

**HUMAN RIGHTS IN AUSTRALIA:  
THE STATE OF PLAY**

**NORTH QUEENSLAND DISTRICT LAW  
ASSOCIATION CONFERENCE**

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## Introduction

1. I acknowledge the President of the Queensland Law Society, Executive Members of the Law Council, Law Society, Bar Association and NQLA, members of the Judiciary, colleagues. I am deeply honoured to deliver this human rights address.
2. Today is an auspicious day, at least for my daughter who turned six. I take this chance to publicly wish her a happy birthday.
3. I acknowledge the Wulgurukaba and Bindal people and pay my respects to their elders past and present.
4. In February 2011, the Law Council hosted a forum to discuss how the profession can contribute to reconciliation in Australia.<sup>1</sup> President Alexander Ward said “the legal profession has an important role to play in closing the gap in Indigenous living standards.”<sup>2</sup>
5. Closing the gap is no glib slogan. It means closing the gap on life expectancy, child mortality, educational achievement and employment outcomes.
6. In 2009 the gap in life expectancy has been measured at 11 years between indigenous and non-indigenous Australians.<sup>3</sup>
7. **SLIDE:** Last year’s Australian of the Year Professor Mick Dodson says that reconciliation and closing the gap is achieved by

*always taking the next step, whatever that step may be....Each little success creates a platform for more success – a little more self-esteem, a little more sense of what’s possible. It’s not grand policy half so much as attention to detail. And persistence – making sure it works.*<sup>4</sup>

## Overview

8. This address is a tour-de-force of the state of human rights laws in Australia.
9. We go first to the states and territories to see what they are doing to enhance and protect human rights. Secondly we turn to the national stage and track the direction of the federal Government.
10. Thirdly, we look back at Australia through the lense of international law and view our compliance with international human rights norms.
11. Along the way we will consider some key controversies and issues of particular concern to lawyers given their role in upholding the rule of law.

## Human Rights

12. Let us then set the scene. What are human rights and freedoms?
13. **SLIDE**: Nelson Mandela says "... to be free is not merely to cast off one's chains, but to live in a way that respects and enhances the freedom of others." Selfless words from a man who spent 27 years imprisoned because of the colour of his skin and his refusal to accept the apartheid regime in South Africa.
14. **SLIDE**: Former United States Attorney General William Ramsey Clark has acted as defense Counsel in some of the most complex war crimes trials of the last two decades. He says "A right is not what someone gives you; it's what no one can take from you."
15. **SLIDE**: His Holiness the 14th Dalai Lama says:

*All human beings, whatever their cultural or historical background, suffer when they are intimidated, imprisoned or tortured . . . for it is the inherent nature of all human beings to yearn for freedom, equality and dignity, and they have an equal right to achieve that.*

16. At international law, human rights are rights inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, colour, religion, language, or any other status. We are all equally entitled to our human rights without discrimination. These rights are all interrelated, interdependent and indivisible.<sup>5</sup>

17. **SLIDE**: Article 1 of the Declaration of Human Rights says:

**Article 1**

*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*<sup>6</sup>

18. **SLIDE**: Many commentators use the terminology created by Professor Karel Vašák that suggests three generations of human rights.

19. First-generation human rights deal with liberty and participation in political life. They are civil and political in nature, and serve to protect the individual from excesses of the state. They include freedom of speech, the right to a fair trial, freedom of religion.

20. Second-generation human rights are related to equality and began to be recognized by governments after the First World War. They are social, economic, and cultural in nature. They ensure different members of the citizenry equal conditions and treatment. They include right to education, housing health care and social security.

21. Third-generation human rights are those rights that go beyond the mere civil and social. They are unofficial and “soft” in nature, such as

Group and collective rights: Right to self-determination, a healthy environment, natural resources.

22. So, what is happening across the Australian jurisdictions.

## State and Territory issues

23. Over the last decade, state and territory jurisdictions have taken a rather mixed approach to protection of human rights.<sup>7</sup>

### New South Wales

24. **SLIDE**: Successive NSW Labor Governments have strongly opposed a Charter of Human Rights. One of the most strident anti-Charter commentators is former Premier Bob Carr. Paul Kelly called him “Australia’s leading opponent of a charter of rights”.
25. Writing in the Australian in April 2010, his column was headed “three cheers that we won’t have a charter of rights”.<sup>8</sup> Carr says there is “no crisis of rights” in Australia and cases such as Haneef’s are evidence of a robust democracy.<sup>9</sup> Whether the newly elected Liberal Government takes a different view remains to be seen.

### South Australia

26. A private members Bill introduced by the Democrats in 2004 failed to become law. That Bill proposed civil and political rights, a parliamentary scrutiny process and a Human Rights Commission. There has been little public discourse since.

### Western Australia

27. In WA the then Labor Attorney General McGinty announced a proposal to develop a WA Human Rights Act in May 2007. A

committee chaired by former WA Liberal Leader Fred Chaney reported on the issue.

28. The report found overwhelming public support for a Human Rights Act. It called for economic, social and cultural rights to be included. The plans were shelved pending the federal Government's own National Human Rights Consultation.<sup>10</sup> The current Government has not sought to implement the report's recommendations.

### Northern Territory

29. In the NT the Bill of Rights debate is mixed up in broader discussions around transition to Statehood. Community discussions commenced in 2007 have not progressed.<sup>11</sup>
30. The Northern Territory Emergency Response (the NTER) widely known as "the Intervention" highlights that the Australian Constitution does not enshrine the right to equality and non-discrimination. As a result, anti-discrimination laws may be overridden by subsequent legislation.<sup>12</sup>
31. Parts of the package were legislated as a "special measures" and thereby declared to be positive actions to assist those targeted. Whilst the suspension of the Racial Discrimination Act was lifted in June 2010, restrictions continue on the use of the RDA to challenge aspects of the framework.

### Australian Capital Territory

32. The ACT *Human Rights Act 2004* was the first "charter" enacted in domestic law in Australia.
33. At May 2011, the Act had been referred to in 143 cases across all jurisdictions. This equates to about twenty (20) cases per year. It

doesn't sound like a lawyers' picnic, nor the swoosh of waters through those feared and fabled floodgates.

34. In December 2010, a review of the Act was tabled.<sup>13</sup> It recommended addition of 15 particular "ecosoc" rights, including the rights to adequate housing, health, a healthy environment, education, work and cultural life.
35. It remains to be seen whether the ACT Government will have the same passion to expand the scheme with the imminent departure of the Act's champion Chief Minister Stanhope.

