

# CONNECT

the Newsletter of the Mornington Peninsula Human Rights Group

*'committed to promoting in our municipality and beyond  
understanding of and respect for human rights  
through programs of community education'*

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## REPORT OF THE NATIONAL HUMAN RIGHTS CONSULTATION

Thanks to an invitation from Phil Lynch, director of the Human Rights Law Resource Centre, Helen and I attended in the Queen's Hall Parliament House Melbourne at 10.30 am this morning to witness Fr Frank Brennan present the **Report of the National Human Rights Consultation** to the Attorney-General, the Hon Robert McClelland.

The Hall was packed and Fr Frank was accompanied by his fellow committee members: Mary Kostakidis, Tammy Williams and Mick Palmer. Most of the audience seemed to be strong supporters of human rights, although a group in front of us were not enthusiastic when Fr Frank announced that the committee was recommending that Australia adopt a federal Human Rights Act.

Robert McClelland spoke warmly of the work of the committee and claimed that the range and depth of its consultation with the Australian community was unique in our history, and would set a pattern for future enquiries to emulate. He underlined the Rudd Government's commitment to human rights and said the Government would respond in detail to the Report.

My enthusiasm was somewhat tempered when speaking afterwards with Malcolm Fraser. He pointed to the political difficulties ahead. He said the *Australian* newspaper would run a strong negative campaign, the Liberal Party is opposed, the Labor Government is divided, conservative Catholics like Cardinal Pell are opposed as are conservative Protestants like the Australian Christian Lobby. The need for community education to dispel the many myths is very strong and urged that our group do something.

I also spoke with Julian Burnside who thought the fact that 87% of the 35,000 who made submissions favoured a Human Rights Act should give the Government confidence to proceed. Another person, I forget who it was, thought that the way the recommendations are structured would allow the Government to move progressively in implementing the proposals. Take one step at a time and see how it plays. Begin with community human rights education, then compile an interim list of rights to be protected and promoted and use this

to influence policy and legislation, and later when it is clear that the sky has not fallen in enact formal human rights legislation.

I think our first task, as a human rights group, is to become well-informed ourselves about the Report. It is available online at [www.ag.gov.au](http://www.ag.gov.au). The thirty-one recommendations are set out below.

John Howells, 3.30 pm, 10 October 2009

# Recommendations

## Creating a human rights culture

### Recommendation 1

The Committee recommends that education be the highest priority for improving and promoting human rights in Australia.

### Recommendation 2

The Committee recommends as follows:

- that the Federal Government develop a national plan to implement a comprehensive framework, supported by specific programs, of education in human rights and responsibilities in schools, universities, the public sector and the community generally
- that human rights education be based on Australia's international human rights obligations, as well as those that have been implemented domestically (whether in a Human Rights Act or otherwise), and the mechanisms for enforcement of those rights
- that the Federal Government publish a readily comprehensible list of Australian rights and responsibilities that can be translated into various community languages
- that any education and awareness campaign incorporate the experiences of Indigenous Australians—with a particular focus on recent and historical examples of human rights concerns
- that the Federal Government collaborate with non-government organisations and the private sector in developing and implementing its national plan for human rights education.

### Recommendation 3

The Committee recommends that its proposed readily comprehensible list of Australian rights and responsibilities include commitments such as the responsibility:

- to respect the rights of others
- to support parliamentary democracy and the rule of law
- to uphold and obey the laws of Australia
- to serve on a jury when required
- to vote and to ensure to the best of our ability that our vote is informed
- to show respect for diversity and the equal worth, dignity and freedom of others
- to promote peaceful means for the resolution of conflict and just outcomes
- to acknowledge and respect the special place of our Indigenous people and acknowledge the need to redress their disadvantage
- to promote and protect the rights of the vulnerable
- to play an active role in monitoring the extent to which governments are protecting the rights of the most vulnerable
- to ensure that we are attentive to the needs of our fellow human beings and contribute according to our means.

## Human rights in policy and legislation

### Recommendation 4

The Committee recommends as follows:

- that the Federal Government conduct an audit of all federal legislation, policies and practices to determine their compliance with Australia's international human rights obligations, regardless of whether a federal Human Rights Act is introduced. The government should then amend legislation, policies and practices as required, so that they become compliant
- that, in the conduct of the audit, the Federal Government give priority to the following areas:
  - anti-discrimination legislation, policies and practices
  - national security legislation, policies and practices
  - immigration legislation, policies and practices
  - policies and practices of Australian agencies that could result in Australians being denied their human rights when outside Australia's jurisdiction.

### Recommendation 5

The Committee recommends that the Federal Government immediately compile an interim list of rights for protection and promotion, regardless of whether a Human Rights Act is introduced. The list should include rights from the International Covenant on Civil and Political Rights as well as the following rights from the International Covenant on Economic, Social and Cultural Rights that were most often raised during the Consultation: the right to an adequate standard of living (including food, clothing and housing); the right to the highest attainable standard of health; and the right to education.

