Title: ‘Social inclusion and human rights – strange bedfellows on the road to an authentically Australian inclusion agenda’

Presenter: Dr Helen Szoke, Chief Conciliator/ Chief Executive Officer of the Victorian Equal Opportunity & Human Rights Commission, Victoria Australia.

Abstract

This paper explores the capacity to develop an authentically Australian concept of social inclusion by positing it within and alongside a human rights policy paradigm.

Noting the emerging prominence of social inclusion in public policy, and in light of the current debate about whether to adopt a federal Charter of Human Rights, it argues that a progressive approach will see a convergence of what are sometimes seen as separate constructs.

Currently, despite its potential strength in recognising the multi-dimensional causes of marginalisation including systemic discrimination, contemporary discussions of social inclusion appear almost devoid of human rights content, to the detriment of both policy frameworks.

The paper will critically evaluate the progression from a needs based to rights based model, arguing that traditional conceptual barriers between anti-poverty theory and legalist constructions of human rights fail our most marginalised communities.

Using examples from the disability and culturally diverse communities, the paper explores whether social inclusion can be made more robust if linked to a human rights framework, so that those currently on the margins are able to participate as fully valued, respected and contributing members of society.
Introduction

May I begin by acknowledging the traditional owners of the land, the Gadigal clan of the Eora nation, and pay my respects to elders past and present. Thank you to the conference organizers for the opportunity to talk today, and particularly with such an esteemed gathering.

Today I want to explore what an Australian concept of social inclusion might look like. I want to test with you, whether it is possible to bring together what have so far been distinct paradigms - human rights and social inclusion, with the aim of developing a coherent and progressive policy agenda.

I think this is a timely discussion, given the emerging prominence of social inclusion in public policy, and in light of the current debate about whether to adopt a federal Charter of Human Rights.

I also think it is an important discussion because despite its potential strength in recognising the multi-dimensional causes of marginalisation, contemporary discussions of social inclusion risk following the pattern of the British model in lacking specific human rights content, to the detriment of both policy frameworks.

I want to begin by taking a quick look at human rights, where they come from, why they are important as policy tools, and their links to social inclusion. I then intend to flip the analysis, and examine social inclusion from a human rights perspective. I will then look to communities where the language of social inclusion and human rights are beginning to converge to see if our ‘strange bedfellows’ can, as I hope, integrate in meaningful ways that drive a progressive policy agenda.

Human rights and marginalised communities

Put simply, human rights are a set of standards, below which a government must not fall, in its treatment of and relationship with, its people.

Derived largely from international treaties and custom, and through domestic legislation these rights tend to fall into the categories of civil and political rights on one hand, and economic, social and cultural rights on the other. However, it is well understood and accepted that you cannot realise one without the other. Or, in the parlance of the human rights, they are ‘indivisible’.

So for example, you cannot fully realise the right to life, if you do not have access to medical treatment, nor can you enjoy your rights to privacy and family life if you are homeless. This lesson is one that many people from marginalised communities know well, although they may not use the language of human rights to describe it.

Human rights possess normative as well as legal value. So ‘by respecting a person’s human rights, we make a statement that we value them as a fellow member of the human race.’ As the disability advocate, Rhonda Galbally said recently ‘Nothing is as bad for you as not being valued.’

Thus, discrimination and other breaches of human rights law also offend the human rights norms of fairness, respect, equality and dignity. As does social exclusion, which is both an obstacle to the attainment of human rights, and evidence that rights are denied.3

Probably if you ask a person from a community with entrenched disadvantage about what matters to them, they would say things like being respected, having opportunities to do what I want to do, having a say in what happens to me – just like everybody else.

These are certainly the messages that come from people with disability, Indigenous peoples and other communities that live the reality of social exclusion. They might also say that they want enough money to get by, a decent place to live, good health, for their kids to have an education, and to stop being labelled as either a victim or a no hoper and denied opportunities because of that stereotype.