## Victoria

36. In Victoria the *Charter of Human Rights and Responsibilities Act 2006* came into full effect on 1 January 2008. It provides specific legal protection to 20 fundamental civil and political rights. In certain circumstances, rights may be limited where necessary and reasonable.<sup>14</sup>
37. Since enactment there have been less than 300 cases that refer to the Charter. Again, it seems that the numbers are not what was expected by some pundits. However, the impact of some of those cases has been significant, particularly in the area of housing rights.<sup>15</sup>
38. In May 2011 the Scrutiny of Acts and Regulations Committee announced a Review of the *Charter of Human Rights and Responsibilities Act 2006* ('the Review'). The review was a 2010 election promise of the Liberal/National opposition. The terms of reference for the review are wide ranging and it is likely to report towards the end of this year.
39. The review will look at a range of issues including whether the rights

protected should be expanded to include economic, social and cultural rights, and Charter remedies. It also looks at the effects of the Charter on statutory drafting, statutory interpretation, public service and litigation. Proponents of the Act are concerned at the new Attorney General's comments that the Charter was "riddled with flaws".<sup>16</sup> This morning's news saw the Victorian Commissioner criticized for not taking a neutral approach to the review process.

## Models

40. **SLIDE**: Both Victoria and the ACT (like the United Kingdom and New Zealand) are "dialogue models", whereby the Act aims to facilitate a rights 'dialogue' between the executive, the parliament and the judiciary.<sup>17</sup>

## Tasmania

41. In June 2010 the Tasmanian Attorney General announced Government would examine a model for a Human Rights Charter for Tasmania.<sup>18</sup> The Tasmanian Law Reform Institute had previously conducted community consultations between 2006 and 2007 and found strong support for a charter of rights.<sup>19</sup> The review will be completed later this year.

## Queensland

42. Before moving on to the federal sphere I note that despite the flurry of activity in the 1990s, Queensland has not taken any steps towards a Charter.<sup>20</sup>
43. As best I could determine, since May 2005 it has been the Government's position that "...the existing system of rights protection in Queensland, provides effective protection for individuals' rights and freedoms." and "a bill of rights for Queensland would not achieve the aim of providing individuals with an effective basis upon which they

can challenge legislative or governmental action which infringes their rights.”<sup>21</sup> This argument does seem to put the cart before the horse.

44. The Queensland Parliament’s Scrutiny of Legislation Committee is currently examining the contemporary meaning of ‘fundamental legislative principles’.<sup>22</sup>
45. **SLIDE:** These principles had their origins in recommendations arising out of the Fitzgerald Inquiry.<sup>23</sup> They are the principles relating to legislation that underlie a parliamentary democracy based on the rule of law.<sup>24</sup> The Committee reports to the Legislative Assembly in October 2011 and it will be very interesting to see what they recommend. I have no doubt many submitters will recommend a scrutiny process like the one currently before the federal Senate.
46. On that note we move on to federal domestic legal issues.

## Cases

47. There have been some interesting cases in the Courts. I will just mention a few.
48. *R v Momcilovic* (2010) 265 ALR 751 was heard by the High Court this year.<sup>25</sup> Momcilovic, a legal practitioner was convicted of trafficking amphetamines. The Victorian Court of Appeal issued a declaration of incompatibility or inconsistent interpretation because the reversed onus of proof in the *Drugs, Poisons and Controlled Substances Act* was incompatible with the presumption of innocence, a human right protected by the Act.
49. **SLIDE:** In *Hogan v Hinch*, Derryn Hinch lost his High Court appeal over a conviction for naming 2 sex offenders in contravention of suppression orders. In that case a literal pile up of rights occurred where rights to free speech and expression, participation in public life

and privacy fought for primacy. Free expression was found to be subject to lawful restrictions that were reasonably necessary to respect the rights and reputations of others.<sup>26</sup> I wonder if they were tempted to end their judgment with “We’re the High Court and That’s Life....”

50. The Courts have also warned appellants that enforcement of human rights must depend on a right that can be identified at law. In the *Aurukun*, *Kowanyama*<sup>27</sup> and *Morton*<sup>28</sup> cases the appellants could not demonstrate that the *Liquor Act 1992* (Qld) infringed a human right or fundamental freedom. This was even though the clear purpose and effect was to impose a regime of alcohol regulation on Indigenous people, different from the regime of alcohol regulation applying to non-Indigenous Queenslanders. Quite simply the Courts found there was no right to drink alcohol.

## Federal Domestic Legal Issues

51. There has been considerable attention given to human rights in the federal sphere over the last few years.

## National Human Rights Consultation

52. In late 2008 the National Human Rights Consultation was initiated by reference from the federal Attorney General.
53. **SLIDE**: The Committee was headed by Father Frank Brennan – that meddling priest, as the then Prime Minister Keating called him.
54. During 2009, the Committee travelled the length and breadth of the country. Thousands of people participated in the Consultation, by attending community roundtables, by presenting submissions, by appearing at public hearings, and in other ways.<sup>29</sup> There were more than 35,000 submissions made to the process.

55. This process was finalized in September 2009 with a Report.

56. **SLIDE:** In Father Frank Brennan's own words:

*The clearest finding from our work is that Australians know little about their human rights – what they are, where they come from and how they are protected.*<sup>30</sup>

57. Some of the key recommendations included:

- A national Human rights education plan.
- A statement of compatibility is required for all Bills introduced into the Federal Parliament.
- A Joint Committee on Human Rights is established to review all Bills and legislative instruments.
- Develop and implement a framework for improving access to justice.
- A 'statement of impact when the intent is to suspend the *Racial Discrimination Act 1975* (Cth) or to institute a special measure.
- Adopt a federal Human Rights Act based on a dialogue model.
- Economic and social rights not be justiciable.
- Require federal legislation to be interpreted in a way that is compatible with the human rights.
- An individual be able to institute a 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.<sup>31</sup>

58. The Law Council supported the development of a Charter at federal level.<sup>32</sup> The Council argued that "[T]he existing legal framework...fails to guarantee adequate protection for fundamental human rights... Some further dedicated form of vehicle for human rights protection is needed."<sup>33</sup>

## The National Human Rights Action Plan/Framework

59. The federal Government responded to the National Human Rights Consultation Report in April 2010 by announcing Australia's Human Rights Framework.