The government should replace the interim list of rights with a definitive list of Australia's international human rights obligations within two years of the publication of the interim list.

### Recommendation 6

The Committee recommends that a statement of compatibility be required for all Bills introduced into the Federal Parliament, all Bills before the third reading (so as to allow scrutiny of amendments) and legislative instruments as defined by the *Legislative Instruments Act 2003* (Cth). The statement should assess the law's compatibility with the proposed interim list of rights and, later, the definitive list of Australia's human rights obligations.

### Recommendation 7

The Committee recommends that a Joint Committee on Human Rights be established to review all Bills and relevant legislative instruments for compliance with the interim list of rights and, later, the definitive list of Australia's human rights obligations.

## Human rights in practice

### Recommendation 8

The Committee recommends as follows:

- that the Federal Government develop a whole-of-government framework for ensuring that human rights—based either on Australia's international obligations or on a federal Human Rights Act, or both—are better integrated into public sector policy and legislative development, decision making, service delivery, and practice more generally
- that the Federal Government nominate a Minister responsible for implementation and oversight of the framework and for annual reporting to parliament on the operation of the

framework.

### **Recommendation 9**

The Committee recommends that the Federal Government incorporate human rights compliance in the Australian Public Service Values and Code of Conduct.

### **Recommendation 10**

The Committee recommends that the Federal Government require federal departments and agencies to develop human rights action plans and report on human rights compliance in their annual reports.

### **Recommendation 11**

The Committee recommends that the *Administrative Decisions Judicial Review Act 1975* (Cth) be amended in such a way as to make the definitive list of Australia's international human rights obligations a relevant consideration in government decision making.

### **Recommendation 12**

The Committee recommends that, in the absence of a federal Human Rights Act, the *Acts Interpretation Act 1901* (Cth) be amended to require that, as far as it is possible to do so consistently with the legislation's purpose, all federal legislation is to be interpreted consistently with the interim list of rights and, later, the definitive list of Australia's human rights obligations.

### **Recommendation 13**

The Committee recommends that the functions of the Australian Human Rights Commission be augmented to include the following:

- to expand the definition of 'human rights' in the *Australian Human Rights Commission Act 1986* (Cth) to include the following instruments:
- 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
- the Declaration on the Rights of Indigenous Peoples.
- to examine any Bill at the request of the federal Attorney-General or the proposed Joint Committee on Human Rights for the purpose of ascertaining if any provision in the Bill is inconsistent with or contrary to any human right in the interim list and, later, the definitive list of Australia's human rights obligations
- to inquire into any act or practice of a federal public authority or other entity performing a public function under federal law that might be inconsistent with or contrary to any obligation in the interim list of human rights and, later, the definitive list of Australia's human rights obligations
- to provide the same remedies for complaints of human rights violations and International Labour Organization Convention 111 complaints as for unlawful discrimination, permitting determination by a court when settlement cannot be reached by conciliation—except in relation to complaints of violations of economic, social and cultural rights, in which case there should be no scope to bring court proceedings where conciliation has failed.

The Federal Government should be required to table a response to any Australian Human Rights Commission report on complaints within six months of receiving that report.

### **Recommendation 14**

The Committee recommends that the Federal Government develop and implement a framework for improving access to justice, in consultation with the legal profession and the non-government sector.

## **Human rights and Indigenous Australians**

### **Recommendation 15**

The Committee recommends that a ‘statement of impact on Aboriginal and Torres Strait Islander peoples’ be provided to the Federal Parliament when the intent is to legislate exclusively for those peoples, to suspend the *Racial Discrimination Act 1975* (Cth) or to institute a special measure. The statement should explain the object, purpose and proportionality of the legislation and detail the processes of consultation and the attempts made to obtain informed consent from those concerned.

### **Recommendation 16**

The Committee recommends that, in partnership with Indigenous communities, the Federal Government develop and implement a framework for self-determination, outlining consultation protocols, roles and responsibilities (so that the communities have meaningful control over their affairs) and strategies for increasing Indigenous Australians’ participation in the institutions of democratic government.

## **A Human Rights Act**

### **Recommendation 17**

The Committee recommends that the Federal Government operate on the assumption that, unless it has entered a formal reservation in relation to a particular right, any right listed in the following seven international human rights treaties should be protected and promoted:

- 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.

### **Recommendation 18**

The Committee recommends that Australia adopt a federal Human Rights Act.

### **Recommendation 19**

The Committee recommends that any federal Human Rights Act be based on the ‘dialogue’ model.