All these equate with human rights, yet when decision makers consider these issues, they are much more likely to think in programmatic terms, bound up in notions of welfare, than as a set of entitlements and responsibilities that we all share.

This may be because human rights are incorrectly seen as the exclusive domain of lawyers and the courts, and therefore blunt tools for transformative policy-making. Indeed, existing anti-discrimination laws are open to criticism that they are overly reliant on individual complaints and lack an effective means of responding to systemic discrimination.4 However, this does not mean that human rights are not a sound basis for decision making in the realms of social policy, it just means that our equalities law need modernising. This process is now underway in Victoria.5

I must admit that I find it curious from where I sit at the Victorian Equal Opportunity and Human Rights Commission to see how challenging and disconnected the dialogue is in Australia around human rights and how this dialogue intersects with public policy paradigms. I suppose this disconnect is not surprising when we consider that we are fifty years behind in terms of fully understanding and integrating human rights into our daily considerations, and when we remain the only democracy in the world that does not, at a national level, have specific legislated protections of our human rights.

In Victoria, we do have the advantage of being two years into the implementation of the cultural change process associated with the adoption of the Charter of Human Rights and Responsibilities Act 2006. This Charter combines a range of rights protections in one law. It imposes on public authorities a positive duty to comply

---

5 The Equal Opportunity Act (1995) is currently under review. Work is progressing on the development of new legislation to replace the Act and implement the Government's response to the June 2008 report by Julian Gardner, An Equality Act for A Fairer Victoria. The Government is considering a range of reforms that will transform the Victorian Equal Opportunity and Human Rights Commission from a complaints handling body to one that acts on systemic discrimination, researches, educates and actively helps people to resolve discrimination disputes and to comply with the law.
with the civil and political rights contained in the Charter – and to do so in every facet of the work of government.

This includes its law making, policy development, service delivery and in matters that come before courts and tribunals. The Victorian Charter also makes it possible for ordinary people to challenge existing public services and policies to make them more fair and humane for all.

Examples in the first two years of operation of the Charter included: young people with head injuries saved from placement in aged care facilities, a woman with an acquired brain injury who gained access to surgery for a severe condition and services reinstated for a person with a disability after service providers considered his right to receive treatment.

Thus in Victoria, we have had the opportunity to see how human rights can work when they are legally embedded in policymaking, and hopefully we have some important messages that will be heard in the context of the development of social inclusion.

**Social inclusion as a public policy paradigm**

As this audience well knows, social inclusion emerged from critiques of traditional approaches to poverty and disadvantage that focussed on income deprivation alone.

As a policy construct, social inclusion responds to social exclusion, which recognises that the lives of the most disadvantaged in society are typified by exclusion from the things necessary for full economic, social and civic life.

There is no one definition of social exclusion, however it is generally understood to be a dynamic process, with a multiplicity of causes, which occurs at both an individual and community level. As noted by various commentators there are differing manifestations of exclusion, both wide (affecting many people), deep (entrenched and multiple forms of exclusion) and concentrated exclusion (geographic concentration).6

Social inclusion interventions often have an emphasis upon communities or areas of persistent, multiple deprivations, however there is no definitional reason for a singular emphasis on place-based interventions.

**The journey from Europe to Australia**

Social inclusion has had an interesting journey from Europe to Australia. Having originally emerged in France in the early 1970’s7, by the 1980’s high unemployment coupled with racism, typified by the rise of Le Pen’s fascist party provided the conditions under which social inclusion became a policy blueprint for the French government. Adoption by the European Community the followed.8

The election of the Blair Government in 1997 pushed social exclusion into the centre of public policy in Britain. The subsequent formation of the Social Exclusion Unit

---

8 Ibid 128.
further developed the inclusion agenda, with a strong emphasis upon social renewal, particularly in marginalised communities.

