

Briefing Paper for the Attorney-General: A Human Rights Agenda for 2012-14



Human rights are the foundation of a community that is fair, just and inclusive. The promotion, protection and fulfilment of human rights should be a key priority for the Government and the Attorney-General.

On the international stage, Australia has made a strong bipartisan contribution to the development of human rights laws and institutions. At home, the 2009 National Human Rights Consultation demonstrated that human rights matter deeply to Australians. Human rights principles resonate with Australian democratic values, including the rule of law and our sense of a fair go.

The Consultation also demonstrated, however, that our laws and institutions do not provide comprehensive protection of rights, particularly for vulnerable or disadvantaged groups. The Consultation disclosed a strong majority view that “we could do better in guaranteeing fairness for all within Australia and in protecting the dignity of people who miss out”.

This Briefing Paper details seven actions which we consider the Attorney-General could take to demonstrate principled human rights leadership, promote equality, enhance government accountability and “do better in guaranteeing fairness” and dignity for all.

Actions

1. Enhance anti-discrimination laws

Strengthened equality laws would contribute to social cohesion, higher productivity and participation, and improved outcomes in areas including education and health.

The current Consolidation Project is an opportunity to strengthen and modernise our anti-discrimination regime. While it is desirable that the process streamlines laws, removes inconsistencies and reduces the regulatory burden, the key measure of success will be the effectiveness of the revised laws in preventing and remedying discrimination and promoting substantive equality.

2. Prioritise and expedite ratification of the Optional Protocol to the Convention against Torture

OP-CAT is an international treaty which aims to prevent ill-treatment by establishing systems for independent monitoring and inspection of all places of detention.

Australia signed OP-CAT in May 2009. Since that time, progress on ratification and implementation has been slow, with wrangling between the states and the Commonwealth about the modest bill for detention monitoring and oversight. This is despite evidence as to the very high social and economic costs of failing to prevent and redress ill-treatment.

It is not only in the interests of persons deprived of liberty, but also the broader community, that detainees are treated with dignity and respect and that all places of detention – including prisons, psychiatric hospitals, police cells, immigration detention centres or disability facilities – promote rehabilitation and reintegration. Independent monitoring mechanisms are critical in this regard.

3. Strengthen Australia’s Human Rights Framework and the protection of human rights under law

Australia’s Human Rights Framework was released in April 2010 and includes a range of complementary legislative, administrative and educational initiatives to better protect and respect human rights. There are a number of actions, however, that could enhance the effectiveness and impact of the Framework:

- a. The effective implementation of the Human Rights (Parliamentary Scrutiny) Act 2011 – which will enter into force on 4 January 2012 – requires that Statements of Compatibility be prepared early in the legislative process and that Statements are reasoned, rigorous and evidence-based.
- b. The National Human Rights Action Plan, currently under development, should: identify priority areas for action; be underpinned by a robust assessment of the state of human rights in Australia; set out specific goals and targets; and include a set of human rights indicators to measure progress.

- c. The review of the Framework, scheduled for 2014, should be directed towards enhancing human rights and should include a commitment to non-regression. We welcome the recent ALP Conference resolution that the 2014 review will consider whether the Framework “could be enhanced through a statutory charter of human rights or other similar instrument”.

4. Further strengthen Australia’s engagement with the United Nations human rights system

Under Rob McClelland’s leadership, Australia resumed its constructive engagement with the international human rights system. Further work is required, however, to move from the rhetoric of positive engagement to a reality of positive implementation. In particular, the Government should:

- a. review all of Australia’s reservations to international human rights treaties;
- b. sign and ratify the key international human rights treaties to which Australia is not party, particularly the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Rights of Migrant Workers and their Families;
- c. implement decisions of UN human rights bodies, such as the Human Rights Committee, on individual communications fully and in good faith. This is an area in which there has been little discernable change in practice from that of the Howard Government; and
- d. expand the mandate of the new Joint Parliamentary Committee on Human Rights to include monitoring and reporting on Australia’s implementation of international human rights obligations and the recommendations of UN human rights bodies.

5. Order a review of the people smuggling offences under the Migration Act 1958, as recently recommended by the Senate Legal and Constitutional Affairs Committee

Such a review is necessary to ensure that these offences, and associated mandatory sentences, are appropriate, proportionate and effective.

The Attorney-General should also conduct an inquiry into the extra-territorial operations of the Australian Federal Police to ensure that their activities do not expose people, whether directly or indirectly, to the risk of torture, ill-treatment or refoulement.

6. Commit to full implementation of the UN Declaration on the Rights of Indigenous Peoples

As recommended by a number of states in the Universal Periodic Review, Australia should ensure that all laws, policies and institutions are compatible with the UN Declaration on the Rights of Indigenous Peoples. Key measures within the Attorney-General’s portfolio should include:

- a. the inclusion of ‘Justice’ as a ‘Closing the Gap building block’ and the development of new ‘Closing the Gap’ targets in relation to the reduction of Aboriginal and Torres Strait Islander imprisonment and re-offending;
- b. the development of compensation schemes to provide reparations for past racially discriminatory policies and practices, particularly in relation to the Stolen Generations and Stolen Wages; and
- c. further reform of native title legislation to reduce costs and evidentiary burden and enhance Aboriginal access to and control over traditional lands.

7. Lead the development of a whole-of-government policy on business and human rights

While corporations have the capacity to contribute to economic growth, poverty alleviation and human development, they can also harm the human rights of individuals and communities.

Under the Attorney’s leadership, the Government should adopt the UN Human Rights Council’s ‘Protect, Respect and Remedy Framework’ and ‘Guiding Principles’ as the basis for a comprehensive policy on business and human rights. This policy should include a range of hard and soft power options to promote corporate compliance with the obligation to respect human rights, both in Australia and transnationally.