

# **AUSTRALIAN COUNCIL OF STATE SCHOOL ORGANISATIONS (ACSSO)**

The national voice of parents of students in Australia's public schools and their school communities

## **OPINION – ACSSO's Guest Columnists address values- driven issues in education**

### **2006 Law and Justice Address**

**"Who Matters? How Many"**  
**AC CH**

**The Right Hon Malcolm Fraser**

**2006 Justice Awards**  
**Parliament House, Sydney**  
**Tuesday 31 October**

I pay tribute to the Law and Justice Foundation of New South Wales for protecting the Rule of Law and due process, for seeking to expose injustice over so many years.

Many years ago I mistakenly believed that the Rule of Law was absolute and that all people in positions of political authority would respect that law and worked to protect the rights of all Australian citizens. I now know that to be naive and incorrect. I applaud therefore the work that you have done and the purposes you serve.

I would like to recall some of the changes that have taken place in the last half century.

The post war years were the beginning of a new age of enlightenment despite some serious backward steps. In spite of the difficulties and rigours of the Cold War and the dangers that that involved, much greater than any dangers we face today, it was an optimistic period. The United Nations, the World Bank and the International Monetary Fund were all established, collectively designed to establish a fairer and a more peaceful world. Colonialism was to be outlawed. People would look after their own affairs. The techniques of modern economics gave hope to governments worldwide, that unemployment could be banished. The Universal Declaration of Human Rights came into being in 1948. Many Conventions were negotiated, designed to give legal force to its high aspirations, including the Refugee Convention which Robert Menzies signed onto for Australia as early as 1954.

In Australia political parties did not play politics with race or religion. Political leaders of those years, both in Australia and in many overseas countries had experienced the depression of the 1930's and the terrors of the 2nd World War. They knew the world had to do better if civilization as we understood it was to survive. They in effect established a new and more liberal age, a time of hope and optimism, I believe a new enlightenment. Much of it was led by the United States. Much of it would not have happened without American support,

It was recognised that on sensitive matters of race and religion, those in authority had to give a lead and make decisions and that it could be unwise to ask for a popular vote. If the people

of Melbourne had been asked if they wanted their city to become the biggest Greek city outside Greece, they would then have voted no in the 1940s. Now that it has happened they would overwhelmingly vote in favour of it and overwhelmingly very proud of it.

If we had asked Australians in 1975/76 if they wanted to accept large numbers of Vietnamese and others from Indo-China, refugees from the war in which we had been an active participant, they would have said no. They would have been fearful of difference. The governments argued on ethical grounds that we had no option and broadly that was accepted.

In these years we did not have detention centres, which should more properly be called jails, I don't know why we allow this kind of double speak to invade us because they have all the necessary attributes of jails and some of them are more uncomfortable than jails. Refugees then were in the community, able to buy coffee, able to work. Because they seriously wanted a new home, they were not going to abscond. It was an open, liberal society. Multiculturalism came to be accepted.

Every migrant group that I have met has always placed Australia first, understands the necessity to abide by Australian laws and customs, but appreciates the openness with which their old customs can still be celebrated. We really believed in strength through diversity and that the acceptance of diversity would bring Australians closer together.

What led to change? In the middle to late 1980's a debate was started about Asian immigration. At the same time a labour Minister for Immigration decided new boat people should be placed in what he called detention centres, what I call jails. The Liberal Opposition accepted that fundamental change. The harshness of our refugee regime begins from that point. It has been fine tuned and made significantly more inhumane in the years since.

Pauline Hanson came on the political stage. Many roundly condemned her for saying turn the boats back. When the current Government turned boats back, it won the Tampa Election, a substantial change in attitude. An undeserved respectability had been given to Pauline Hanson's words.

We had forgotten that the right to free speech is not absolute. Without a sense of responsibility, of community, and of judgement, free speech can become divisive and destructive. And it's not good enough for people in authority to say somebody shouting racist obscenities and wrapped in the Australian flag to say he has a right to do that. Nobody has a right to do that.

One of the small reasons for change is that now opinion polls often drive policy. Both the Government and Opposition use their internal party pollsters on many issues to find out the basic views of Australians. Such polls can lead to extraordinary error, especially if the questions asked are ones about which there has been no public debate and which are therefore likely to attract an emotional and not a considered response. But all of this is not enough to justify or to explain the changed attitudes. Why have governments chosen to follow and not lead as I believe governments led from eh time Arthur Caldwell initiated Australia's major migration program in 1945/6 up til the middle of the 1980s?

