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Thursday 16 February 2012

Well thank you very much, and it's quite a long hall here, so I hope that you can all hear well and I want you to yell out if you can't, and so make sure that you can hear.

Now I should also tell you that one of my goals tonight is to make you angry. Now, who are you going to be angry with? Well, it could be me; it could be the government, it could be the opposition; could be the media, could even be yourself, or Australia's churches. Lets see how that goes. And I'm looking forward greatly to a conversation with you. So, I get to say a bit just now, and we'll have some desert, and you get to participate in the conversation and my request is that when you do want to make some comments and questions that you should be as frank and forthright as you'd like to be. And the reason I say that is because the substance of what I'm going to be speaking about tonight; and that's the issue of asylum seekers and refugees is one where we've had in my view an appallingly ill-informed debate in Australia. And I'm looking forward to this group being part of the movement that's going to change that and make the debate one that's more informed.

I'll also say right now, it's perfectly reasonable for people to have views that oppose an increase in the numbers of migrants, and you might even have views about the ethnic composition of Australia's immigration programme.

What I'd say though is that's not what I'm talking about. I want to be talking about people for whom Australia and 140 countries around the world have given themselves legal obligations to protect people in certain circumstances.

Now 3 things, at least, happened in 1951. 2 important ones and 1 less important one.

The 2 important ones were firstly the UN convention on refugees was signed. 2 – it was the first year of the bottling of *Grange Hermitage*. And, 3 – I was born; and indeed on this very day. (*audience sings "Happy Birthday"*)

In fact, I'll only be happy if 1 or 2 of you do get angry and we'll come to that in a little while. But before that, just a bit of an outline of what I'd like to cover in these few minutes and then to look forward to discussing them a little later.

I want to talk to you a little bit about the ideals of the notion of an 'ombudsman'. I'll give you just a little bit of the history of that but most importantly to describe the role in Australia at the federal level of the Ombudsman and references and relationships to human rights and some issues around that. Then in particular to talk about the role of the commonwealth Ombudsman in relation to immigration and specifically asylum seekers and refugees.

And then I want to talk a little bit about what I see as the ethical underpinning of the way in which I would encourage others to approach this issue of asylum seekers. And then to talk a little about some biblical contexts as well. And all of that in just the next 25 minutes or so. So, I'd better go and get us underway.

The key role as I see it for the Commonwealth Ombudsman is about protecting individual rights. And individual rights in a context where we have Government which is increasingly complex, increasingly intrusive, and actually increasingly arbitrary.

And the way in which individuals interact with Governments can come in all sorts of ways. All of us are going to have interactions of one sort or another, and pretty well all of us are going to have over a period of years some challenges with the way in which government decisions are made or not made, and there in the subject matter of the work of the Ombudsman.

Each year there are around 38,000 formal complaints made to the Commonwealth Ombudsman. But not all of those are investigated, but just as a bit of a measure of the sort of work.

In fact in recent years there's been a sought of a bit of a theory developed that tries to deal with this issue increasing complexity of government and the arbitrary use of power.

And the theory is about the 'forth arm of government'. There are a number of bodies, the Ombudsman is one, the Auditor General is another, the Information Commissioner is a third, and the Public Service Commission possibly who are integrity bodies and their whole reason for being is to try and ensure that governments deal fairly with citizens and residents.

And there is an increasing global literature about this and it's very instructive just in the papers over the last couple of days that pretty well everyone of those integrity agencies at commonwealth level, that includes the Human Rights Commission and the Information Commissioner have pointed out, as did I as Ombudsman, that the severe funding cuts have meant that the agencies are incapable of doing the work that parliament set them up to do.

And it also occurs to me that that's quite a convenient outcome for many of those who direct Australia's public service. After all, it's them that these agencies are trying to make accountable. And so as I'll say a few times tonight, I think that there is a severe case of moral ambiguity among many of the leaders of government agencies, and most particularly of ministers and the parliament as a whole. And I think that that is a rather unfortunate sign in terms of keeping governments accountable.

And so, the issues are these; the parliament in our system is the one that makes the laws, and even makes national policy. And they turn those policies into laws.