Interestingly while social inclusion has gained significant traction in Europe, it has gained little traction in the United States where attention has remained focussed on the ‘underclass’.9

**Social inclusion in Australia**

Here in Australia, a number of social inclusion initiatives have emerged at a state and federal level. Many of these have been discussed at this conference over the last three days.

In Victoria, there is no formal social inclusion policy as such. However, inclusionary principles are expressed in a number of high-level policies, principal amongst which are *Growing Victoria Together* (2006) and *A Fairer Victoria*.10 In addition, place-based programs are undertaken through *Community Renewal*, *Neighbourhood Renewal* and *Community Building* initiatives.

After failing to mention the Charter in *A Fairer Victoria 2008*, it was refreshing to see that this year, *A Fairer Victoria* does emphasise the link between fairness and social inclusion, and also specifies that realising human rights, including freedom from discrimination is a pre-cursor to tackling disadvantage.11

This contrasts with work on social inclusion at a federal level, which has been less explicit in its human rights content. Although the Australian Social Inclusion Board principles of ‘reducing disadvantage; increasing social, civic and economic participation; a greater voice and building on individual and community strengths’, are grounded in human rights values, these are expressed at a high level.12

Unfortunately, at the program or results level, human rights are not explicitly referenced.

Although it is still relatively early days for social inclusion as a national policy priority, the program to date suggests that the Board will follow the British example with a strong emphasis on locational and intergenerational disadvantage.

While place based work is an important component of social inclusion and most ‘poverty postcodes’13, have significant Indigenous and CALD communities by virtue of systemic barriers to employment, housing and other services, I believe this work needs to be complemented by getting the policy settings right across the whole community.

If we are to avoid the risk of resolving issues in one locality, but allowing them to flourish in another then ‘Making universal policies more spatially aware is the long-

---

9 Hayes et al, above n 6, 4.
11 Ibid, 64-66.
term answer to the problems that disadvantaged areas and their populations face’
It also avoids some of the criticisms that emerged amongst targeted communities during the early incarnations of place-based renewal interventions.

The replication of the British model also risks that charge that we are mimicking an approach that does not equate with localised conditions, or that social inclusion is just another flavour of the month policy that will fade.

To mitigate this risk it is important that we do not import the limitations of the United Kingdom example, where the enactment of their Human Rights Act, and the establishment of the social inclusion policy agenda took place at the same time, yet there was very little integration between the two.

I must admit that I find it frustrating when two major Federal initiatives: the Social Inclusion Agenda and the National Human Rights Consultation, are being rolled out side by side, without any clear policy connections necessarily being made between the two initiatives.

**Does it matter?**

But why does this matter, if nevertheless governments are doing good work in the community? It matters because a rights based framework prevents ambiguity in what social inclusion is trying to achieve, how it is designed and implemented, and how it meets (or does not meet), the needs and aspirations of people currently living on the margins.

One of the benefits of social inclusion is its recognition of the multiple causes and effects of inequality. However, compared to poverty, social exclusion is a relatively imprecise concept. This leaves it open to the critique that the term lacks rigour and can be easily appropriated and rendered meaningless.

Some commentators argue that the vagueness of the term allows politicians to be seen to be doing something about disadvantage without detailing with any precision the substance of the efforts, or its intended results. This criticism was levelled in France and the United Kingdom where, it is argued there has been ‘powerful rhetoric about social justice yet modest resources allocated to social inclusion programs’.

It also matters because there is a danger that we will focus our inclusive efforts too narrowly. I recognise that social investment to enable people to be productive is an enhancement of their rights, but social inclusion must be more than being productive. People are valuable because they are people. In the absence of a

---

19 Beland, above 7, 133.
rights framework we risk yet another discourse that constructs people that ‘don’t fit’ as deficient.21

The human rights-social inclusion connection also matters because to operate effectively, ‘social inclusion needs to be both commonly understood and commonly recognised as significant.’22 In other words, it needs that aha! moment if it is to make sense amongst the public and gain any real political traction.