60. **SLIDE**: The Attorney-General stated:

*...the Framework demonstrates the Government's commitment to positive and practical action in relation to human rights through a number of key commitments, including:*

- *investing over \$12 million in a comprehensive suite of education initiatives to promote a greater understanding of human rights across the community;*
- *establishing a new Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation for compliance with our international human rights obligations;*
- *requiring that each new Bill introduced into Parliament is accompanied by a statement of compatibility with our international human rights obligations;*
- *combining federal anti-discrimination laws into a single Act to remove unnecessary regulatory overlap and make the system more user-friendly; and*
- *creating an annual NGO Human Rights Forum to enable comprehensive engagement with non-government organisations on human rights matters.<sup>34</sup>*

61. The elephant in the room was the absence of any commitment to a federal human rights Act. Despite this there was general support for the measures announced.

62. Education grants and activities are a core component of the Framework.

## Education

63. **SLIDE**: "We protect only what we love, we love only what we know, we know only what we are taught." - Author Unknown

64. Many famous human rights advocates have talked about the importance of promotion of human rights.
65. **SLIDE**: Aung San Suu Kyi, Burmese Democracy Leader and Nobel Peace Laureate says

*"Please use your freedom to promote ours."*

66. **SLIDE**: Her words are echoed by Nobel Laureate Kofi Annan who says "knowledge is power. Information is liberating. Education is the premise of progress, in every society, in every family."
67. The National Human Rights Report recommended widespread human rights education as the highest priority.<sup>35</sup>
68. Under the Education Program, the Government will provide funding to NGOs to deliver human rights education programs to the community.<sup>36</sup>

## Legislation

69. In Australia's defence during the Universal Periodic Review the AG referred to the Human Rights Scrutiny Bills before the Parliament.<sup>37</sup>
70. The Bills include the Human Rights (Parliamentary Scrutiny) Bill 2010 and the Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010.
71. The Bills were referred to the Senate Legal and Constitutional Affairs Committee who reported on 28 January 2011.<sup>38</sup> The report was tabled on 9 February 2011.
72. There was debate about many aspects of the Bills, particularly how human rights might be defined.<sup>39</sup> The Bills are now back before the

Parliament and it is likely we will have a process of parliamentary scrutiny in place later this year.

## Federal Equality Legislation

73. Another notable aspect of the Framework is the proposed consolidation of federal discrimination legislation.<sup>40</sup> The notion of a single Equality Act is not new, it was recommended by the Australian Law Reform Commission in 1993.<sup>41</sup>
74. The merger of all federal laws will create a single, potent Act if the consolidation process addresses the inconsistencies between scope, jurisdiction, complaints processes, remedies, exemptions and definitions.
75. There are also significant gaps in our discrimination laws. There is no prohibition against discrimination, harassment and vilification on the grounds of religion, sexual orientation and gender identity.<sup>42</sup> Hot button issues include parenting laws, marriage equality and recognition of gender identity.
76. In mid 2010 a group of experts in discrimination law and policy convened to provide a joint contribution to the consultation process. This was undertaken on the group's own motion.<sup>43</sup> Their submission, like others, shows how complex this consolidation process could be.
77. Jurisprudence in the area of discrimination law has become very technical and out of touch with the spirit of the legislation.<sup>44</sup> The complexity of the common law is obvious if you review the High Court's decisions since the early nineties.<sup>45</sup>
78. Let us now look back at Australia through the context of international treaty body processes.

## United Nations

79. Australia has always been an active participant in the development of international human rights standards. As a founding member of the UN, Australia has long supported the UN's key role in world affairs.
80. The UN officially came into being on 24 October 1945 following the signing of the Charter in San Francisco. It replaced the League of Nations created by the Treaty of Versailles in 1919.
81. Australia was an active participant at the 1945 Conference. Our delegation notably Doc Evatt played a significant role in drafting the charter.<sup>46</sup>
82. As new international standards have been developed, Australia has endorsed non-binding instruments and has ratified binding legal instruments. In some cases it entered reservations that limit the impact of the treaty on domestic affairs.
83. Australia has also ratified some of the mechanisms that give individuals the right to complain to UN about violations of their rights.
84. The Department of Foreign Affairs and Trade is responsible for oversight of our accountability to international human rights norms.<sup>47</sup> Our Missions in Geneva, Vienna, Nairobi and New York represent Australia's interests before UN bodies.
85. Reporting against treaty obligations is Australia's primary form of human rights accountability.<sup>48</sup>

## Universal Declaration of Human Rights

86. **SLIDE:** The Universal Declaration of Human Rights was drafted by representatives from over the world. It was proclaimed by the UN

General Assembly in Paris on 10 December 1948 as a common standard of achievements for all peoples and all nations.<sup>49</sup> It set out, for the first time, fundamental human rights to be universally protected.<sup>50</sup>

87. The Declaration arose out of the atrocities of the Second World War.
88. **SLIDE:** Let us revisit Pastor Martin Niemöller’s chilling piece “First they came”:

*When the Nazis came for the communists,  
I remained silent;  
I was not a communist.*

*When they locked up the social democrats,  
I remained silent;  
I was not a social democrat.*

*When they came for the trade unionists,  
I did not speak out;  
I was not a trade unionist.*

*When they came for the Jews,  
I remained silent;  
I was not a Jew.*

*When they came for me,  
there was no one left to speak out.*

89. **SLIDE:** Of the Declaration, Herbert “Doc” Evatt said:

*“it has a moral power ...of enormous weight and influence – one that represents the standard to which we can look and with which we can compare what we in fact enjoy.”<sup>51</sup>*

90. The Declaration’s role as a “measuring rod of the conduct of nations” was as Evatt acknowledged “an aim, not an accomplished end.”<sup>52</sup>
91. Of course the Universal Declaration is not a treaty, so it does not directly create legal obligations for countries.

92. Let us move to some of our specific obligations.

### The Universal Periodic Review (UPR)

93. **SLIDE:** The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years.
94. It is a State-driven process, which provides the opportunity for each State to declare what actions they have taken to improve human rights and fulfill their human rights obligations.
95. The UPR is designed to ensure equal treatment for every country when their human rights situations are assessed.<sup>53</sup>
96. **SLIDE:** UN Secretary-General Ban Ki-moon, has said the Universal Periodic Review "has great potential to promote and protect human rights in the darkest corners of the world."<sup>54</sup>
97. In March this year, the federal Attorney-General suggested that Australia's first appearance under the Universal Periodic Review marked another significant moment in Australia's history of promoting human rights at the international level.<sup>55</sup>
98. The Attorney has used the UPR process to announce a number of actions taken by the current Government, some of which address outstanding recommendations by treaty bodies.
99. The Advance Unedited Version of the Draft Report of the Working Group on the Universal Periodic Review Australia has been released.<sup>56</sup>

100. A randomly drawn troika of rapporteurs from Djibouti, France and Slovakia assisted the working group.<sup>57</sup>
101. The Draft Report made 145 recommendations.<sup>58</sup> These recommendations canvassed Australia's compliance with other treaties.
102. The Queensland Law Society's submission to the UPR raised some of the same high level concerns including the NT Intervention, counter-terrorism laws, legal aid funding, immigration detention, extradition and the death penalty, lack of comprehensive juvenile justice policy, 17 year olds in the criminal justice system, processing of asylum claims and anti-biker laws.<sup>59</sup>
103. Let us now look at those rights we most readily identify as human rights – civil and political rights – first generation rights.