But the problem is the parliament can't be in a position to administer those laws. The parliament can't even really interpret the laws that it passes. And so, we have the courts. The court's role is to interpret and enforce those laws. As I'm sure everybody here would appreciate the courts can only deal with the cases that come before them, and very few just because of the huge costs and delays and things like that; and so while on quite a few occasions people are able to have their rights enforced by courts, more often than not they can't. And so the courts, also, having made findings on behalf of people aren't in any position to supervise the way in which their decisions are put into effect. And so, in Australia and now 140 other countries there are these institutions of Ombudsman who receive complaints from individuals about administrative process, fairness, and justice in government, and have the task of investigating complaints that people make and trying to get the government to do what they had promised to do in the first place. To act fairly, openly and with justice. And so the role of ombudsman has that plus one other big feature that isn't found in the courts and other bodies; and that is accessibility. The Ombudsman's office should be quite accessible. In this area though I have to say the Commonwealth Ombudsman fails rather badly as well, and I realised this within weeks of taking up my post as Ombudsman when I asked to look at all of the statistics about who was making complaints, where do they come from, which social groups. Were they people with disabilities, people from non-English speaking backgrounds, people from rural and remote areas, indigenous people. Were they all coming to us in numbers that were at least proportionate to their significance in the population? And the answer was a resounding no.

Sadly, offices like that of the Ombudsman operate to serve that part of the community who least need it. And that's a tragedy. I'm not saying that some people should not get that assistance but it does mean that huge numbers of people don't.

I did a survey last year and found that more than a third of the population had no idea what the Ombudsman did or how to make contact. And that third turned out as you can imagine to be those far more likely to have issues that needed to be resolved. And I guess that was one of the many projects that I'd started to do something about. Looking for social inclusion programmes in commonwealth agencies, it's a programme that I hope goes ahead and that the next Ombudsman might carry that forward to.

Well, just a micro history lesson; the first Ombudsman was in Sweden in 1809, 200 years ago now. Appointed by the parliament of Sweden because there was lots of injustice being inflicted on Swedes by their public administration, and in time that institution has spread around the world.

I was in Taiwan not very long ago and was very interested to discover that while the Swedes had an Ombudsman 200 years ago, in the Chinese civil system there

was an Ombudsman, and the Ombudsman's role is a firm part of the constitution of China, at least as it is carried forward in Taiwan. In the Peoples Republic of China it had disappeared for 50 years but is coming back. So, 200 years for Sweden and nearly 700 years in China. And you'll be interested to know that the first Ombudsman in Australia in WA in 1972, and the commonwealth in 1977. So, a real baby in that sense, that it took us that long to catch up on some of those issues.

The challenges though for rafting an Ombudsman like scheme into a Westminster system is not really easy because our system of government and parliament sought of precedes on the theory of ministerial responsibility.

I have to say that's a notion that's not much more than a theory; I don't think we see in practice ministers taking responsibility for the actions of their own policy departments very often. And that's a rather sad development in government in Australia.

Now there is a tension, especially in times like these where the commonwealth is very keen on reducing its budget deficit in itself that's a highly commendable goal. But one consequence of that is so many of the services that government agencies provide are going to be attenuated, they're going to be cut back and increasingly decisions are going to risk being abuses of power. And so the need for review, the need for Ombudsman, is greater now than ever in my view. It's actually a very fine line between the use of power and the abuse of power.

Some of the roles of the Ombudsman are in relation to taxation, defence, policing, immigration, and overseas students, and the post office. And in each of those areas there are large groups of the community who are often quite vulnerable and are adversely affected by the application of those rules. And so there are all sorts of issues. The morality of governance is important where people are deceived about their rights. For example, told they don't have rights when they do, there are straight legal issues where government agencies simply misinterpret the law. There are political ones and there are administrative ones to, where simple mistakes are made, where governments fail to respond in a timely way. And all of these can lead to devastation in the lives of individuals.

During 2011, the Office of the Ombudsman apart from dealing with the 37,000 complaints that I mentioned published around 14 major reports on aspects of government administration. They included some that you may have heard of, and maybe some of you will be angry with this, about school chaplains; where I said 'the school chaplaincy system was pretty hopeless'. That parents and local communities were inadequately consulted about the chaplaincy system, the way in which people could bring concerns and complaints was not very good and the chaplains themselves were often put in quite confusing roles as to what they could do in a school and what they couldn't. One of the rules provided that they

were not to engage in proselytising. And I checked with at least a dozen people about what their understanding of that word was and got at least a dozen different views. So it was hardly surprising that communities were uncertain about just what the role of school chaplains were.