People are beginning to ‘get’ social inclusion because they understand that exclusion is unfair. If you look at the ACOSS Australia Fair poll, you will see that human rights were included in the ten things that would make Australia a fairer place.23 Similarly, a 2006 Morgan Poll found that 91 per cent of respondents felt ‘a fair go’ was an important Australian value.24

This goes to our perceived (though not necessarily always deserved) national identity as a fair and egalitarian country. Arguably, notions of fairness have even more resonance in these difficult economic times when people feel less secure and know that they too could easily become unemployed, homeless or otherwise disconnected from the economic mainstream. People may not identify fairness as a right, but that does not detract from its power as a social norm.

Connecting our ‘strange bedfellows’ also matters because the target populations for social inclusion policies are already much likely to have a much higher level of contact with government. For these interactions to be fair and transparent, they should be governed by a clear set of standards that define the human rights of the individuals involved as well as the broader responsibilities of the community as a whole.

It is interesting that in the Canadian context, where there has been a long history of human rights protections, there is a more robust definition of social inclusion:

> Social inclusion is about making sure that all children and adults are able to participate as valued, respected and contributing members of society. It is, therefore, a normative (value based) concept - a way of raising the bar and understanding where we want to be and how to get there.25

In arguing for this more transformative agenda, social inclusion begins with premise that ‘it is democratic citizenship that is at risk when a society fails to develop the talents and capacities of all its members’.26 In this model, ‘accommodating differences and eliminating barriers to equality of opportunity are the hallmarks of social inclusion’ such that the discourse shifts from the realms of formal equality to

---


26 Ibid 9.
substantive equality.\textsuperscript{27} Or, in other words, we get real results both in outcome, but also in process.

The other reason why it matters that human rights informs social inclusion, and vice versa, is because marginalised people keep telling us it matters.

**Lessons from the disability, CALD and Indigenous communities**

The disability community was one of the first to make the clear link between exclusion and human rights. Canadian academic and disability advocate, Marcia Roux sets out in plain terms how exclusionary policy frameworks deny the human rights. For example the practice of doing things to people in their ‘best interests’ rather than supporting their autonomy, focusing on safety and protection rather than support, enshrining dependency rather than recognising the barriers that need dismantling, and fixing the ‘disabled person’ not the disabling environment.

As noted by our former Chair, Fiona Smith, herself a woman with disability

> People with disability have been colonised first by the health system, and now increasingly by the welfare model. It is a very narrow lens that is being applied to people with disabilities and one which still relies largely on thinking in terms of segregation, services and dependency. The social inclusion agenda offers real hope of being able to shift this paradigm’.\textsuperscript{28}

Increasingly social inclusion is being used in the public arena in regards to disability. This has come about because people with disability have been arguing through these dual paradigms for a number of years, and our disability policy is slowly becoming the better for it.

In those settings, rights to participation, the value of people with disability to our community and the challenging of negative stereotypes underpin the ‘inclusion’ discourse. I note for example, the work of SCOPE around aspects of inclusive citizenship that draws on the rights protected under the *International Covenant on the Rights of People with Disabilities*.\textsuperscript{29}

However, there is still a very long way to go. As noted in the field of mental health ‘Enabling public policy can make the difference between a system that excludes and marginalises or one that includes and supports’.\textsuperscript{30} This includes tackling the big picture issues of discriminatory attitudes and stigma, an inaccessible built environment and transport system, access to real employment, inclusive education and enabling meaningful participation. With participation at both an individual level and in how government includes people with disability in policy and program decisions.

Similarly, in the multiculturalism space, Culturally and Linguistically Diverse (CALD) communities remind us of the strong links between racism and exclusion, and the

\textsuperscript{27} Ibid.

\textsuperscript{28} Fiona Smith, 'Australians with Disabilities and Social Inclusion: Getting on the Agenda' (Paper presented at the Social Inclusion Down Under, Melbourne) 2.


realisation as both a precursor to inclusion, and evidence that inclusion is being achieved.

