

AUSTRALIA'S HUMAN RIGHTS FRAMEWORK

FOREWORD

The Australian Government is committed to a fairer and more inclusive Australia. We believe that everyone is entitled to respect and to a fair go and should be able to participate fully in the economic, political and social life of our nation.

All Australians are responsible for respecting and protecting human rights and ensuring that our commitment to a fair go becomes a reality for all Australians.

In December 2008, the Government launched the National Human Rights Consultation to inquire into the protection and promotion of human rights and responsibilities in Australia. The community responded in significant numbers to the Consultation, chaired by Father Frank Brennan AO. The Government welcomed the Committee's Report and its considerable efforts in undertaking this important task.

Australia can be proud of its human rights record. The Consultation has shown that Australia is, 'in general, a wonderful country to live in' and that 'the majority of people living here feel that the system is not broken, and they do not foresee their human rights ever being curtailed.'¹ However, the Report also notes that some people's rights could be better acknowledged and protected. The Government agrees. A community that respects the rights of all citizens is stronger, safer and more resilient to challenges. And there is a need to ensure that all Australians, including those without a strong voice, can be heard.

For example the Australian Government is committed to Closing the Gap on Indigenous life expectancy, and has made unprecedented investment into Indigenous education, health employment, housing and remote services. The Australian Government's support for the establishment of the National Congress of Australia's First Peoples, and National Aboriginal and Torres Strait Islander Women's Alliance also underlines our commitment to resetting the relationship with Indigenous Australians.

On behalf of the Australian Government, I am proud to release Australia's Human Rights Framework. The Framework complements the many other measures the Australian Government has already undertaken to encourage full participation in our community. The Framework reflects the key recommendations made by the Consultation Committee, including the need for greater human rights education.

The Framework does not include a Human Rights Act or Charter. While there is overwhelming support for human rights in our community, many Australians remain concerned about the possible consequences of such an Act. The Government believes that the enhancement of human rights should be done in a way that as far as possible unites, rather than divides, our community. The Government is committed to positive and practical change to promote and protect human rights. Advancing the cause of human rights in Australia would not be served by an approach that is divisive or creates an atmosphere of uncertainty or suspicion in the community.

Australia's Human Rights Framework reflects the Committee's key recommendation, based on overwhelming feedback from submissions by ordinary Australians, that education must be 'the highest priority for improving and promoting human rights in Australia.' The Framework will ensure that information about human rights is more readily available for all members of the community.

The Australian Government will commence the implementation of Australia's Human Rights Framework immediately.

The Hon Robert McClelland MP
Attorney-General

¹ Human Rights Consultation Committee Report, September 2009, www.ag.gov.au, p. 16

FRAMEWORK IN ACTION

- Reaffirm** • The Government reaffirms its commitment to promoting awareness and understanding of human rights in the Australian community and respecting the seven core United Nations human rights treaties to which Australia is a party.
- Educate** • The Government will enhance its support for human rights education across the community, including primary and secondary schools.
- The Government will provide funding of \$2 million over four years to non-government organisations (NGOs) for the development and delivery of community education and engagement programs to promote a greater understanding of human rights.
 - The Government will provide an additional \$6.6 million over four years to the Australian Human Rights Commission to enable it to expand its community education role on human rights and to provide information and support for human rights education programs.
 - The Government will invest \$3.8 million in an education and training program for the Commonwealth public sector, including development of a human rights toolkit and guidance materials for public sector policy development and implementation of Government programs.
 - The Government will consider appropriate recognition of the need for public servants to respect human rights in policy making in any revision of the APS Values or Code of Conduct.
- Engage** • The Government will continue to engage with the international community to improve the protection and promotion of human rights at home, within our region and around the world.
- The Government will develop a new National Action Plan on Human Rights, working with our State and Territory counterparts and NGOs, to outline future action for the promotion and protection of human rights.
 - The Government will bring together the NGO Forums on Human Rights hosted by the Attorney-General and the Minister for Foreign Affairs, to ensure the forums provide a comprehensive consultation mechanism for discussion about domestic and international human rights issues.
- Protect** • The Government will introduce legislation to establish a Parliamentary Joint Committee on Human Rights which will provide greater scrutiny of legislation for compliance with Australia's international human rights obligations under the seven core UN human rights treaties to which Australia is a party.
- The Government will introduce legislation requiring that each new Bill introduced into Parliament, and delegated legislation subject to disallowance, be accompanied by a statement which assesses its compatibility with the seven core UN human rights treaties to which Australia is a party.
- Respect** • The Government will review legislation, policies and practices for compliance with the seven core UN human rights treaties to which Australia is a party.
- The Government will develop exposure draft legislation harmonising and consolidating Commonwealth anti-discrimination laws to remove unnecessary regulatory overlap, address inconsistencies across laws and make the system more user-friendly.
 - The Government will include the President of the Australian Human Rights Commission as a permanent member of the Administrative Review Council.