We reported on Centrelink, on a policy that they introduced where if somebody had been rude to one of their customer contact centres, the staffers were entitled to put them on what they call 'write only'. 'We won't speak to you any more, you only have to respond to us in writing', which is really terrific for the 25% of their customer base who had difficulty with the English language, and those who had literacy problems, those from non-English speaking backgrounds. And the risk was that an entire group of people would be cut off from access to that service. Of course people shouldn't be allowed to abuse staff but I argue that there are a lot better ways of doing something about that.

We enquired into the policies used by Australia Post in Post Office closures which was a fairly arbitrary process put forward a whole range of things about better consultations of the community. There were lots of others about police use of force and others, but I won't talk about those tonight because I want to get on to speak more specifically about some of the asylum issues and in particular some of the work that our organization, and I personally did on Christmas Island.

And the resolution of complaints from asylum seekers is part of the role of the Ombudsman as well. And so we sent groups of our staffers to not just Christmas Island but Villawood and other detention centres every few months and in total we made eight different visits over a number of years to Christmas Island.

When I first took up the post I looked through the 6 or 7 reports that we had prepared from those visits and we had sent to the minister for immigration and that we had sent to the department as well. And I was really stunned to see that recommendation after recommendation had been ignored.

The number of people going to Christmas Island was going up and up, and lots of the systems there were breaking down. And so just as a matter of interest Christmas Island detention facility was designed to take 744 people plus in times of surge that might go up 3 or 4 hundred. By the end of 2010 there were 3045 men, women and children crammed into that facility. Four times the number for which it was designed.

The context is that in the mid 1980's the government was caught out in some terrible human rights violations. There were 2 individuals; Vivien Alvarez and Cornelia Rau, who were Australian citizens who found themselves in immigration detention. In one case one was sent out of Australia, to the Philippines, and it took several years before that situation was recovered. If there had only been 2 cases maybe one would say 'that's terrible, but a fairly isolated thing'. It turned out there were 247 instances where administrative errors of that nature had occurred, not with people being sent abroad but where terrible mistakes affecting people's human rights were involved. As a result of that the law was changed and

the Commonwealth Ombudsman was also made the Immigration Ombudsman with specific legal powers to deal with issues of immigration and in particular detention. There was a provision in that law that anybody in immigration detention for more than 2 years was subject to an investigation by the ombudsman; after 2 years and then every 6 months thereafter.

In 2008 that was extended to include anybody in immigration detention for more than 6 months. And at the time that agreement was made the Ombudsman was funded to look at 300 cases a year.

There's never been an increase in that funding and so by the middle of last year there was a backlog of some 2000 cases. To review the management of mental health, the deployment of children, and all of the administrative processes, investigating problems of interpreter services and a range of things that was no longer being done. And in my view that was quite a travesty of the human rights of those individuals.

So, in September last year I sent a composite report to the minister and to the department telling them that they had to fix these things. There were 7 or 8 specific recommendations and by February when it was clear that the government was acting very slowly on those I did something that Ombudsman haven't done before, and probably won't do again. I published the report in February. It did receive pretty saturation coverage; I set out all of the recommendations and all of my findings.

It was successful to this extent, that the government did announce a fairly radical programme to bring people on shore from Christmas Island to open up a property built in Tasmania and a number of other centres to bring people back from Christmas Island. Unfortunately one of their decisions was to transfer quite a few people to the Curtin facility way out in the middle of Western Australia. And, Western Australia in a very remote area that suffered all of the problems of Christmas Island. Remoteness and hostile climate, very difficult to get high quality medical services there in a timely way. Very difficult to get interpreter services and education for children and all those sorts of things were being ignored.

So, as a result of that there were some reforms but sadly too little too late. When we went around Christmas Island we found the huge increase in numbers I mentioned over 3000 people there by the end of 2010. Quite a few of them in the tents that one sees in refugee camps around the world. Many with black mould with spores floating through the air. Muddy areas, no areas for play for children and quite a shameful situation.

Well, sadly within weeks of that report, the March disturbances, the riots and violence and crackdown by the police occurred on Christmas Island and these were all things that I'd warned about and feared and deeply regret because either weren't strong enough or didn't reach the right people at the right time and there

are now hundreds of people who still face legal challenges and trauma that comes from that time.

