



**ATTORNEY-GENERAL
HON ROBERT McCLELLAND MP**

**ADDRESS TO THE
NATIONAL PRESS CLUB OF AUSTRALIA**

**LAUNCH OF
AUSTRALIA'S HUMAN RIGHTS FRAMEWORK**

CHECK AGAINST DELIVERY

**CANBERRA
WEDNESDAY, 21 APRIL 2010**

First may I acknowledge the traditional owners of the land we meet on today, the Ngunnawal People, and pay my respects to their elders both past and present.

May I also acknowledge:

- The Hon Brendan O'Connor, Minister for Home Affairs
- Senator the Hon Ursula Stephens, Parliamentary Secretary for Social Inclusion
- The Hon Bob Debus MP, Federal Member for Macquarie
- Roger Wilkins AO, Secretary of the Attorney-General's Department
- The Hon Catherine Branson QC, President of the Australian Human Rights Commission
- Ladies and Gentleman.

May I also express my appreciation to the National Press Club of Australia for the invitation to speak with you today. It is an excellent venue to announce the Government's response to the report of the National Human Rights Consultation Committee.

The National Human Rights Consultation was one of the most extensive public consultations ever held in Australia's history. The Committee considered the views of many Australians, including those without a strong political voice. Over 65 community round tables and public hearings were conducted across more than 50 urban, regional and remote locations.

Unfortunately, Frank Brennan, Chair of the Consultation Committee is unable to be here today because of lecturing commitments overseas. I would like to acknowledge not only Frank, but each of the Committee members for their contribution to the Consultation.

The Report of the Committee concluded that we are doing pretty well in the area of human rights. The Report also concluded, however, that there are areas where we can do better.

In respect to individuals we can do more to promote the equality of women, to ensure the rights of older people, to protect our children and to ensure that all members of our society, including those with a disability, have the maximum ability to participate in all aspects of

Australia's economic, social and political life. In terms of systemic issues there is also clearly much still to do to address Indigenous disadvantage and issues such as domestic violence and child abuse.

These are all issues of "human rights". They all relate to our ongoing work to create a decent and inclusive society. This is an aspiration summarised neatly in the great Australian expression of ensuring "a fair go"— or, commonly, "a fair go all round".

That expression involves rights but it also necessarily involves a responsibility to others.

For example, while all people have a right to live their lives free of arbitrary government interference, governments can legitimately put in place requirements that an individual comply with the law and not unreasonably intrude upon or abuse the rights of others.

Today, in response to the Committee's report, I am launching Australia's Human Rights Framework.

The Framework focuses on:

- *reaffirming* a commitment to our human rights obligations;
- the importance of human rights *education*;
- enhancing our domestic and international *engagement* on human rights issues;
- improving human rights *protections*, including through greater parliamentary scrutiny; and
- achieving greater *respect* for human rights principles within the community.

Let me say at the outset, that a legislative charter of rights is not included in the Framework as 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 Framework is intended to achieve that outcome, and as you will see, does reflect the key recommendations of the Human Rights Consultation Committee.

REAFFIRM

The first objective of the Human Rights Framework is to reaffirm Australia's commitment to promoting awareness and understanding of human rights.

Australians can be proud of the role our nation has played in promoting human rights.

The then Labor Foreign Minister, Dr HV (Doc) Evatt, was among the most active of world leaders in contributing to the drafting of the Universal Declaration of Human Rights, going on to become General Secretary of the United Nations when the Declaration was adopted in 1949.

Since then successive Australian Governments have played a major role in promoting human rights – domestically and internationally.

Continuing this tradition, the Rudd Labor Government has taken a number of significant steps, including:

- legislating to create a comprehensive Commonwealth offence of torture, consistent with our obligations under the *Convention Against Torture*;
- legislating to prevent the reintroduction of the death penalty anywhere in Australia, consistent with obligations under the *Second Optional Protocol to the International Covenant on Civil and Political Rights*;
- ratifying the *Convention on the Rights of Persons with Disabilities* and acceding to the Optional Protocol to that Convention;
- acceding to the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*;

- signing the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment*; and
- announcing support for the *Declaration of the Rights of Indigenous Peoples*.

The Government firmly believes that a nation that respects fundamental human rights is a nation that is safer, more resilient, productive and stable.

In reaffirming Australia's commitment to human rights we are therefore committing to build upon those strengths which are already part of the fabric and culture of our nation.

