



**Australian Government**  

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**Attorney-General's Department**

## **Human Rights Symposium**

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**Deputy Secretary**

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**University of South Australia**

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contributed to the preparation of this paper**

- 1. The 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights is a fitting occasion to take stock of Australia's current position and foreshadowed action in human rights, both domestically and internationally.**
- 2. It is fair to say that over the last 12 months there has been a major change in the Commonwealth's human rights stance.**
- 3. The Attorney-General, the Hon Robert McClelland MP, has been personally committed to leading and promoting these changes.**
- 4. From the Attorney-General's Department's perspective, we have been energised by the new direction as well as the challenges in advising and implementing the Attorney-General's agenda. Given the amount of work involved it is fortunate that there has been this energy – and even excitement – about being part of a new approach.**
- 5. I thought it would be useful to outline the very significant developments we've been involved in –**

**both internationally and domestically – to give an indication of just how much has been done in a short period.**

**[Key International Initiatives]**

- 6. Since coming to office the Government has made clear its intentions to strengthen Australia's engagement with the United Nations.**
- 7. In August this year, the Government issued a standing invitation to the UN to visit Australia to investigate the protection of human rights here, joining around 60 other nations who have done likewise.**
- 8. In addition, the Government has taken action on a number of key international human rights instruments in particular, those dealing with Disabilities, Women's Equality and Torture.**
- 9. The Government led a process which concluded that ratification of the United Nations Convention on the**

**Rights of Persons with Disabilities would be in our national interest.**

- 10. The Convention requires Parties to remove barriers faced by people with disability and enhance opportunities to participate in social and political decision making processes.**
- 11. It also recognises their rights to education, health, work, adequate living conditions, freedom of movement and equal recognition before the law.**
- 12. Ratification was supported by the Federal Parliament's Joint Standing Committee on Treaties – and on 17 July this year, Australia became a party to the Convention. It entered into force here one month later.**
- 13. Because of our early ratification of the Convention the Government was able to nominate an independent expert from Australia as a candidate for election to the UN Committee monitoring implementation of the Convention.**

- 14. I am sure many of you will be aware that Australia's nominee, Professor Ron McCallum was successful.**
- 15. Professor McCallum has outstanding credentials – he is the former Dean of the Sydney University Law School, has eminent legal and administrative skills, and has had significant involvement with advocacy and self-help for people with disability. As a person who has been blind since birth, he has experience of life with a significant disability.**
- 16. I'll talk shortly about the action that is underway for Australia to consider adopting the Optional Protocol to the Disabilities Convention.**
- 17. Recently the Government completed the formal steps necessary for Australia to become a party to the Optional Protocol to the UN *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)*.**
- 18. The Optional Protocol establishes a complaint mechanism for individuals or groups of women to**

**complain about violations by State Parties of obligations under the CEDAW, once all domestic legal avenues have been exhausted.**

**19. Consultations with States and Territories and NGOs on this issue showed overwhelming support for Australia becoming a party.**

**20. Our instrument of accession was lodged on 4 December. This means that the Optional Protocol will enter into force for Australia before International Women's Day on 8 March 2009<sup>1</sup>.**

**21. The Government has made it clear that torture, whether state sponsored or perpetrated by others, contravenes the values Australia subscribe to as a humane, civilised society. It wants to take a public stand in support of this position.**

**22. And so the Government is committed to considering the steps needed to become a party to the UN *Optional Protocol to the Convention Against Torture*.**

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<sup>1</sup> This was announced 24 November 2008.

**23. The Attorney-General's Department is consulting with the States and Territories and Commonwealth agencies in preparing the usual National Interest Analysis which will be tabled in Parliament. This process will determine whether Australia's laws, policies and practice comply with the obligations in the Optional Protocol.**

**[Key domestic initiatives]**

**24. The Government has also undertaken action on domestic human rights – and I would like now to outline the significant domestic initiatives that have either been completed or are underway.**

**25. On 3 December, the International Day of People with Disabilities, the Government took action in several areas.**

**26. In line with the recommendations of the Productivity Commission in its 2004 review of the *Disability Discrimination Act 1992*, legislation was introduced into Parliament to amend the Act.**

- 27. The amendments clarify the obligation on employers, service providers and others to make reasonable adjustments to remove discriminatory barriers against people with disabilities. Consistent with the position that the requirements must be ‘reasonable’, adjustments will not need to be made if they would cause unjustifiable hardship.**
- 28. As well, on 3 December, Draft Disability (Access to Premises – Building) Standards were tabled in the Parliament.**
- 29. The Standards will clarify what building owners, managers and developers need to do to ensure that people with disability can enter and use publicly accessible buildings.**
- 30. In a further recognition of the significance of the International Day of People with Disabilities, the National Interest Analysis for the Optional Protocol to the Disabilities Convention was also tabled in Parliament on 3 December.**

- 31. The Optional Protocol is a separate instrument that empowers the Committee on the Rights of Persons with Disabilities to receive and investigate complaints from individuals and groups after they have exhausted domestic remedies.**
- 32. The next step is for the Optional Protocol to be considered by the Parliamentary Joint Standing Committee on Treaties.**
- 33. The other action on 3 December, was the introduction of legislation to implement a recommendation of the *Older people and the law* report.**
- 34. The report, prepared by the House of Representatives Standing Committee on Legal and Constitutional Affairs, recommended that the *Age Discrimination Act 2004* be amended to remove the ‘dominant reason test’.**
- 35. The ‘dominant reason test’ means that a person’s age must be the dominant reason for something to constitute discrimination under the Act.**