### **The International Covenant on Civil and Political Rights (ICCPR)**

104. The ICCPR was adopted by the UN in 1966, signed by Australia in 1972 and acceded to in 1980.<sup>60</sup> The Human Rights Committee (HRC) monitors States Party compliance with the ICCPR.
105. Australia ratified the First Optional Protocol in 1991. This establishes an individual complaints mechanism under the Covenant. We ratified the Second Optional Protocol aiming at the abolition of the death penalty in 1990.<sup>61</sup> The Committee has reported on Australia four times and most recently in 2009.
106. There have been 124 individual communications to the HRC.<sup>62</sup> 23 pre-admissible living cases, 32 concluded inadmissible, 36 discontinued, 33 views: 27 violations, 6 no violations.<sup>63</sup>

107. **SLIDE:** Among those cases are local individuals: community activist Patrick Coleman<sup>64</sup> and Terry Irving. Mr Irving's miscarriage of justice saw him serve 4 1/2 years of an 8-year sentence before the High Court quashed his conviction. Several local practitioners aided him in his appeals. His case involved a number of ICCPR articles including refusal of legal aid when facing imprisonment, wrongful imprisonment and compensation.
108. The Committee's concluding observations in 2009<sup>65</sup> included:
- The Covenant has not been incorporated into domestic law.<sup>66</sup>
  - Anti-terror laws appear to be incompatible with the Covenant.<sup>67</sup>
  - NT Intervention is inconsistent with the Covenant.<sup>68</sup>
  - Lack of reparation to Stolen Generation victims.<sup>69</sup>
  - Levels of domestic violence in Australia.<sup>70</sup>
  - The situation of homeless persons who are not able to fully exercise the rights enshrined in the Covenant.<sup>71</sup>
  - Excessive use of force by law enforcement officials.
  - Excessive use of the electro-muscular disruption devices (EMDs) "TASERS" by police forces.<sup>72</sup>
  - Mandatory detention in all cases of illegal entry.<sup>73</sup>
  - That children and juveniles can be detained in adult facilities or held in immigration detention facilities, where they are sometimes subject to abuse.<sup>74</sup>
  - The lack of adequate access to justice.<sup>75</sup>
109. **SLIDE:** The death penalty became a domestic political issue once again in 2005 with the execution by hanging of Van Nguyen at Changi prison in Singapore on 2 December 2005. My cousin Connie Levett reported for the Age Newspaper from Singapore. She told me of the grief experienced by those present.

110. It is a live issue for Australian nationals facing that prospect overseas such as Chan and Sukumaran of the Bali Nine in Indonesia. That debate spilled over into a debate beyond the death penalty and questioned the actions of Australian Federal Police who failed to intervene on Australian soil, allegedly knowing that members of the Bali 9 would be caught and may face death.
111. The debate has also been enlivened by the prospect of foreign nationals facing the death penalty on extradition or removal. If convicted, the so-called bubble wrap salesman Gabe Watson may have faced death by lethal injection in Alabama unless assurances were given the death penalty would not be sought.
112. In 2009 the Government passed the *Crimes Legislation Amendment (Torture Prohibition and Death Penalty) Act 2009*. It implements Australia's obligations under ICCPR and CAT to introduce a specific Commonwealth offence of torture and to prevent the death penalty from being introduced anywhere in Australia in the future.<sup>76</sup>
113. Moving to Law enforcement. The death of Antonio Galleano at Brandon received widespread media attention. The Coroner's inquest into his death is ongoing and I'll not comment on these matters further.
114. **SLIDE**: I do however note the Crime and Misconduct Commission's recent report on Taser use.<sup>77</sup> CMC Chair Justice Moynihan said:
- Tasers are a useful tool but a less serious use of force should always be the preferred response.
  - There are areas of ongoing concern, such as the use of Tasers against medically vulnerable people, and the application of multiple and prolonged discharges.

- Taser deployments since the introduction of the revised policy were generally more likely than before to involve a person suspected of having an underlying mental or physical health condition, despite the revised policy highlighting the possible risks of Taser use against people in potentially "at-risk" groups.
  - More than 20 per cent of Taser uses were targeted at Indigenous people.<sup>78</sup>
115. The use of oleoresin capsicum (OC) spray also has been subject of criticism. Like TASERS, some argue the use of OC Spray is a form of torture and therefore in breach of several Conventions if used as anything other than last resort.<sup>79</sup>
116. The UN Code of Conduct for Law Enforcement Officials at Article 3 says:
- Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty. The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.*<sup>80</sup>
117. Let us move to economic, social and cultural rights – second-generation rights.

### **The International Covenant on Economic Social and Cultural Rights (ICESCR)**

118. The ICESCR was adopted by the UN in 1966, signed by Australia in 1972 and ratified in 1975.<sup>81</sup> The Committee on Economic, Social and

Cultural Rights (ECOSOC) monitors States Party compliance. The Government is currently considering ratifying the Optional Protocol, which establishes an individual complaint mechanism under the Covenant.<sup>82</sup>

119. The Committee has reported on Australia three times and most recently in 2009.<sup>83</sup>

120. In 2009, the Committee made concluding observations:

- Australia's lack of a legal framework for the protection of economic, social and cultural rights at Federal and state level.<sup>84</sup>
- Some of the NT Intervention measures are inconsistent with the Covenant rights, in particular with the principle of non-discrimination, and have a negative impact on the realisation of the rights of indigenous peoples.<sup>85</sup>
- A wage gap still persists between men and women in the workplace.<sup>86</sup>
- High unemployment rates among indigenous people, people with disabilities and other groups.<sup>87</sup>
- The social security system does not ensure universal coverage.<sup>88</sup>
- 12 per cent of the Australian population lives in poverty and that no steps have been taken to adopt an official poverty line.<sup>89</sup>
- Retention of the mandatory detention policy for asylum seekers.<sup>90</sup>
- The incidence of homelessness increased over the last decade.<sup>91</sup>
- Continuing high levels of ill health among indigenous people.<sup>92</sup>
- Health services in prisons are generally inadequate.<sup>93</sup>
- Insufficient support for persons with mental health problems.<sup>94</sup>
- Disparities in access to the educational system for indigenous peoples.<sup>95</sup>

121. Most “ecosoc” issues are big picture issues that affect groups in society as is evident from the Committee’s observations. Now to issues of Race.