As Social Justice Commissioner Tom Calma notes ‘In a genuinely inclusive community people’s religious, cultural, ethnic and racial beliefs and backgrounds should, as an absolute minimum, be respected’. 31

I believe that it is in the area of community relations that social inclusion and human rights have real prospects for delivering the Aha! moment that I described earlier. After many years of political and media discourse littered with notions of being ‘UnAustralian’ we now stand at a point where we can step back from the fear of the ‘other’ and recalibrate our notions of national identity so they are truly inclusive. Human rights norms are already helping us to take that step.

Research by Kevin Dunn suggests that there might be benefit in relying on human rights concepts of religious freedom, individual choice, and liberty in pro-diversity work. His research on attitudes to women wearing the hijab suggests that non Muslim Australians are generally supportive of the right to wear the veil and translate these human rights norms into everyday statements such as ‘each to their own’, ‘live and let live’ and ‘it’s a free country’. 32

This suggests that communicating about inclusion through the rubric of human rights offers some new ways to tap familiar ideas that connect with many people’s ideas of fairness. However, for fairness and equality to work as terminology, real or substantive equality needs to be differentiated from treating ‘everyone the same’.

My third example relates to Indigenous policy, where it is well understood that empowerment and inclusion are the critical elements of reconciliation with Indigenous peoples. 33

Last year a state-wide forum was held with representatives of the Indigenous community, to discuss Victorian government policy in relation to Aboriginal people. A significant outcome of this forum was the clear message from the Indigenous community that they were no longer willing to take their cause to government as one of deprivation or need, but that they were a community with a proud culture and history and that they deserved recognition and redress because of that.

This message was ultimately included in a communiqué to government. It reflects the view that the community wants to move from being treated within needs framework to being part of a rights based framework where their own dignity and role in determining their future is respected and acknowledged.

This forum has not overnight solved the historical dispossession of Aboriginal people of Victoria, nor has it provided redress to their poorer outcomes on any social, health or economic measure. What it has done is to begin the process of responding to these challenges within a human rights framework, which acknowledges the process

is as important as the outcome, and in which individuals and groups are empowered to realize their rights.

**What would human rights social policy look like?**

Human rights policy design and service delivery is holistic and based on principles of fair and non-discriminatory treatment, participation and empowerment, transparency and accountability, and linkages to human rights. We translate this into the acronym PANEL, which the Commission views as a critical process which should inform how we develop our public policy.

The PANEL approach has five components:

*Participation* – people and communities must be involved alongside government in the assessment of issues, decision making and the implementation of strategies and service delivery. Participation needs to be active, free and meaningful. Or in the words of the disability community ‘nothing about us, without us’.

Genuine participation goes beyond consultation. Often this means that time and resources will be required to create the capacity for participation. It rests on social foundations (a place to live, a decent education, safety and freedom from violence) and on normative and legal standards expressed through human rights. Indeed, participation is a human right.

*Accountability* – To achieve results, clear accountabilities must be set. However, in the context of human rights, the notion of accountability extends beyond articulating responsibility and answerability: it actively involves individuals and groups in processes designed to monitor and evaluate performance.

*Non discrimination.* Equality and attention to vulnerable groups is required to ensure that all people can participate equally, especially those who have fewer social, economic or political resources. The principle of non-discrimination helps us to understand and respond to multiple disadvantage and the intersectionalities between gender, race, age, sexuality and disability.

*Empowerment* seeks to redress imbalances in power, to give all individuals and groups within a society opportunity and voice’. It increases the capacity of the target group to claim and exercise their rights and to make rights based complaints. Empowerment is about doing things with people, rather than to them.

*Linkages to human rights standards* - these standards are minimum guarantees and held to identify problem areas and what is required to resolve them. In many cases resources may be limited, but the protection, promotion and fulfilment of human rights may be progressively realised progressively rather than immediately; however rights must not be diminished, and progress must be maintained and protected.