- 36. The amendment, will mean that a person need only show that their age was one of the reasons they were discriminated against – regardless of whether this was the dominant or merely a substantial reason.**
- 37. This change will harmonise the Act with other federal anti-discrimination laws, better align it with State and Territory laws and provide a higher level of protection from unlawful age discrimination.**
- 38. The Government has released its initial response to the independent Review of the Northern Territory Emergency Response (NTER).**
- 39. The Government has committed to maintaining the core elements of the NTER such as compulsory income management, the five-year leases, and alcohol and pornography controls.**
- 40. The independent Review of the NTER found that the situation in remote Northern Territory communities and town camps remained sufficiently**

**acute to be described as a national emergency. For this reason, the Government has decided that the current stabilisation phase of the NTER will continue for the next 12 months before transitioning to a long-term development phase.**

- 41. The support for the NTER stems from the obligation to protect women and children from violence, abuse and neglect, and to expand the life chances of children.**
- 42. The Government has advised that it agrees with the Review's recommendation that Government actions affecting Aboriginal communities must respect Australia's human rights obligations and conform to the *Racial Discrimination Act 1975*.**
- 43. As a result, over the coming months the intervention measures will be refined so that they are more clearly special measures under the Racial Discrimination Act, or to ensure that they are not racially discriminatory.**

- 44. The Government has also taken major steps to remove discrimination against same-sex couples and their families under Commonwealth laws.**
- 45. In May last year the Australian Human Rights Commission published its landmark report *Same-sex: Same Entitlements*.**
- Essentially, the report found that same-sex couples and their children do not enjoy the same entitlements as opposite sex couples and their children.**
- 46. Following the change of Government, the Department undertook an audit of Commonwealth legislation to identify provisions that unfairly discriminated on the grounds of sexuality and gender identity.**
- 47. Two Bills have now been passed to remove discrimination against same sex couples. The first Bill dealt with superannuation and the second with more general law reform measures<sup>2</sup> to amend 84**

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<sup>2</sup> The Same-Sex Relationships (Equal Treatment in Commonwealth Laws – Superannuation) Act 2008 and the Same-Sex Relationships (Equal Treatment in Commonwealth Laws – General Law Reform) Bill 2008. The

**Commonwealth laws that discriminate against same-sex couples and their children in areas such as social security, taxation, Medicare, veterans' affairs, workers' compensation, educational assistance and superannuation. It has been a huge exercise for the Human Rights Branch of the Department in coordinating action across a range of Departments.**

**48. The Bills aim to ensure that in each amended law same-sex couples and their families are recognised and that for all practical purposes they have the same entitlements as opposite-sex defacto couples.**

**49. Work has also commenced on harmonising Australia's anti-discrimination legislation.**

**50. As you will be aware - in addition to Commonwealth legislation, each jurisdiction has their own anti-discrimination laws and there are differences in both substantive law and procedure between jurisdictions.**

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Superannuation Bill received Royal Assent on 4 December 2008, while the Equal Treatment Bill has not yet received Royal Assent.).

- 51. Complaints can be made to different bodies under Commonwealth and the relevant State or Territory laws.**
- 52. However, there are differences in the grounds available for making discrimination complaints, in the remedies available, and in the treatment of particular types of discrimination.**
- 53. Harmonising anti-discrimination laws is being progressed through the Standing Committee of Attorneys-General. A Working Group of officials has been established to progress the work in accordance with terms of reference agreed by Standing Committee of Attorneys General.**
- 54. One of the first projects, agreed to at their most recent meeting. in November, was for the creation of a single website, to be hosted by the Commonwealth. This website will be a one-stop shop for all Australians to access information relevant to their discrimination issue.**

- 55. The Attorney General strongly supports this project and the website will be launched in early 2009.**
- 56. Options for harmonisation of anti-discrimination legislation in the medium and longer term are also being developed.**
- 57. With impeccable timing the Attorney-General is launching the National Human Rights Consultation in Sydney this morning.**
- 58. The Consultation implements a key election commitment of the Government.**
- 59. The purpose of the Consultation is to listen to, and report back to Government on the community's views on human rights.**
- 60. The Consultation will be broad based. It won't just be about whether Australia should or shouldn't have a Bill of Rights.**
- 61. While it is anticipated that a full range of ideas will be canvassed – including the possibility of a legislated charter of rights for Australia – there are**

**of course many other ways that human rights can be protected and promoted.**

**62. These include:**

- building upon our existing democratic institutions**
- developing new laws to further protect and promote human rights**
- incorporating a human rights perspective into all government policy development and administrative decision making, and**
- promoting a human rights culture at all levels of Australian society.**

**63. The Consultation will not presuppose any outcome. Rather it will provide an opportunity for the community to inform the Government about how the community wants human rights protected in the 21<sup>st</sup> century.**

**64. The Attorney has indicated that the Consultation will be conducted by an independent Committee –**

**and I expect that by now the Attorney will have announced the membership.**

**65. The Committee will be charged with asking the community:**

- Which human rights (including corresponding responsibilities) should be protected and promoted?**
- Are these human rights currently sufficiently protected and promoted?**
- How could Australia better protect and promote human rights?**

**66. The Committee will report to Government on the community's views about the range of options for human rights protections, their advantages and disadvantages and an assessment of the level of community support for each option.**

**67. The Government has indicated that it will only consider proposals that preserve the sovereignty of Parliament to pass laws in the national interest.**

**68. The Department will be closely involved in supporting the Committee in this important work.**

## **[Conclusion]**

- 69. It's important that we acknowledge and celebrate the signing of the Universal Declaration. Australia played a leading role in its drafting and we were an original signatory.**
- 70. The Declaration remains the foundation for the standards of human rights and freedoms across the world. And it is the basis for our major human rights instruments and the expert bodies associated with them.**
- 71. Symposiums, such as today's, underscore the importance of the Declaration and increase the discussion of human rights both internationally and at home.**
- 72. I am very grateful for the opportunity to contribute to this discussion.**