Reaffirm

Human rights matter. They are about a fair go—about each of us being able to realise our potential and having the chance to participate on our own merits as members of the Australian community.

The Australian Government has developed this Human Rights Framework to enhance the protection and promotion of human rights in Australia. The Government will provide \$18.3 million over four years to implement the measures in the Framework.

The Framework will underpin future government action on human rights matters.

The practical implementation of human rights occurs in our everyday lives. Children learn about respect for each other in our schools. There are rules, protocols and laws prohibiting discrimination, harassment and bullying to ensure that men and women have equal opportunity in employment and equal access to services. We all have an obligation to ensure that our senior citizens and people with disabilities are treated with dignity and respect.

The recognition of human rights in our schools, workplaces and the broader community actively contributes to building a more respectful, productive and inclusive society. Respect for human rights underpins a stable and robust democracy. It ensures freedom of belief and expression. Protection of human rights contributes to a safer and more secure Australia.

Australia has signed up to the seven core United Nations treaties that protect human rights. The Government believes that Australia can and should live up to its obligations under those treaties.

The Government reaffirms its commitment to promoting awareness and understanding of human rights in the Australian community and respecting the seven core UN human rights treaties to which Australia is a party.

The seven core United Nations human rights treaties to which Australia is a party are:

the International Covenant on Civil and Political Rights

the International Covenant on Economic, Social and Cultural Rights

the Convention on the Elimination of All Forms of Racial Discrimination

the Convention on the Elimination of All Forms of Discrimination Against Women

the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment

the Convention on the Rights of the Child

the Convention on the Rights of Persons with Disabilities

These treaties reflect international agreement about the fundamental values that make up 'human rights' protected under the treaties. As a community, we recognise that some rights intersect and that some limitations on particular rights may be necessary to strike the right balance. For example, as a society we agree that protection of women from violence can require a limitation on the freedom of movement of an aggressor. Also, the right to freedom of expression does not mean people should be free to incite violence or crime or to publish offensive material.

A human rights culture carries with it responsibilities—not just on government, the Parliament, courts and tribunals but on all members of the community—to recognise and respect the human rights of others.

Educate

Education and information about human rights and responsibilities

Australians are supportive of ensuring that all citizens are given a fair go. However, it is not always fully appreciated how respect for human rights achieves that objective.

The centrepiece of Australia's Human Rights Framework is action to make information about human rights more readily available across our community. That includes information about what rights are, why they matter and how they are protected.

The Framework encompasses a comprehensive suite of education initiatives to ensure all Australians are able to access information on human rights. This includes the development of human rights education programs for primary and secondary schools, the community and for the Commonwealth public sector.

PRIMARY AND SECONDARY EDUCATION

The Government will enhance its support for human rights education across the community, including primary and secondary schools.

The *Melbourne Declaration of Educational Goals for Young Australians* was agreed to by all Australian Ministers for Education in December 2008 to set the direction for Australian schooling over the next 10 years.

Through that Declaration, the Australian Government, in conjunction with the States and Territories, has specifically committed to supporting young Australians to become active and informed citizens who are able to act with moral and ethical integrity and are committed to values of democracy, equity and justice.

National *Statements of Learning for Civics and Citizenship*, which specify learning opportunities to be offered to all children, are already included in curriculums in all States and Territories and seek to provide students with the opportunity to develop an appreciation of the local, state, national, regional and global rights and responsibilities of citizenship and civic life.

The Australian Government is committed to the development of a rigorous, world-class national curriculum for all Australian students from kindergarten to Year 12. The Australian Curriculum, Assessment and Reporting Authority has been established to implement this important work.

Developing an understanding of rights and responsibilities, including human rights, will be an integral part of curriculum development. In addition, the very good work done in schools in programs that address issues such as bullying and harassment will continue to enhance respect and understanding of the rights of all members of the community.