### The Convention on the Elimination of All Forms of Racial Discrimination (CERD)

122. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was adopted by the general assembly in 1965 and signed by Australia in 1966 and ratified in 1975.<sup>96</sup> The Committee on the Elimination of Racial Discrimination (CERD) monitors States Party compliance. The Committee has reported on Australia four times and most recently in 2010.
123. Racial discrimination is at the forefront of human rights globally.
124. **SLIDE**: As Bob Marley sang in his song “War”:

*Until the philosophy which hold one race  
Superior and another inferior  
Is finally and permanently discredited and abandoned  
Everywhere is war, me say war*

*That until there are no longer first class  
And second class citizens of any nation  
Until the colour of a man's skin  
Is of no more significance than the colour of his eyes  
Me say war*

*That until the basic human rights are equally  
Guaranteed to all, without regard to race  
Dis a war<sup>97</sup>*

125. Bob Marley’s lyrics are almost verbatim from a speech made by exiled Ethiopian Emperor Haile Selassie before the UN General Assembly in 1963.
126. Dr Martin Luther King said similarly:

*I look to a day when people will not be judged by the color of their skin, but by the content of their character.*

127. Under the Convention there have been 8 individual communications dealt with by the Committee.<sup>98</sup> The cases involve 1 living case, 3 were inadmissible, 4 views: 0 violations and 4 no violation.<sup>99</sup>
128. The only violation found was in respect of Stephen Hagan's complaint about the name of a stand at a Toowoomba sporting field. The CERD Committee found the sign to be offensive and insulting.<sup>100</sup> The local authorities decided that, in the interest of reconciliation, racially derogatory or offensive terms would not be used or displayed in the future. It didn't seem like complex jurisprudence to arrive at the decision. Most of us wondered why the stand could not be simply given the man's real name without the use of the offensive nickname.
129. The case shows how the UN will intervene in "local" matters where domestic remedies are exhausted.
130. The Committee's concluding observations included:<sup>101</sup>
- Absence of Constitutional protection against racial discrimination.<sup>102</sup>
  - Collection of biometric data of visa applicants may constitute racial profiling.<sup>103</sup>
  - Corporations whose activities on traditional land have a negative impact.<sup>104</sup>
  - Constitutional acknowledgement of Australia's indigenous peoples.<sup>105</sup>
  - Continued discrimination on the basis of race through "special measures".<sup>106</sup>
  - Acts of racial hatred are not criminalized.<sup>107</sup>

- Disproportionate incarceration rates and deaths in custody among indigenous Australians.<sup>108</sup>
- The maintenance of traditional language and bilingual education.<sup>109</sup>
- The personal security of international students, in particular racially motivated assaults.<sup>110</sup>
- Differential processing and appeals arrangements for offshore asylum seekers.<sup>111</sup>
- Children in immigration detention.<sup>112</sup>
- Ratification of other relevant conventions such as the Migrant Worker's Convention.<sup>113</sup>

131. The AG recently announced a full time Race Commissioner that will address one of CERD's recent observations.<sup>114</sup>

132. Now to the rights of children.

### **The Convention on the Rights of the Child (CRC)**

133. The CRC was adopted by the UN in 1989, signed and ratified by Australia in 1990.<sup>115</sup>

134. Australia has signed Optional Protocols to the Convention on Children in respect armed conflict<sup>116</sup> and on the Sale of Children, Child Prostitution and Child Pornography.<sup>117</sup> The Committee on the Rights of the Child monitors States Party compliance.

135. The Committee has reported on Australia three times and most recently in 2008. The Australian Government is currently considering a draft text of a third optional protocol to the Convention on the Rights of the Child. The draft third OP seeks to establish an individual communications (complaints) mechanism.<sup>118</sup>

136. Our next CRC reporting will occur in January or February 2012. The process has already begun with the Government and NGOs preparing their respective reports.
137. I only want to mention one arising under CRC. That 17 year olds are still treated as adult prisoners in Queensland is a gross breach of the Convention. As far as I am aware we are the only state that takes this approach. Notwithstanding any reservations we have entered against the Convention, in my view the Government's position is indefensible.
138. Let us move to the area of disability.

### The Convention on the Rights of Persons with Disabilities

139. **SLIDE:** Jurist William J Brennan has said: "society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment."
140. The CRPD was adopted by the UN in 2006, signed by Australia in 2007 and ratified in 2008.<sup>119</sup> We acceded to the Optional protocol in 2009.<sup>120</sup>
141. The first session of the Committee with Australia is yet to be scheduled.
142. This newest Convention marks a move towards a thematic convention on human rights and disability away from a medical model of disability. This stems from a transformation of the way disability is viewed and dealt within the public policy realm.
143. The CRPD reflects a shift in attitudes in relation to persons with disabilities from a view that persons with disabilities have charitable, medical treatment and social protection needs, to an approach

recognising the capacity of persons with disabilities to act autonomously and take an active part in society.<sup>121</sup>

144. **SLIDE**: See Charles Nettleton's photograph of the Kew Asylum, 1885. This image evokes the fears many have of disability, reinforced by popular media. Institutional care, past, present and future is still a major community issue. Treatment of patients within mental health and guardianship systems, forced medical procedures and restrictive practices remain controversial.
145. Non-therapeutic sterilisation of people with disability remains an ongoing practice in Australia and impacts most significantly on the rights of women and girls with disability. It has been identified as an area of great concern by several treaty bodies.<sup>122</sup>
146. The treatment of disability within the migration system remains controversial. For example families are denied permanent residence due to medical assessments of individual family members with disability, including blindness, hearing impairment and autism.
147. Now to issues of torture.

### **The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

148. The CAT was adopted by the UN in 1984. It was signed by Australia in 1985 and ratified in 1989.<sup>123</sup> 18 December 2002. Australia signed the Optional Protocol in 2009.<sup>124</sup>
149. The Subcommittee on Prevention of Torture (SPT) monitors the CAT. There have been three Committee reports and most recently in 2005.
150. There have been 27 CAT communications: 5 living cases, 1 inadmissible, 11 discontinued, 10 views, 1 violation, 9 no violation.<sup>125</sup>

151. As part of the UPR process the AG has announced that Australia will be ratifying the Optional Protocol to the Convention against Torture (OP-CAT).<sup>126</sup>
152. One might presume that Australia (as a States Party) has nothing to fear from ratification of the Optional Protocol, though some suggest that it remains only a matter of time before certain law enforcement techniques (TASERs), disability accommodation policies and medical treatment practices become subject to scrutiny under OPCAT.
153. Let us now move to the area of discrimination against women.