Well, the reports are all on the website of the Ombudsman if that is something that is of interest to you I'd suggest you have a look at that.

And it left me with what I saw as a huge moral conundrum. That the presence of families and children, the presence of people clearly with mental illnesses, the failure to provide adequate interpreter services, the very poor efforts at language training. And all of those things, vulnerable people, were exactly against the policies that the commonwealth had adopted in 2008 which I believed was the reference point for the work that I was doing there. And what is that policy? In July 2008 the Minister for Immigration - Chris Evans with the full support of the government committed the Australian Government to some absolute policies in relation to immigration detention. And they were that children including juvenile fishers, Indonesian boat crews, juveniles and families would not be held in detention centres, in places of detention.

Well, it pretty well quickly turned out that there were hundreds- 247 in 2010, but by a slight of hand the government declared that a number of the detention places on Christmas Island, were henceforth not going to be called detention centres; they were going to be called alternative places of detention.

They still have the barbed wire, they still have the mud, and they still constrain people. And that fiction remains to this day. And so you'll hear ministers say, 'oh no, we don't have children in places of detention, they're in alternative places of detention'. But they look the same to me.

Secondly, the policy was that there would be no indefinite or otherwise arbitrary detention. Such a policy was declared not acceptable, and that it would also be subject to regular review, hence the role of the Ombudsman.

We know now that there are more than a thousand people who have been in detention for more than 2 years, many of them with no idea of when their asylum claims will finally be determined. When their security clearances might come through, or when they'll be able to meet up again with their families.

That detention centres were declared in July 2008 to be places of last resort and for the shortest period. And yet it does seem now that more and more people are in them and the keys being thrown away.

I'll touch on this a little later with some individuals who have negative security clearances and the difficulties they find themselves in.

The next principle was that people would be treated respectfully and within the law. I have to say that this is another provision that has been generally breached in lots and lots of cases. And as I attempted on a number of times to meet the Minister to ask what he was going to do about those things, pretty quickly he stopped seeing me. And the department started to ignore information from our

office as well. Tragically, even though in our system there should have been as there has been for most of the 30-year history of the Ombudsman support from either the parliament or the Prime Minister, no such support was forthcoming.

The final immigration detention value the government adopted was that the conditions of detention would always ensure inherent dignity of human persons. And again, although that's a rather vague statement, I think one can see where those values don't exist.

Some examples include the use of force after those March riots where there were more tear gas shells, and, what are described as non lethal munitions, more were used in that one night than were used in the whole year in the Solomon Islands during the riots there.

The impact of long term detention on the mental health of many of the folk there, many who have been survivors of torture and trauma were very badly compromised. And I was very concerned and remain that way at the very high incidents of self-harm. In a single week when I was on Christmas Island there were at least 50 instances of people harming themselves which included some of the well publicised examples of people sewing up their lips, cutting themselves, or attempted suicides. And according to international studies in the US, the UK and Australia is a pretty logical and natural consequence of the powerlessness in which people found themselves, the uncertainty, and the lack of an ability to have any control over their lives. And those remain big issues.

Pat McGorran, Australian of The Year 2 years ago noted that in his view asylum centres were mental health factories. Now that's inhuman and against Australia's interests in a number of ways. Firstly, and to my mind, most importantly the impact on the individual who having perhaps already come with some post-traumatic stress or other mental illness was made much worse, often quite permanently. But then since 80-95% of folk who go through these centres, eventually become Australian residents how absurd is it that we inflict that extra pain and suffering on people and then the Australian health care system has the added burden of meeting those extra health care costs for the lives of those individuals.

Those were a couple of the points I had made to the government, and attempted to make to the parliament. Delays in processing of course, and I can understand how that can happen with the ramp up in numbers arriving, illegal maritime arrivals, necessarily will lead to queues and I don't think one can criticise the government for that in itself, but having poor management approaches to it is quite another thing.

Let me just finish with a couple of specific issues that I think need urgent resolution. The status of teenage fisherman from Indonesia; there are possibly as many as 100 or more in adult gaols in Australia, that the Australian Government uses an extraordinarily discredited technique of wrist x-rays under which they

come up with the idea that a lot of these young folk are actually adults. And I have to say even if they were 18 or 19; the law recently passed that provides 5-year goal sentences for people described as people smugglers when so often these are semi literate impoverished young people who live around the ports of Indonesia. That's a very poor thing.