Political events in the Middle East and also Afghanistan were causing large numbers to flee. Upwards of 400,000 a year were arriving in Europe. 4, 5 or 6,000 came to Australia although those in authority said there were millions more waiting to come. That was never true. At the

time the Government was not doing well in the polls. It needed an issue. The defence of Australia's borders, proclamations about deciding who would come here or who would not, sought to arouse a chauvinistic response. Boat people were demonised as evil, as queue jumpers, as prostitutes, as drug peddlers, even as potential terrorists and as having no appropriate family values.

I don't believe there was ever an explanation of the terrors from which these people fled, of Afghan families wanting a life for their female children knowing they would have none in a Taliban dominated Afghanistan. A father in such a family, if he had initiative and enterprise would do everything he could to get that family out of Afghanistan. He didn't have too many options. He could go over the border and get into a queue three or four million long in Pakistan. He couldn't go to an Australian migration office and apply for something because the migration office had been moved and he couldn't get to it. If he had enough money he'd try to go to Europe where he'd get a better reception. Less money might pay for a boat to Australia.

We sometimes forget the Tampa occurred before 9/11, much longer before the invasion of Iraq. The possibility of terrorists coming to Australia on refugee boats was only raised after 9/11. But they wouldn't come on refugee boats, they wouldn't risk their lives. They wouldn't risk the possibility of years in an Australian immigration jail. They would come with very good papers, get past our authorities and first class by Qantas.

The terrible events in the United States of 9/11 occurred a couple of weeks after the SAS were placed on the Tampa. From these points on the politics of fear dominated the domestic environment.

What we do not know we often fear. What we do not understand we fear. People from a different religion we often fear. And what we fear becomes a threat. The politics of these issues has bitten too deeply into the Australian psyche and it will take many years to remove it.

This reminds me of the bitterness, even hatred, between Catholics and Protestants generated very significantly by Prime Minister Billy Hughes during the First World War. His actions over the conscription debates in attacking the Catholic Church and the Irish and Archbishop Mannix in particular was irresponsible and scarred Australia for over 50 years. The bitterness against Catholics was extreme and in some quarters has still not entirely died. I can remember people saying to me that Catholics have a loyalty to the Pope and not to Australia. And this was common. The difference now is they say it about Muslims rather than about Catholics. We should remember our own history.

Those in charge of our affairs today seem not to understand this experience. There are already suggestions that this next election will be a Muslim election, as a while ago it was the Tampa election. It would create a terrible and unnecessary divide between Islam and the rest of the community. There is a responsibility on those in authority not to repeat the mistakes made by Prime Minister Billy Hughes. But the omens point in another direction. Because if we look at statements already made over a period, the ground work has been laid for an increase in fear and concern for the followers of Islam.

The War against Terror is important, although it should never have been called a war because if terrorism is going to be overcome it will be overcome by wise policy, much better

intelligence than we have had to this point and by good policing. But it is a threat and I do not want anyone to construe my remarks as denying that threat. Our strongest weapons against terrorism are our own principles and our own belief in liberty and due process for all people. We do not need to overthrow our principles. To the extent that we do, we give a weapon to the terrorist. And in recent years recruitment for the terrorists has been made extraordinarily easy, especially by the war in Iraq.

In your mind prepare two lists. One, what should you do to maintain a broad based coalition in the fight against terrorism, of the kind open to President Bush after 9/11 and another list, what should you do if you wanted to reinvigorate the terrorist movement and drive the West towards a decades long war against Islam.

On the first list I would have said to continue to act on our own principles, to maintain honest and open policies and to behave fairly to all people and to encourage strongly a peaceful resolution of problems between Israel and Palestine. Under current American policy that was never an option. The United States ran out of targets for its bombers in Afghanistan and then wanted a more emphatic demonstration of United States power and so it went to war in Iraq.

That war has made it extraordinarily easy for fundamentalist groups to recruit would-be suicide bombers to fill the ranks of the terrorist armies. It has also made it very difficult for moderate Islamic Leaders to maintain their moderation, especially in the face of other breaches of principle by the West.