COMMUNITY EDUCATION AND AWARENESS

The Government will provide funding for community education and awareness programs to foster a better understanding of human rights within the Australian community and encourage greater respect for the rights of others.

The Government will work in partnership with community organisations, including Aboriginal and Torres Strait Islander and Culturally and Linguistically Diverse organisations, to ensure that programs are appropriately targeted and address the information needs of different groups.

The Government will provide funding of \$2 million over four years to non-government organisations (NGOs) for the development and delivery of community education and engagement programs to promote a greater understanding of human rights.

AUSTRALIAN HUMAN RIGHTS COMMISSION

Under the Framework, the Australian Human Rights Commission will have an enhanced community education role.

The Government will provide an additional \$6.6 million over four years to the Australian Human Rights Commission to enable it to expand its community education role on human rights and to provide information and support for human rights education programs.

Building on its extensive experience and expertise in the promotion of human rights, the Commission will have an important role in making sure education and information is available right across the community with programs that complement those delivered by NGOs.

FOSTERING HUMAN RIGHTS AWARENESS IN THE COMMONWEALTH PUBLIC SECTOR

The Australian Government believes in a strong and apolitical public service with a values-driven culture that retains public trust and puts people first. A greater focus on human rights is important to ensure service delivery is focused on the people receiving the services. Promoting a stronger focus on human rights in the public sector through education and training, particularly for decision makers and policy developers, is critical for increased awareness and understanding about human rights issues.

The Government will invest \$3.8 million in an education and training program for the Commonwealth public sector, including development of a human rights toolkit and guidance materials for public sector policy development and implementation of Government programs.

The Commonwealth public sector education and training package will:

- raise awareness and understanding of human rights obligations

- strengthen the capacity of policy and legal officers to develop policies, programs and legislation that are consistent with human rights, and

- provide guidance to administrative decision makers on relevant human rights considerations to take into account.

The Government expects public sector officials to act consistently with human rights. It believes this is an important obligation bearing on their conduct and professionalism. The education and training package will ensure that public servants have appropriate information and knowledge about human rights. This will have a positive impact on the development and implementation of Commonwealth policies, programs and services.

In September 2009 the Prime Minister established an Advisory Group to develop a comprehensive blueprint for reform of the public service. The Advisory Group has now recommended that the Government consider revising the APS Values to a smaller set of core values and also revise, as necessary, the APS Code of Conduct.

The Government will consider appropriate recognition of the need for public servants to respect human rights in policy making in any revision of the APS Values or Code of Conduct.

Engage

Australia's international reputation on human rights

Since its election, the Australian Government has acted to reinvigorate Australia's engagement with the United Nations. We have issued a standing invitation to the UN to visit Australia to examine the protection of human rights here, sending a clear message that we are committed to our international obligations and relationship with the United Nations. The Government is committed to restoring Australia's reputation as a good international citizen.

The Government will continue to engage with the international community to improve the protection and promotion of human rights at home, within our region and around the world.

Australia's commitment to international human rights protection is reinforced by our actions.

Since the start of 2008, the Government has:

ratified the *Convention on the Rights of Persons with Disabilities* and acceded to the *Optional Protocol to the Convention on the Rights of Persons with Disabilities*

acceded to the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*

signed the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*

announced support for the United Nations *Declaration on the Rights of Indigenous Peoples*

legislated to create a comprehensive Commonwealth offence of torture consistent with Australia's obligations under the *Convention Against Torture*, and

legislated to prevent the reintroduction of the death penalty anywhere in Australia, consistent with Australia's obligations under the *Second Optional Protocol to the International Covenant on Civil and Political Rights*.

NATIONAL ACTION PLAN ON HUMAN RIGHTS

In 1993, Australia proposed, through the United Nations, the creation of National Action Plans on Human Rights to encourage member countries to commit to action to promote and protect human rights. In 1994 Australia was the first country to produce a National Action Plan.

As part of the Government's commitment to engagement with the international community, a new National Action Plan will be developed, to outline the programs and actions to be taken by all levels of government for the promotion and protection of human rights in this country.

The Government will develop a new National Action Plan on Human Rights, working with our State and Territory counterparts to outline future action for the promotion and protection of human rights.

The National Action Plan will demonstrate Australia's on-going commitment to its international human rights obligations, as well as encouraging other countries to achieve higher standards of human rights.

