities.

Recent research has shown that while Muslim Australians have higher rates of school and university education than Australians generally, they are less able to participate in social and economic life than others in Australia. They are 15 per cent less likely than other Australians to own their own homes and young Muslim Australians experience double the rate of unemployment of non-Muslims.<sup>1</sup>

The Australian Human Rights Commission has embarked on a number of projects aimed at enhancing social inclusion of Australia's Muslim communities as part of its *Community Partnerships for Human Rights* program, with a particular focus on building harmony and creating greater awareness of human rights.

One of these projects, and there are many more, supports partnerships between local police and Muslim communities, particularly young people. The aim is to build trust and understanding between police and Muslim communities by facilitating engagement between police and communities through a range of activities, such as mentoring, sport, and workshops on crime, law enforcement and discrimination.

Through our work with Muslim communities, the Commission hopes to help create more inclusive, harmonious and safer communities for all Australians.

## **Social inclusion for families**

Another important aspect of a socially inclusive society is supporting families to enable them to spend time with one another, while also pursuing a career.

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<sup>1</sup> D Cooke, 'Muslims more disadvantaged', *The Age*, 18/11/08.

Currently, many Australians are juggling their paid work with caring responsibilities. This includes care for their children, grandchildren, care for relatives with an illness or disability, and increasingly, elder care. With the rapid ageing of our population, the pressure on workers to balance the caring of elderly parents with their paid work is only likely to intensify.

The Australian Human Rights Commission has long been outspoken in its call for governments and business to help ease the pressure on families by providing family friendly working arrangements, such as paid parental leave, flexible working arrangements, and job redesign.

I think we need to re-examine our attitudes towards work and family and question whether the current balance reflects the type of society we want to live in.

We all stand to benefit from supporting family life. This is an issue that affects both men and women, young children and teenagers, older people, employees and businesses. We all have the right to protection of our family life.

### **Social inclusion for older Australians**

Australia is aging rapidly. It is estimated that by 2056 twice as many of us will be aged over 65 years of age and four times as many over 85 years of age.<sup>2</sup> A society that we can all be proud of is a society where our older generations can actively participate in the community and receive the care and support they need to be able to do this.

Employment is one area where we can make a difference. People often assume – incorrectly - that older people won't perform as well as younger workers.

Research suggests that workers over 55 are less likely to take sick leave, and they are the fastest growing users of technology.<sup>3</sup>

Yet there appears to be a serious reluctance to hire older people – often because of a failure to question unjustifiable assumptions about their capacities.

You will understand the failure of a former judge to understand this.

Judges carry heavy workloads and onerous responsibilities. Most rely heavily on modern technology - but no one seems to question that they should be free to remain in office until they reach the age of 70 or more. Indeed, the Attorney-General of NSW has now suggested that the appropriate retiring age for a judge might be 77 years of age.

On a lighter note, I was wryly amused to learn from the listening tour conducted by the Sex Discrimination Commissioner, Elizabeth Broderick, of a mature age female teacher who was refused a particular job because it was thought that as an older woman she would not be able to handle young people swearing within her hearing.

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<sup>2</sup> ABS, *Population Projections, Australia 2006-2101*, Cat. No. 3222.0.

<sup>3</sup> ABS, *Labour Mobility Survey*, Cat. No. 6209.0, 2006; ABS, *Year Book Australia*, Cat. No. 1301.0, 2005.

When I was a young solicitor in private practice my senior partner considered that I could not do industrial work because as a young woman I would not be able to handle workers swearing within my hearing. It seems that stereotypes of this kind can follow a woman throughout her career!

Human rights tells us that older Australians have the same right to work as other people – even if it involves hearing the odd swear word or two!

They have the right to access the health care they need and they have the right to participate freely in the community.

### **Human rights consultation**

As I mentioned at the outset, the federal government has promised to initiate a consultation into the protection and promotion of human rights. That consultation, which I hope will be announced this year, is an important opportunity to find out what human rights really mean to people in Australia.

I intend to use this opportunity to try to understand people's fears and desires about human rights and to explain why I feel that a better understanding of human rights will help us create a society of which we may be proud.

I will be working with all sectors of the community, including the federal government and public service, business leaders, community organisations, and disadvantaged communities to discuss human rights and how they might be relevant to their everyday lives. I will also be urging everyone to participate in the government consultations about human rights.

Over the five years of my term as President of the Australian Human Rights Commission I hope to encourage a new understanding of the place of human rights in Australia.

As President of the Commission, I want to be a visible champion of human rights. I want to support and inspire others to engage in meaningful discussions on human rights. And I want to assist all people in Australia to understand and exercise their rights and respect the rights of others.

My goal is for Australia to become a society in which human rights are recognised as an important part of our basic democratic values – values that are focussed about creating a fairer Australia for us all; a society in which we all treat each other with the respect and dignity we deserve as human beings and in which we can rely on our government to do the same.

Looking into the future, my vision is to create an Australia where human rights are promoted and protected for everyone, everywhere, everyday.