The President established Guantanamo Bay, which Australia supports, but Britain does not. The President established Military Tribunals by executive decree. The United States Supreme Court, much to its credit, decided that the President had exceeded his powers. Congress has now passed a new law establishing new tribunals. As a result, defendants may well be worse off because Congress has enshrined some serious defects of the original tribunals. The administration clearly hopes that the Supreme Court will not rule against the congressionally established tribunals.

The Legislation recently passed remains utterly inconsistent with the international community's long-standing commitment to the prohibition of torture and cruel, inhumane and degrading treatment. Any conviction based on such evidence will have no credibility. The President has also established a very narrow interpretation of the Geneva Conventions which greatly reduces their application. Intrusive questioning is to be allowed. It is left entirely to the President to define how far that intrusive questioning can go. And Congress has to an extent acted like Pontius Pilate on that particular issue.

Defence lawyers will have to challenge these new commissions. A suggestion from the Australian Attorney-General that David Hicks should plead guilty to enable a speedy trial and sentencing to take place, is tantamount to pressuring an accused into making an involuntary plea. It is unacceptable for the first law officer of the Commonwealth to promote a course of action that is utterly incompatible with the presumption of innocence and the right to a defence.

There are some important questions for Australians.

Why the Australian Government is the only western government as I am advised which has accepted that the Military Tribunals provide a reasonable standard of justice for its own

people? A situation which the United States, the founder of those Military Tribunals, does not accept for its own American citizens. It is one of the great wonders of Major Mori, Hicks' Marine lawyer that the Australian Government does absolutely nothing to achieve a fair trial and that it parrots American defences of the military tribunals, from notes sent to it by the Pentagon.

We now have a growing number of people who appear not to matter to those in authority. I probably should have said at the beginning that I call this *Who matters, how many*. Not only David Hicks, Cornelia Rau, Vivien Alvarez Solon. Not only our indigenous population who's problems seem low on the government's agenda, but increasingly refugees or potential refugees. We know the government sought to excise all of Australia from our migration zone. In the process the government would have broken a promise made only last year to keep children out of detention. This time it was going to be detention in some off shore prison. Out of sight, and the government would have hoped, quite out of mind.

Because some member of the Liberal Party would not accept these changes and the Labour Party was prepared to oppose them, for which they must have credit, this particular legislation was withdrawn. But we know the government's intention. We know what the government was prepared to do.

These are groups which, under current policies, have no adequate protection under the law. The administration has avowedly pursued policies designed to deny access to the law to increasingly large groups of people.

A civilised society is be judged by its adherence to the rule of law, to due process and the ease with which all people would have access to the law. And nobody knows that better than all of you who are here tonight.

It is judged by the way it treats minority groups. Australia would today - not would, today is - judged badly. Today for a variety of reasons, but not least because the government has sought to set Muslims aside, discrimination and defamation against Muslims has been rising dramatically. Too many have taken the easy path and accepted the governments contentions that Muslims aren't like us and therefore it doesn't matter if discrimination occurs and if access to the law does not apply. We have forgotten that discrimination once it starts, spreads. It cannot be contained. This situation is already leading to increased discrimination against Jews. It will spread from minority to minority.

We would do well to heed the words of Israeli Professor Naomi Chazan in the recent Gandel Oration in Melbourne: "There is one standard and one standard for all, and the challenge that is posed by terrorism is how to defend the rights of those that we don't agree with?...How can we defend the rights, the basic human and civil rights, of those whose ideas we simply abhor? It is the system, the process, the courts, it is the measurement of justice that determines the nature of our civilisation."

Our reputation as a successful multicultural society is now threatened.

The new security laws diminish the rights of all Australians. I do not know any other democracy that has legislated for the secret detention of people the authorities know to be innocent. You are not allowed to make a phone call. You cannot ring your wife or husband to say where you are, that you're alright. You just disappear. Your spouse goes home at night.

You're not there. You are not allowed to ring a lawyer unless that is specifically conceded in the warrant for your detention. Comply with ASIO perhaps better know as in this regard secret police allow that because they determine what goes in that warrant. If you answer questions satisfactorily that's fine. If you don't, you can be prosecuted and go to jail for 5 years. There is a defence against that prosecution, if you can prove you never knew anything, it is not an offence, but how do you prove what you do not know, that you do not know something if you don't even know what they are talking about in the first place? That's precisely what you have to do under the law.