### **The Convention on All Forms of Discrimination against Women (CEDAW)**

154. The International Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted by the UN in 1979, signed by Australia in 1980 and ratified in 1983.<sup>127</sup> Australia's ratification was subject to reservation, which was partially withdrawn in 2000.<sup>128</sup> We acceded to the Optional protocol in 2008.<sup>129</sup>
155. The Committee on the Elimination of Discrimination against Women monitors States Party compliance.<sup>130</sup> There have been no decisions on individual complaints under the optional protocol so far.
156. In 2010 Australia's State Report was considered. The Committee's concluding observations<sup>131</sup> included:
- Lack consistency in how the Convention is implemented across the country, such as criminal sanctions with regard to abortion.<sup>132</sup>
  - the unacceptably high levels of violence against women that persist in Australia, with one in three Australian women experiencing physical violence and one in five experiencing sexual violence.
  - The lack of federal legislation or minimum standards for protection

of women against violence and domestic violence.<sup>133</sup>

- The State's efforts do not aim to reduce demand for the services of women in prostitution and/or provide alternatives to women entering into prostitution.<sup>134</sup>
- Indigenous women and girls face the highest levels of violence, especially at home where indigenous women are 35 times as likely to be hospitalized as a result of family violence-related assaults as non-indigenous females.
- Indigenous women have fewer opportunities and more restricted access to quality education, health care and legal aid services.<sup>135</sup>

157. Now to refugees.

### The Convention Relating to the Status of Refugees

158. The Refugee Convention entered into force in 1954. Australia signed the Refugee Convention in 1954 and the 1967 Protocol Relating to Refugees in 1973.

159. **SLIDE**: The debate on refugees in Australia is best described as polarized. Most controversy is reserved for the so-called boat people. Opinion poll data show that boat arrivals have always been an issue of concern to the Australian public, and opposition to boat arrivals has increased steadily over the last four decades.<sup>136</sup>

160. The term 'boat people' entered the Australian vernacular in the 1970s with the arrival of the first wave of boats carrying people in the aftermath of the Vietnam War.<sup>137</sup>

161. Spagnoli put it well in his poem *Refugee*:

*Refugee, F. Spagnoli*

*You can't be here, you can't be there,*

*You can't be anywhere.  
Bacteria, that's what you are,  
Repelled and kept afar  
By States that think that they should be  
Immune systems for thee.*

162. **SLIDE**: One protester against the recent Northam Immigration Detention Centre was recently reported as saying:
- "Three-metre high fence, anybody can jump. If someone jumps that fence, they are going to steal my car, they are going to attack my wife and they are going to race all the way straight to Perth to blend in with their kind,".*
163. With such obvious demonisation, Human rights issues abound. Mandatory Immigration detention, offshore processing, excised migration zones, children in detention, health requirements...the list goes on.
164. Let us just put things in perspective for a moment.
165. **SLIDE**: According to the United Nations High Commission for Refugees (the UNHCR) there are now more than 15 million refugees in the world and one million stateless individuals.<sup>138</sup>
166. In 2009-10, 13,770 humanitarian visas were granted by the Department of Immigration and Citizenship.<sup>139</sup> Of these 9,236 (67.1 per cent) were offshore and 4,534 (32.9 per cent) were onshore.
167. **SLIDE**: Compare this with 4,322,710 grants that year:<sup>140</sup>

Visa Type	Visa Grants
<b>Total</b>	4 322 710
<b>Temporary</b>	
Offshore Visitor	3 416 576
Working Holiday	183 161
Student	269 828
Other Temporary	33 075
Temporary Skilled (457)	67 980
<b>Permanent</b>	
Skilled	107 868
Family	60 254

Humanitarian	13 770
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168. We now await the detail of the federal Government's latest incarnation of the Pacific Solution.

### **Convention on the Protection of the Rights of all Migrant Workers and Members of their Families**

169. **SLIDE:** I want to briefly mention the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. It was adopted by the UN in 1990.<sup>141</sup> It is the leading international standard for protection of the rights of migrant workers.<sup>142</sup>
170. Despite the numbers of temporary work visas issued, Australia is yet to ratify the Convention. Amnesty International has suggested that ratification would “ensure that the specific dangers that migrant workers and their families face are addressed, and their rights are properly protected.”<sup>143</sup>

### **Administration of Justice**

171. It would be remiss to fail to mention human rights issues that relate to the Administration of justice. Funding of legal aid commissions, Indigenous legal services and community legal centres remains inadequate.
172. Access to interpreting and translating services remains inconsistent and a major problem for the administration of justice. This includes foreign language services, indigenous languages and services for hearing impaired.

### **Concluding Remarks**

173. Just this week the UN High Commissioner for Human Rights

condemned certain Australian policies. Referring to the policies of immigration detention and the NT Intervention she said:

*There is a racial discriminatory element here which I see as rather inhumane treatment of people, judged by their differences, racial, colour or religions<sup>144</sup>*

174. Additionally, just yesterday the Australian Human Rights Commission released a confronting report on Villawood Immigration Detention Centre. The Commission called for an end to mandatory detention citing serious mental health issues including three suicides in three months, high rates of self-harm and rioting behavior. The Commission has called for detention to be last resort for a short duration.
175. So, against this backdrop, what can we as lawyers do to promote human rights?
176. It is imperative that we understand them and their context.
177. It behoves us to know as much as we can. There are no other laws that cut across society so broadly and seek to protect so much that is important in our lives and the people around us.
178. Talking about human rights can make you an outsider these days. As lawyers we are expected to justify how some human rights issues are not adequately dealt with by the system.
179. For example, we are expected to understand and explain how the child protection system must balance the complex interplay between the rights of the child, the parent and the state. And why it is damned if it does and damned if it doesn't.
180. Equally, we are expected to justify the enforcement of human rights to the "undeserving". The types of cases that lead the UK *Human Rights*

Act to be called the Villains' Charter by some.