The second, and I mentioned this earlier was security-compromised people, there are some Burmese, but particularly from Sri Lanka where even if you're assessed to be a refugee, in other words you came as an asylum seeker and were able to prove to the satisfaction of Australia that you had genuine fears about your safety, or the subject of persecution or torture. Australia recognised that it has a duty of care to you and thus you could never go back to that country you still had to get a security clearance. And of course that's a perfectly reasonable thing. I think nobody would want Australia to be indifferent to that, and there are of course many war criminals from the Sri Lankan armed conflict over many years who should be dealt with through the criminal court system.

However, in the case of assessments against security of refugees that is purely in the discretion of ASIO. That an ASIO officer without any requirement to give reason can determine that someone is a threat to Australia's security and they are thus not able to get any form of visa, they're not able to be sent back if they are assessed to be refugees. There is no appeal, no reasons and no review. I find that to be the most astounding lack of justice in the Australian context. Any murderer, any criminal, no matter what their crime or how many crimes they've committed would have access to reasons, appeals and review.

I've raised this myself a number of times with the head of ASIO and the government; I've tabled in parliament at least 10 perhaps 15 reports drawing in this, calling on the minister, calling on the government to do something about it. The only response that I get from Minister Bowen is, he says, "he will never compromise the security of Australia". And of course nobody's ever been calling on him to compromise the security of Australia but to bring some justice into this particular situation.

I'm working with a number of organizations looking to bring some more test cases so that we can finally get something like that before the High Court in the hope of having a finding about that.

The third point that I'd draw from that is the issue of community detention. And I'm pleased to say that the government has genuinely made a commitment to, instead of putting people as a first option into detention centres is now investigating community detention where people are living in the community. However, it's still at a fairly early stage and I think there is scope for thousands of Australians to put their own homes forward to invite asylum seekers, either individuals or families to live in communities where they might be exposed to life of normalcy, where they might be able to have conversational English and perhaps to get some vocational skills.

Well, I won't say anything more about that because I did say I'd touch on some ethical principles which I believe ought to influence Australians about that. In fact, to me, the greatest sources of ethics can be found in the pages of the bible. And that any description of the Old Testament would include one that says that the Old Testament is a book written by refugees for refugees. And if you think about the rich experiences that we read of there; Jesus himself fleeing to Egypt to escape the murderous activities of Herod. Moses, the apostle John whom we find writing the revelation from the island of Padmos where he was in exile. And that God is not silent on the issue of how we should treat refugees just as the scriptures are full of injunctions about the treatment of the poor, of injustice and poverty. And in this respect I think many of our Churches seem to be unduly silent on a number of these issues. And perhaps that's one of those areas where a little bit of anger might be required. One of the passages I'd like to raise with you is that from *Mathew Ch 25*. Where it was noted that when before God, how we treat strangers, the hungry, the homeless, those without clothing, those in prison, and those who are sick. That the King will say to those on the right, *'come you are blessed by my father, take your inheritance. The kingdom prepared for you since the creation of the world. For I was hungry and you gave me something to eat. I was thirsty and you gave me something to drink. I was a stranger and you took me in. I had no cloths and you clothed me. I was in prison and you visited me.'*

And the message that I take from that passage and many others is our responsibility, especially, to the strangers. And it ends as you might recall *'whatever you did to one of these the least of my brothers, you did to me.'* There's a whole swathe from the Old Testament, I'll just refer to a few things that you can check out yourself. The experience of Moses, the experience of Ruth, and Boaz, the experiences of Noah, and Abraham who described himself as a homeless person wandering abroad. The Book of Lamentations is itself a description of exiles and the loss of liberty by the people of Israel. That ethical underpinning of what I said at the beginning just leads me to challenge you as to what your response will be.

A few suggestions from me are at the very least be aware and informed of the issues. And as I said at the beginning it's quite possible for people to have honest and opposite views. There's no single or right view, but I urge everyone to have a view. To engage in the conversations and most importantly though to put right instances where mis-information is given.

We see so much in the media; claims of special privilege to asylum seekers where that just isn't the case and all sorts of fears and ignorance that comes out of that. I believe that ordinary members of the public who are well informed should engage in conversations to do something about that.

For my part, I've always been ready, willing and able to work with anyone who wants to bring about more justice in society. But, I'm also ready, willing and able to work against anyone who doesn't.

Thankyou.