The National Action Plan will reflect activity across the Commonwealth, State and Territory governments. The Australian Government will consult the States and Territories, and NGOs, in the development of the National Action Plan.

IMPROVED ENGAGEMENT WITH NON-GOVERNMENT ORGANISATIONS

NGOs play an important role in promoting human rights in Australia.

The Government will strengthen the relationship between government and NGOs to improve human rights protection in this country.

The Government will bring together the NGO Forums on Human Rights hosted by the Attorney-General and the Minister for Foreign Affairs, to ensure the forums provide a comprehensive consultation mechanism for discussion about domestic and international human rights issues.

Greater engagement with NGOs will complement the Government's commitment to provide \$2 million over the next four years to NGOs for the development and delivery of community human rights awareness and education programs

Protect

Parliamentary scrutiny

The Government believes that it is important to ensure that Australia's domestic laws comply with our international human rights obligations.

The Government supports a transparent and accountable legislative process. Increased parliamentary scrutiny of our laws against Australia's human rights obligations will enhance public confidence that Australia's laws reflect our human rights obligations.

The Government will introduce two measures designed to improve parliamentary scrutiny of new laws for consistency with Australia's human rights obligations.

PARLIAMENTARY JOINT COMMITTEE ON HUMAN RIGHTS

There is currently no dedicated parliamentary committee with responsibility for reviewing legislation against human rights obligations. The Government believes that a new Committee with specific responsibility to consider human rights, and with members from both Houses of Parliament, will enhance the consideration of human rights in Commonwealth legislation.

The Government will introduce legislation to establish a Parliamentary Joint Committee on Human Rights which will provide greater scrutiny of legislation for compliance with our international human rights obligations under the seven core UN human rights treaties to which Australia is a party.

The new Joint Committee on Human Rights will scrutinise Bills and legislative instruments for consistency with the seven core UN human rights treaties to which Australia is a party. The Joint Committee on Human Rights will be able to conduct inquiries to examine whether legislation is consistent with these human rights obligations. The Government will also be able to ask the Joint Committee on Human Rights to conduct broader inquiries into human rights matters.

The Committee will be a key mechanism for bringing human rights issues to the fore in Parliamentary consideration of legislation.

STATEMENTS OF COMPATIBILITY

The Government will introduce legislation requiring that each new Bill introduced into Parliament, and delegated legislation subject to disallowance, be accompanied by a statement which outlines its compatibility with the seven core UN human rights treaties to which Australia is a party.

Statements of compatibility will aid parliamentary consideration of new laws against human rights principles. Statements of compatibility will provide a valuable assessment to assist the Joint Committee's work. The statements will be publicly available along with other explanatory materials which accompany legislation.

Cabinet and Legislation Handbooks will be updated to include guidance on the need to address consistency with Australia's human rights obligations in developing policies and legislation.

Respect

Reviewing existing legislation, policies and practices

The Government is committed to a fairer, more inclusive Australia. To achieve this, the Government will, over time, review legislation, policies and practices to ensure that they appropriately reflect human rights.

The Government will review legislation, policies and practices for compliance with the seven core UN human rights treaties to which Australia is a party.

The review of legislation will incorporate a number of key elements, including:

- identification of priority areas within portfolios particularly relevant to human rights for review, and
- ensuring that human rights obligations are considered as part of legislation reviews proposed in other contexts

Reviews will be designed to suit the particular circumstances. For example, a review at the time of introducing substantial amendments to an Act may be appropriate. In some cases, the Government may ask the new Joint Committee on Human Rights to review particular legislation, while in others, a review team may be established or existing bodies may undertake a review.

Views expressed by UN human rights bodies will be taken into account in identifying areas for review.

STREAMLINING AND HARMONISING ANTI-DISCRIMINATION LEGISLATION

The Australian Government believes everyone should be able to participate in our community free from discrimination, harassment and bullying on a range of grounds including their race, sex, disability and age.

Under anti-discrimination laws, complaints about discrimination can be made in relation to broad areas of public life including employment, education, the provision of goods, services and facilities, accommodation, sport and the administration of either Commonwealth or State and Territory laws and services.

The Government will develop exposure draft legislation harmonising and consolidating Commonwealth anti-discrimination laws to remove unnecessary regulatory overlap, address inconsistencies across laws and make the system more user-friendly

It is timely to review federal anti-discrimination legislation to ensure that it is working effectively. The review will focus on removing unnecessary regulatory overlap, addressing inconsistencies across existing anti-discrimination laws and making the system more user-friendly in order to reduce compliance costs for individuals and business. This will, in turn, strengthen human rights protections.

