What Can We Do to further protect human rights in the next Commonwealth Parliament?

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We Australians are fortunate to live in one of the world’s freest, most secure, and well endowed countries. We prize the rule of law and we enjoy the benefits of a robust democracy. On the cusp of a tightly fought election, community groups are able to organise and call for a reckoning from their candidates. Security and national economic growth are always the big ticket items for the electorate choosing between the major political parties. Some voters see little to separate the major parties on those items and thus look to other issues or reasons to determine their vote. Some other voters prefer to give a higher priority to other questions which do not enjoy the same populist support as security and the economy.

Community groups in the House of Representatives electorate of Higgins have invited their candidates, including the incumbent Treasurer Peter Costello, to attend a public forum this evening in Malvern Town Hall and answer questions about “what they will personally do to protect human rights if elected at the 2007 poll”. The hot button issues are bills of rights, the death penalty, the Pacific solution and the temporary protection visa, the criteria for choosing refugees, collective bargaining, the treatment of suspected terrorists, the curtailment of civil liberties to counter terrorist threats, and the federal intervention in the Northern Territory including the legislative interference with land rights, welfare rights, and CDEP. On some of these issues, it is nuance rather than light separating the major parties. On others, real differences may be emerging.

Without a national bill of rights, we Australians have often had to rely upon the Senate to keep in check any excesses of Executive power in legislation proposed by the government of the day. Minor parties have added texture to our democratic processes. In the present parliament, the government has controlled the Senate with the result that our main check on Executive power has been idle. There has been little point in putting arguments to Senate committees when the legislative result is a foregone conclusion. Without deliberative debate in the Senate, citizens are left more in doubt whether government has struck the appropriate balance between individual liberty and the national interest. Ironically, this may have harmed government as much as its opponents. We are left more dependent on individual politicians taking a stand in the party room.
Even when the government does not control the Senate, there are times when the major parties agree on policies which over time are seen to work violence to basic human rights. In 2002, while community groups agitated against the long term migration detention instituted by Labor and continued by the Coalition, it was commonplace for the Minister for Immigration to affirm: “Detention is not arbitrary. It is humane and is not designed to be punitive.” Unvisaed asylum seekers including children were being held in hell holes like Woomera. Health professionals were reporting that “prolonged detention of asylum seekers appears to cause serious psychological harm.” It took another three years for the Migration Amendment (Detention Arrangements) Bill to be passed. The government backbencher Bruce Baird echoed much of the community outrage at mandatory detention of children when he told Parliament: “I am sure that all members from both sides of this chamber would absolutely endorse this as fundamental. Let us never again see children in detention in this country. They should not be behind barbed wire or razor wire. It is an indictment that we have let it happen. Both sides of the House have been involved in that but we are changing this process through the bill. I really stress the importance of these changes.”

There are times when we Australians get the balance between national interest and individual liberty wrong, especially when the individual is a member of a powerless minority. One way of improving the balance is including the judiciary in the calculus, as has now happened in the United Kingdom and New Zealand. Australia is now isolated without any national bill of rights framework. The ACT passed its Human Rights Act in 2004. The Victorian Parliament has now passed its Charter of Human Rights and Responsibilities Act 2006 which takes full effect next year.

Whether or not we have a national bill of rights, we need to nurture a more deeply rooted culture of respect for human rights among governors and the governed. It will be increasingly difficult for the jurisprudentially and geographically isolated Australia to strike the right balance, maintaining respect for the freedom and dignity of the individual, a commitment to the rule of law, and a spirit of egalitarianism that embraces tolerance, fair play and compassion for those in need. Like the British, we may find that a statutory bill of rights is a needed additional institutional pillar on which can rest a modern democracy true to our traditional values.

*Fr Frank Brennan will open the Higgins Forum on human rights at Malvern Town Hall at 8pm this evening. The event will be chaired by the Hon Stephen Charles QC.*