EDUCATE

Eleanor Roosevelt, chair of the committee that drafted the Universal Declaration of Human Rights, said that "documents expressing ideals carry no weight unless the people know them, unless the people understand them, unless the people demand that they be lived."¹

In that context, the Human Rights Consultation Committee emphasised the importance of human rights education as the highest priority.

Many of you will be aware of valuable programs that already occur in our primary and secondary schools that focus on developing an understanding of both rights and responsibilities. Programs to address bullying and promote respectful relationships, for example, are particularly valuable.

The Framework will build on these initiatives by providing \$6.6 million over four years to the Australian Human Rights Commission to enhance its role in community engagement and education.

¹ Mary Ann Glendon, 'A world made new: Eleanor Roosevelt and the Universal Declaration of Human Rights,' Random House, New York, 2001, p xix.

In addition, \$2 million over four years will be provided to enable Non-Government Organisations to engage and inform the community about human rights.

In terms of the public sector, most of the day to day interactions people have with Government take place through our public service. We are fortunate to have a highly educated and competent public service. And I think that most people would acknowledge the importance of having a public service genuinely focussed on the public it serves.

There are a variety of avenues available to formally review decisions and actions of public servants. However, those mechanisms effectively operate after the event. As a Government, we are interested in influencing the culture and practice of decision makers, policy developers and legal advisers at the starting point in the development of policy.

Indeed, the report of the Access to Justice Taskforce, '*A Strategic Framework for Access to Justice in the Federal Civil Justice System*' which I released last year found that recalibrating the focus of public servants on the rights of the citizen has the prospect of significantly reducing litigation against Government.

Accordingly, the Government will invest \$3.8 million over four years in education and training programs for the Australian Public Service. The material will include the development of a people-focused human rights toolkit and guidance materials. In addition, the Government will include greater emphasis on respect for human rights in any revision of the Australian Public Service Values and Code of Conduct.

These resources will improve public service decision making with the potential to reduce disputes against Government.

ENGAGE

In 1993, the Keating Labor Government advocated the creation of National Human Rights Action Plans, and in 1994 Australia was the first Nation to produce such a Plan and lodge it with the United Nations.

Since the publication of that first Plan much has changed in Australian society. A new National Action Plan, a key part of the Framework, will demonstrate Australia's on-going commitment to its international human rights obligations. The Government will consult with State and Territory Governments as well as non-government organisations to develop a new Plan.

These Plans not only provide a public commitment of our intended actions, but also provide an example to other countries to achieve higher standards of human rights.

Internationally, as I have mentioned, we have already taken action to further engage with the international community to improve and promote human rights at home, in our region and the rest of the world. This includes, for example, issuing a standing invitation to international rapporteurs to visit and examine Australia's compliance with our international human rights obligations. Such an invitation also provides a powerful symbol in encouraging other nations to review and continually improve their own human rights performance.

The Government proposes a more sophisticated and deeper engagement with Australia's Non-Government Organisations involved in the promotion and protection of human rights.

We will do this by bringing together the annual forums currently chaired by the Minister for Foreign Affairs and myself into an annual NGO Human Rights Forum. This will provide a comprehensive forum for the Government to engage with Non-Government Organisations on an annual basis.

PROTECT

Parliamentary committees perform an important role in ensuring transparency and accountability of the legislative process.

The Government will therefore enhance parliamentary scrutiny of legislation for consistency with Australia's human rights obligations.

These obligations are contained in the seven core human rights instruments to which Australia is a party, which are:

1. The International Covenant on Civil and Political Rights,
2. The International Covenant On Economic, Social and Cultural Rights,
3. The Convention for the Elimination of All Forms of Racial Discrimination,
4. The Convention for the Elimination of Discrimination Against Women
5. The Convention against Torture and Cruel and Inhumane and Unusual Punishment,
6. The Convention on the Rights of the Child, and
7. The Convention on the Rights of Persons with Disabilities.

The Government will introduce legislation to establish a new Parliamentary Joint Committee on Human Rights (JCHR) which will have representation from both Houses of Parliament. It is envisaged that the new Committee will operate in a similar way to the Joint Standing Committee on Treaties. In particular, it will have the power to initiate inquiries into Bills, existing Acts and delegated legislation as well as conduct broader human rights inquiries. And it will be empowered to conduct public hearings when the Committee believes it would benefit from submissions from the public or particular expertise.