**Progressing from a needs based to rights based model**

The PANEL principles are consistent with the notion of encouraging and building on the resilience of people rather than making them passive recipients of government services. They express the journey from needs based to rights based public policy.

---

34 Ibid 20.
Arguably, three historical approaches capture what has happened in Australia in terms of our social policy and service delivery.

The first: charity, focuses on the moral responsibility of the rich to the poor. Individuals are seen as victims.

The second: the needs approach, recognizes needs as valid claims. Individuals are objects of development interventions and are seen to deserve assistance. The focus is on immediate causes of problems. Arguably, the needs based approach is how the current emphasis on Social Inclusion risks being defined.

The final approach is a rights based approach which focuses on process and outcome. This emphasizes realizing rights and recognizes individual and group rights as claims toward legal and moral duty bearers. Individuals and groups are empowered to claim their rights and are entitled to assistance. This approach focuses on structural causes and their manifestations.36

As noted by the Australian Institute for Social Inclusion and Wellbeing, in policy terms this makes us think about moving from a welfare model of social protection and risk, to a stronger agenda about quality of life and overcoming social injustice. 37

Or in the language of human rights, both ‘freedom from’ and ‘rights to’.

Conclusions

As policy makers, social inclusion appeals to our moral imagination. What drives that moral force is a sense of community belonging. 38 As we all know, to feel a sense of belonging we need respect, dignity, equality and fairness.

Social inclusion provides us with a major opportunity because it ‘allows us to reframe social policy in terms of a social investment... [and] will demand a very different social safety net: not just modest income support but a clearly articulated set of entitlements that each citizen will need for full economic and social participation’. 39

Human rights represent these entitlements. They are what every person needs to belong in their community. Together these form a strong normative and legal framework for enabling social inclusion.

There have been shifting meanings of social inclusion in other jurisdictions, from individual responsibility and mutual obligation, to social cohesion agendas to participatory models.40

---

36 As discussed in VEOHRC, From Principles to Practice: Implementing the Human Rights Based Approach in the Community Organizations (2008) 23.
39 Paul Smyth, 'Closing the gap? The role of wage, welfare and industry policy in promoting social inclusion' 50 (4) Journal of Industrial Relations 647-63 660.
As social inclusion takes its place in domestic public policy in Australia it must remember its purpose—as a solution to marginalisation, disadvantage and inequality in society.

‘This meaning places social inclusion within a human rights and equity agenda; and sees an explicit role for governments to put into place actions that will remove barriers and foster participation by all citizens in the social, economic, institutional and symbolic fabric of life’. 41

It goes beyond making the shift from welfare to wellbeing. Because while wellbeing is a useful measure of people’s life experiences, and the complexity of those experiences, and quality of life is an important outcome to be striving for— we also need to look beyond measurement, to what drives change, and to what drives meaningful social, economic, cultural and civic engagement, equity and justice.

So the question becomes do we continue do things ‘to’ people (including making sure they are well and happy), or do people have the entitlement to control their own lives, to expect minimum standards in their relationship with government and society, and to be included.

For me, social exclusion equates to a denial of rights that all people should enjoy. It includes circumstances where people and communities encounter structural and systemic barriers and so are denied or restricted from participating in society.42

It necessarily follows that a socially inclusive society is one where all people feel valued, their differences are respected, and their needs are met so they can live in dignity. 43

I believe that the emerging interest in social inclusion as a policy driver provides us with unique opportunity to bring human rights out of the shadows of public policy, and place it front and centre.

Traditional conceptual barriers between anti-poverty theory and legalist constructions of human rights have been shown to fail our most marginalised communities.

We must not miss this opportunity for social inclusion and human rights to both be made more robust, so that those currently excluded are able to participate as fully valued, respected and contributing members of society.

It is about time our two strange bedfellows learnt how to talk to each other. I hope that this paper has contributed to that conversation.

42 Salorjee, above n 25, 2.