In reviewing anti-discrimination legislation, the Government will also consider further the complaints handling processes and the related role and functions of the Australian Human Rights Commission.

Streamlined Commonwealth anti-discrimination laws will also lead the way for development of nationally harmonised laws across Australia. This is a project currently being progressed through the Standing Committee of Attorneys-General.

As a first step, the National *Anti-Discrimination Information Gateway* was established to assist individuals and businesses find information on anti-discrimination laws. The Gateway provides an overview of all Commonwealth, State and Territory anti-discrimination systems and links to further information about each jurisdiction's anti-discrimination schemes, located at www.antidiscrimination.gov.au.

The Australian Government believes streamlined anti-discrimination laws will create a more effective system of

protections from unlawful discrimination, greater certainty for businesses and the most efficient enforcement mechanisms.

REVIEW OF COUNTER-TERRORISM LEGISLATION

The Government is committed to ensuring that its national security laws and powers contain appropriate safeguards and are accountable in their operation.

The Government has recently engaged in extensive public consultation to review Australia's counter-terrorism legislation. Amendments arising from that review are currently being considered by Parliament.

Human rights obligations will also be taken into account as a part of a further review of counter-terrorism laws, which is expected to commence in December 2010.

The Government has also legislated to establish a new Independent National Security Legislation Monitor to review the operation and effectiveness of counter terrorism and national security legislation. The Monitor's review will also ensure that the legislation is consistent with Australia's international obligations, including human rights, counter-terrorism and international security obligations, and contains appropriate safeguards for protecting the rights of individuals.

Statutory interpretation

Australian courts interpret and apply legislation every day using well established common law and statutory rules of interpretation.

In the event of ambiguity, the courts construe legislation consistently with fundamental rights unless Parliament has expressly indicated a contrary intention. Similarly the courts construe ambiguous legislation on the basis that it is presumed that Parliament does not intend to breach Australia's international human rights obligations.

In discharging this function the courts will use a variety of means to assist in determining the purpose and intent of the Parliament in enacting the law in question. This can include having regard to other material considered by Parliament in the passage of legislation such as accompanying Explanatory Memoranda, Second Reading Speeches and Parliamentary Committee reports.

Statements of compatibility and any report of the Joint Committee on Human Rights would fall into that category of information that can currently be considered by a court.

Accordingly by its response to the Minister's statement of compatibility and any report of the Joint Committee on Human Rights, the Parliament will be able to give more precise guidance to the courts as to the legislature's intention in enacting legislation in the context of Australia's human rights obligations.

This extraneous material will be referred to in the event of a court finding that the provisions of a statute are unclear or ambiguous. The courts will have no additional powers to strike down or amend legislation.

Administrative decision-making

The Commonwealth has a comprehensive and extensive framework for independent review of administrative decisions. The merits of many decisions can be reviewed by tribunals such as the Administrative Appeals Tribunal. The *Administrative Decisions (Judicial Review) Act 1977* enables a person aggrieved by most decisions made under federal laws to apply to a federal court for an order of review on various grounds, including that the decision-maker failed to take into account a relevant consideration.

Australia's Constitution also separately guarantees a broad scope of judicial review of government action. The Government is required to comply with anti-discrimination legislation in relation to its administrative decisions.

Current avenues for review for government decision-making will now be complemented by public sector education on human rights and an increased focus on human rights in the development and implementation of government policies and practices.

The Government will include the President of the Australian Human Rights Commission as a permanent member of the Administrative Review Council.

The Administrative Review Council is an independent body established to review and inquire into the Commonwealth administrative law system and recommend improvements that might be made to the system to the Attorney-General.

The President of the Australian Human Rights Commission will join the President of the Administrative Appeals Tribunal, the Commonwealth Ombudsman and the President of the Australian Law Reform Commission as ex officio members of the Council, to ensure an appropriate human rights perspective is integrated with the views of decision-making agencies on the Council.

Review

The changes in this Framework are intended to have broad effect and to enhance the understanding of and respect for human rights in Australia. It is appropriate to review their effectiveness after a period in operation and look at whether other or additional measures are required.

The Government will review the operation of this Framework in 2014, to assess its effectiveness in the protection and promotion of human rights in Australia.