181. When those charged with sex offences against children or terror offences have their human rights upheld, the default position of the community is to be critical of those "rights". As if they were somehow to blame for the person's conduct, or act as an incentive for further conduct of a like kind. They don't understand that the more serious the allegations, the more important due process becomes.
182. **SLIDE:** Dr King warns us "The hottest place in Hell is reserved for those who remain neutral in times of great moral conflict." His words still resonate. It is important that we as lawyers do not remain neutral where fundamental human rights are at stake. The time is always right to do what is right.
183. Dr King says, "You not only refuse to shoot a man, but you refuse to hate him." In this vein we must refuse to accept demonisation of those who suffer human rights abuses: asylum seekers... homeless... prisoners ... people living with mental illness. We must challenge demonisation lest it be us or a loved one facing such attitudes.
184. **SLIDE:** I will leave you with the words of The Most Rev. Dr. Desmond Tutu:  
  

*Despite all the ghastliness that is around, human beings are made for goodness. The ones who ought to be held in high regard are not the ones who are militarily powerful, not even economically prosperous. They are the ones who have a commitment to try and make the world a better place.*
185. This I know you all do each day. Thank you and enjoy the rest of the conference.

- <sup>1</sup> see <http://www.lawcouncil.asn.au/programs/national-policy/indigenous/policy-statement.cfm>;  
<http://www.lawcouncil.asn.au/media/news-article.cfm?article=DF280F8D-CAFB-07F5-79A9-FF0D141DE411>
- <sup>2</sup> Ibid.
- <sup>3</sup> <http://www.reconciliation.org.au/home/latest/q-a-on-closing-the-gap---life-expectancy>
- <sup>4</sup> <http://www.reconciliation.org.au/home/latest/mick-dodson-speaks-at-the-national-press-club>
- <sup>5</sup> <http://www.ohchr.org/en/issues/Pages/WhatareHumanRights.aspx>
- <sup>6</sup> Universal Declaration of Human Rights, Article 1.
- <sup>7</sup> Examples include: the journey in South Australia from the Equal Opportunity (Miscellaneous) Amendment Bill 2006 to the *Equal Opportunity (Miscellaneous) Amendment Act 2009*; the *Government Response to the Productivity Commission's Review of the Disability Discrimination Act 1992*, January 2005 at <[www.ag.gov.au/PCDDA](http://www.ag.gov.au/PCDDA)> on 5 April 2010; the failure of the Tasmanian Government to act on the recommendations in Tasmania Law Reform Institute, *A Charter of Rights for Tasmania*, Report No 10 October 2007, and the failure of the Western Australian Government to act on the recommendations in *Report of the Consultation Committee for a Proposed WA Human Rights Act*, November 2007; and the explicit refusal of the Federal Government [Attorney-General Hon Robert McClelland MP, *Address To The National Press Club Of Aust Launch Of Australia's Human Rights Framework*, Canberra, 21 April 2010] to act on Recommendations 17-31 of the *National Human Rights Consultation Report*, Commonwealth of Australia, 2009.
- <sup>8</sup> <http://www.theaustralian.com.au/news/opinion/three-cheers-that-we-wont-have-charter-of-rights/story-e6frg6zo-1225856601001>
- <sup>9</sup> Ibid.
- <sup>10</sup> <http://acthra.anu.edu.au/media/State%20Rights%20Bill%20falls%20to%20Federal%20Bill.pdf>
- <sup>11</sup> <http://www.cdu.edu.au/cdss0705/presentations.html>
- <sup>12</sup> <http://www.humanrightSACTIONPLAN.org.au/nhrap/focus-area/equality-and-non-discrimination-laws>
- <sup>13</sup> [http://www.justice.act.gov.au/protection\\_of\\_rights/human\\_rights\\_act](http://www.justice.act.gov.au/protection_of_rights/human_rights_act)
- <sup>14</sup>
- [http://www.humanrightscommission.vic.gov.au/index.php?option=com\\_k2&view=item&layout=item&id=19&Itemid=147](http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&layout=item&id=19&Itemid=147)
- <sup>15</sup> *Director of Housing v Sudi* [2010] VCAT 328 (31 March 2010)
- <sup>16</sup> <http://www.theage.com.au/victoria/rights-charter-set-for-overhaul-20110420-1do53.html>
- <sup>17</sup> National Human Rights Consultation Report, 241.
- <sup>18</sup> [http://www.justice.tas.gov.au/corporateinfo/projects/human\\_rights\\_charter](http://www.justice.tas.gov.au/corporateinfo/projects/human_rights_charter)
- <sup>19</sup> Ibid.
- <sup>20</sup> Electoral and Administrative Review Commission, June 1992, *Review of the Preservation and Enhancement of Individuals' Rights and Freedoms*, Issues Paper No.20, Government Printer, Brisbane; Electoral and Administrative Review Commission, Report on Review of the Preservation and Enhancement of Individuals' Rights and Freedoms, August 1993; Legal, Constitutional and Administrative Review Committee, *The Preservation and Enhancement of Individuals Rights and Freedoms: Should Queensland Adopt a Bill of Rights*, Issues Paper 3, September 1997.
- <sup>21</sup> Davis, Rob. Government rejects rights consultation proposal, June, Proctor, 2006.
- <sup>22</sup> Queensland Parliament, Scrutiny of Legislation Committee, *Our Principles, Review of the Meaning of Fundamental Legislative Principles*, November 2010.
- <sup>23</sup> <http://www.parliament.qld.gov.au/view/committees/SLC.asp?SubArea=inquiries>
- <sup>24</sup> <http://www.premiers.qld.gov.au/publications/categories/policies-and-codes/handbooks/legislation-handbook/fund-principles/considering-flps.aspx>
- <sup>25</sup> <http://www.hrlrc.org.au/content/topics/victorian-charter-of-human-rights/centre-intervenues-as-amicus-curiae-in-high-court-in-landmark-charter-of-rights-case-momcilovic-v-the-queen-ors-8-10-feb-2011/>
- <sup>26</sup> *Hogan v Hinch* [2011] HCA 3.
- <sup>27</sup> *Aurukun Shire Council v CEO, Liquor Gaming & Racing in Dept of Treasury; Kowanyama Aboriginal Shire Council v Chief Executive, Office of Liquor, Gaming & Racing* B11/2010 and B12/2010 [2010] HCATrans 293
- <sup>28</sup> *Morton v Queensland Police Service* [2010] QCA 160
- <sup>29</sup> National Human Rights Consultation Report Summary, xiii.
- <sup>30</sup> National Human Rights Consultation, V.
- <sup>31</sup> National Human Rights Consultation Report, Recommendations.
- <sup>32</sup> Law Council of Australia, *A Charter protecting the Rights of All Australians: Law Council of Australia Policy Statement on a Federal Charter or Bill of Rights*, 29 November 2008.
- <sup>33</sup> Ibid, 2.
- <sup>34</sup> [http://www.ag.gov.au/www/agd/agd.nsf/Page/Human\\_rights\\_and\\_anti-discriminationAustralia's\\_Human\\_Rights\\_Framework](http://www.ag.gov.au/www/agd/agd.nsf/Page/Human_rights_and_anti-discriminationAustralia's_Human_Rights_Framework)
- <sup>35</sup> Recommendations 1, 2, 3, 5.
- <sup>36</sup> <http://www.ag.gov.au/humanrightsframework>
- <sup>37</sup> UPR Speech.