There are many other things. We have control orders and preventative detention provisions reminiscent of apartheid in South Africa and which are almost certainly a serious error in the fight against terrorism. Both devices forewarn any potential terrorist that a certain person has been blown. The cell or group would disappear. It would be better policy to watch, to collect evidence and if there's evidence to collect, hopefully to make a charge at some later point.

Recently there has been a report, by a group established by the government to review Anti-Terrorist Legislation. This review precedes and takes no account of recent proposed changes to our refugee provisions.

The review emphasised that recent events have had a profound impact on Muslim and Arab Australians. The committee points out that there is a considerable increase in fear, a growing sense of alienation from the wider community and an increase of distrust of authority. These concerns are more likely to lead to an increase in terrorist activity rather than in a diminution of terrorist activity. The review committee strongly recommends - and remember that it was a review committee established by the government - strongly recommends that efforts be made by government to combat those serious concerns.

To combat concern amongst Muslim and Arab communities in this way would mean the government should also moderate its rhetoric and its language and cease in efforts which can only be construed as designed to instil concern, even fear of that minority by the majority. We have seen statements which suggest that Muslims are different from other groups of immigrants or refugees. We have seen suggestions that people who don't want to accept Australian laws and customs should go home. Suggestions that contain within them the view that Muslims are such people.

Overwhelmingly all migrant groups accept the supremacy of Australian law and of Australian customs. Statements by a small minority should never be used in such a way that suggests they may reflect the views of a majority. Sensitivity and judgement is required. And fairness and accuracy of comment. And I believe that that has been seriously lacking.

The government now wants to establish tests for citizenship. The oath or affirmation of allegiance which in my view says everything which needs to be said by a new citizen, is no longer enough. The country that has most successfully handled multicultural issues over the last 50 years is to go down a track, practised by countries that have handled these same issues less well and with less harmony.

The government wants a general knowledge or history test, but we cannot even agree on our own history. Will the government have Windschuttle teach Australian history or Henry Reynolds? Well we know who the government would choose because they put him on the ABC board. The government wants an English language test. People who do take out

citizenship know that English is important and most would like increased opportunities to become more proficient. Making more money available for state or community based English teaching would do all that is necessary on that account.

But we can't look at the government proposals in isolation without having in mind the discriminatory comments and actions of the government over recent years. If there were an English test it would be so easy for the government to generate a harder test for people from a certain background, for people of a certain religion. How many are there who really believe that such tests would make our situation better? How many are there who would trust the government to manage such tests with honesty and fairness? Certainly the kinds of tests that America, Canada and Britain have put in place would seem to me to be trivial and pathetic in terms of any kinds of broad-based knowledge would add nothing to our system. But it does get back to a question of trust and how such tests might be used and I do not believe that this government or for that matter this Opposition has earned the right to trust on these issues because neither has adequately defended the rights of people.

There is no objective reason why any significant change should be made to the current situation that has really worked very well over a long period. And the government's suggestion for these test seems to have come out of nowhere, there's been no analysis, what's gone wrong why do we suddenly need something different. What is really the government agenda what does it have something in mind or is it all part of that Muslim election? Ah these tests will help protect Australia from too many Muslims - is that the unstated objective? Are the tests designed to achieve that purpose? Perhaps they are.

Any society on issues of race and religion needs an example from those in positions of power. It has not had it.

Instead of talking about the evils of boat people fleeing the Taliban, the government could have spoken of the initiative of a family who wanted to give its female members a future in a land that respected all people. It could have mentioned the heroism needed to flee the Taliban so that female children could have a future. We know that the government didn't do that. It wasn't its purpose.

The title of this speech is "Who Matters? How Many" The numbers who positively do not matter start as being quite small. But as I have sought to show those numbers grow and as they grow they diminish our society more. Unfortunately, if economically people are reasonably well off, and if there is a belief that these issues don't touch me, don't touch my family or my friends then it is easy to conclude that these issues don't matter too much. We should remember, that as governments maintain support by playing on the politics of fear, so too they tend to exaggerate the fear and to expand the concerns of people.

This process leads to a further exaggeration of fear and to further alarmist reactions. If current policies led by the United States are to prevail, supported as the United States has been by Britain and Australia, then we run two major risks. A decades long war against Islam with the possibility of extraordinary destruction throughout the world, and the very real possibility that our government will build within individual Australians a fear and concern of Islam that will take many decades to eradicate.