### **Recommendation 20**

The Committee recommends that any federal Human Rights Act protect the rights of human beings only and that the obligation to act in accordance with those rights be imposed only on federal public authorities—including federal Ministers, federal officials, entities established by federal law and performing public functions, and other entities performing public functions under federal law or on behalf of another federal public authority.

### **Recommendation 21**

The Committee recommends that any federal Human Rights Act protect the rights of all people in Australia and all people who are overseas but subject to Australian jurisdiction.

### **Recommendation 22**

The Committee recommends that, if economic and social rights are listed in a federal Human Rights Act, those rights not be justiciable and that complaints be heard by the Australian Human Rights Commission. Priority should be given to the following:

- the right to an adequate standard of living—including adequate food, clothing and housing
- the right to the enjoyment of the highest attainable standard of physical and mental health
- the right to education.

### **Recommendation 23**

The Committee recommends that a limitation clause for derogable civil and political rights, similar to that contained in the Australian Capital Territory and Victorian human rights legislation, be included in any federal Human Rights Act.

### **Recommendation 24**

The Committee recommends that the following non-derogable civil and political rights be included in any federal Human Rights Act, without limitation:

- *The right to life.* Every person has the right to life. No one shall be arbitrarily deprived of life. The death penalty may not be imposed for any offence.
- *Protection from torture and cruel, inhuman or degrading treatment.* A person must not be
  - subjected to torture
  - or
  - treated or punished in a cruel, inhuman or degrading way
  - or
  - subjected to medical or scientific experimentation without his or her full, free and informed consent.
- *Freedom from slavery or servitude.* A person must not be held in slavery or servitude.
- *Retrospective criminal laws.*
- A person must not be found guilty of a criminal offence as a result of conduct that was not a criminal offence when the conduct was engaged in.
- A penalty imposed on a person for a criminal offence must not be greater than the penalty that applied to the offence when it was committed.
- If a penalty for an offence is reduced after a person committed the offence but before the person is sentenced for that offence, the reduced penalty should be imposed.
- Nothing in the foregoing affects the trial or punishment of any person for any act or omission that was a criminal offence under international law at the time the act or omission occurred.
- *Freedom from imprisonment for inability to fulfil a contractual obligation.* A person must not be imprisoned solely on the ground of inability to fulfil a contractual obligation.
- *Freedom from coercion or restraint in relation to religion and belief.* No person will be subject to coercion that would impair his or her freedom to have or to adopt a religion or belief of his or her choice.

The right to a fair trial should also not be limited.

### **Recommendation 25**

The Committee recommends that the following additional civil and political rights be included in any federal Human Rights Act:

- the right to freedom from forced work
- the right to freedom of movement
- the right to privacy and reputation
- the right to vote
- the right to freedom of thought, conscience and belief
- freedom to manifest one's religion or beliefs
- the right to freedom of expression
- the right to peaceful assembly
- the right to freedom of association
- the right to marry and found a family
- the right of children to be protected by family, society and the State
- the right to take part in public life
- the right to property
- the right to liberty and security of person
- the right to humane treatment when deprived of one's liberty
- the right to due process in criminal proceedings
- the right not to be tried or punished more than once
- the right to be compensated for wrongful conviction.

### **Recommendation 26**

The Committee recommends that any federal Human Rights Act require statements of compatibility to be tabled for all Bills introduced into the Federal Parliament, all Bills before the third reading (so as to allow scrutiny of amendments) and legislative instruments as defined by the *Legislative Instruments Act 2003*.

### **Recommendation 27**

The Committee recommends that any federal Human Rights Act empower the proposed Joint Committee on Human Rights to review all Bills and the relevant legislative instruments for compliance with the human rights expressed in the Act.

### **Recommendation 28**

The Committee recommends that any federal Human Rights Act contain an interpretative provision that is more restrictive than the UK provision and that requires federal legislation to be interpreted in a way that is compatible with the human rights expressed in the Act and consistent with parliament's purpose in enacting the legislation. The interpretative provision should not apply in relation to economic, social and cultural rights.

### **Recommendation 29**

The Committee recommends that any federal Human Rights Act extend only to the High Court the power to make a declaration of incompatibility.

(Should this recommendation prove impractical, the Committee recommends alternatively that any federal Human Rights Act not extend to courts the formal power to make a declaration of incompatibility.)

### **Recommendation 30**

The Committee recommends that any federal Human Rights Act require Commonwealth public authorities to act in a manner compatible with human rights (other than economic and social rights) and to give proper consideration to relevant human rights (including economic and social rights) when making decisions.

**Recommendation 31**

The Committee recommends that under any federal Human Rights Act an individual be able to institute an independent cause of action against a federal public authority for breach of human rights and that a court be able to provide the usual suite of remedies—including damages, as is the case under the UK Human Rights Act. The independent cause of action should not be available in relation to economic, social and cultural rights.