This will be the first time that we will have, at a Federal level, a parliamentary committee dedicated to human rights scrutiny in such a comprehensive way.

A separate but related measure is the introduction of Statements of Compatibility. The Government will introduce legislation to require Ministers, when introducing a Bill into Parliament, to present a statement of human rights compatibility. The obligation will also apply to delegated legislation. Again, compatibility will be assessed against the seven core human rights instruments to which I have referred.

The statements of compatibility will not detract from parliamentary sovereignty. Rather, they will inform Parliament of human rights considerations to assist its deliberation and ultimate determination of legislative outcomes.

Specifically, the Statements will assist Ministers explain the purpose and intent of the legislation, to contextualise human rights considerations, and where appropriate, justify restrictions or limitations on rights in the interests of other individuals or society more generally.

In turn, by providing information about human rights compatibility, the Statements will assist the parliamentary process and aid the consideration of relevant issues by the Joint Parliamentary Committee on Human Rights.

Much of the debate during the Consultation has focused on the role of the judiciary.

This comes as no surprise. The judiciary plays an important role in keeping a check on both individual and government action, ensuring that such action is lawful.

In the event of ambiguity, the courts already construe legislation consistently with fundamental rights unless Parliament has expressly indicated a contrary intention.

Similarly, the courts will construe ambiguous legislation consistently with Australia's international obligations, again, unless Parliament has expressly indicated a contrary intention.

This is not judicial activism or adventurism - it is a necessary part of the judicial function.

In discharging that function the courts will use a variety of means to assist in determining the purpose and intent of the Parliament in enacting a law in question. The Acts Interpretation Act, for example, currently provides the Court with the ability to consider ancillary Parliamentary material when construing ambiguous legislation.²

This material commonly includes a Minister's Second Reading Speech and any accompanying Explanatory Memorandum. Statements of Compatibility and any relevant Report of the JCHR would fall within that category of documentation that can be considered by a court.

It is not, however, the Government's intention that these documents will create any new causes of action.

Far from having its role usurped by the courts, the Parliament, by its response to the Minister's Statement of Compatibility and any report of the JCHR, will be able to give more precise guidance to the courts as to the intention for enacting legislation in the context of Australia's human rights obligations.

It is to be acknowledged that there are many who have argued that the judiciary should have enhanced powers set out in a Human Rights Act.

It is the Government's view that the well-established principles of statutory interpretation, together with the proposed Statements of Compatibility and any Committee report - will provide the Courts with the appropriate tools to undertake their role in the context of the Parliament's enhanced focus on human rights considerations.

² Section 15AB of the Acts Interpretation Act 1901.

RESPECT

An additional significant measure that I announce today as part of the Framework, along with the Minister for Finance and Deregulation, is a review of all federal anti-discrimination laws with a view to streamlining this legislation into a single, comprehensive Act. This will enable us to remove unnecessary regulatory overlap and focus on making the system more user friendly, while at the same time examining any gaps and the effectiveness of remedies.

It will also provide the basis for work of the Standing Committee of Attorneys-General into the feasibility of national harmonisation of Australia's anti-discrimination laws.

More generally, the Framework also confirms that in order to ensure that existing laws adequately reflect and respect Australia's human rights obligations, the Government will from time to time, review current legislation.

That review will take place over time and as appropriate or convenient. For instance, an appropriate time to review legislation may be when extensive amendments are proposed or when more time is available between Parliamentary sitting schedules.

CONCLUSION

The Rudd Government is committed to positive and practical change. That is why we have responded in this Framework with measures directed at systemic changes that promote awareness and respect of human rights.

In taking these steps, the Government is conscious that, as is the case with all reforms, it will be appropriate to review their impact and effectiveness after a period in operation. That is why we have committed at the outset to a review of the operation of the Framework in 2014.

Australia does a great many things very well when it comes to the protection and promotion of human rights. Indeed, we can be entirely proud of the role we have played both at home and in the international community.

Through the National Human Rights Consultation the Government created a unique opportunity for the community to critically assess and reflect upon our current practices in the protection and promotion of human rights.

I thank Father Frank Brennan, Mary Kostakidis, Tammy Williams, Mick Palmer and Philip Flood for their outstanding efforts.

We have approached our response to the invaluable work of the Committee in the spirit of making positive and practical changes by making current practices more effective and efficient, seeking better ways of decision making, and engaging all Australians' in building a fairer and more inclusive society.

Thank you.