<sup>38</sup> Senate Legal and Constitutional Affairs Committee, Human Rights (Parliamentary Scrutiny) Bill 2010 [Provisions] and Human Rights (Parliamentary Scrutiny) (Consequential Provisions) Bill 2010 [Provisions], 28 January 2011.

<sup>39</sup> [http://www.aph.gov.au/senate/committee/legcon\\_ctte/human\\_rights\\_bills\\_43/report/b02.htm](http://www.aph.gov.au/senate/committee/legcon_ctte/human_rights_bills_43/report/b02.htm)

<sup>40</sup> *Human Rights and Equal Opportunity Commission Act 1986*, the *Sex Discrimination Act 1984*, the *Race Discrimination Act 1975*, the *Disability Discrimination Act 1992*, the *Age Discrimination Act 2004*.

<sup>41</sup> Australian Law Reform Commission, *Equality before the Law: Justice for Women*, Report No 69, Recommendation 4.3.

<sup>42</sup> <http://www.humanrightSACTIONPLAN.org.au/nhrap/focus-area/sexual-and-gender-identity>

<sup>43</sup> Discrimination Law Experts' Roundtable: Report on recommendations, 29 November 2010

<sup>44</sup> Simon Rice, *And Which Equality Act would that Be?*, 7.

<sup>45</sup> *Waters v Public Transport Corporation* [1991] HCA 49; (1991) 173 CLR 349; *IW v City of Perth* [1997] HCA 30; 191 CLR 1; *X v Commonwealth* [1999] HCA 63; 200 CLR 177; *New South Wales v Amery* [2006] HCA 14; (2006) 230 CLR 174

<sup>46</sup> [http://www.dfat.gov.au/facts/australia\\_and\\_un.html](http://www.dfat.gov.au/facts/australia_and_un.html)

<sup>47</sup> <http://www.dfat.gov.au/hr/index.html>

<sup>48</sup> *Ibid.*

<sup>49</sup> General Assembly resolution 217 A (III)

<sup>50</sup> <http://www.ohchr.org/en/udhr/pages/introduction.aspx>

<sup>51</sup> Sighted on 12.11.08 at <http://www.humanrights.org.au/quotes.htm>. According to the Evatt Foundation the quotation is likely to have been sourced from Dr H V Evatt "*Peace - How Can It Be Achieved*" - Address to the Nation Associates 7th April 1949 - (Evatt Collection: UN Miscellaneous); "The United Nations and Human Welfare" address by H V Evatt to the Australian National Committee for the United Nations Brisbane 8 November 1949 (Evatt Collection; UN Miscellaneous) or from his statement to the House of Representatives, found at CPD vol 202 21 June 1949 pp 1212-1226.

<sup>52</sup> Kylie Tennant, *Evatt Politics and Justice*, Angus and Robertson, 1972, 235.

<sup>53</sup> <http://www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx>

<sup>54</sup> *Ibid.*

<sup>55</sup>

[http://www.attorneygeneral.gov.au/www/ministers/mccllelland.nsf/Page/Speeches\\_2011\\_FirstQuarter\\_2\\_March2011-MinisterialStatement-UniversalPeriodicReview?open&query=UPR](http://www.attorneygeneral.gov.au/www/ministers/mccllelland.nsf/Page/Speeches_2011_FirstQuarter_2_March2011-MinisterialStatement-UniversalPeriodicReview?open&query=UPR)

<sup>56</sup> Human Rights Council, Working group on the universal periodic review, Tenth session

Geneva, 24 January – 4 February 2011, Draft report of the Working Group on the Universal Periodic Review - Australia

<sup>57</sup> <http://www.geneva.mission.gov.au/gene/Statement159.html>

<sup>58</sup> *Ibid.*, 13-22.

<sup>59</sup> Queensland Law Society, Submission on United Nations Periodic Review of Australia's Human Rights Obligations, 15 April 2010.

<sup>60</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en)

<sup>61</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en)

<sup>62</sup> *A.S. and L.S. v. Australia* CCPR/C/47/D/490/1992 (Fair Trial); *A, B, C, D & E v Australia* CCPR/C/92/D/1429/2005 (Deportation, risk of persecution upon return to the country of origin); *ARJ v Australia* CCPR/C/60/D/692/1996 (Immigration Detention); *Anderson v Australia* CCPR/C/88/D/1367/2005 (right to compensation following reversal of conviction); *BL v Australia* CCPR/C/58/D/659/1995/Rev.1 (Legal Representation in Civil proceedings); *Baban v Australia* CCPR/C/78/D/1014/2001 (Immigration Detention); *Bakhtiyari v Australia* CCPR/C/79/D/1069/2002 (Immigration detention, child welfare); *Brough v Australia* CCPR/C/86/D/1184/2003 (juvenile detention); *Burgess v Australia* CCPR/C/85/D/1012/2001 (Deportation); *C v Australia* CCPR/C/72/D/832/1998 (Disability Discrimination in School); *Cabal v Australia* CCPR/C/78/D/1020/2001 (Extradition); *Chung v Australia* CCPR/C/84/D/1336/2004 (Exclusion from University); *Coleman v Australia* CCPR/C/87/D/1157/2003 (Political Speech); *D and E v Australia* CCPR/C/87/D/1050/2002 (Immigration Detention); *Dixit v Australia* CCPR/C/77/D/978/2001 (Disability Discrimination and Immigration); *Dranichnikov v Australia* CCPR/C/88/D/1291/2004 (Independence of Tribunals); *Dudko v Australia* CCPR/C/90/D/1347/2005 (Fair Trial, Legal aid); *Fardon v Australia* CCPR/C/98/D/1629/2007 (Preventive Detention/Double Jeopardy/Arbitrary Detention); *Faure v Australia* CCPR/C/85/D/1036/2001 (social security benefits on compulsory labour); *GT v Australia* CCPR/C/61/D/706/1996 (Deportation); *Hart v Australia* CCPR/C/70/D/947/2000 (Fair Trial, Compensation); *Hesse v Australia* CCPR/C/75/1087/2002 (Compensation); *Irving v Australia* CCPR/C/74/D/880/1999 (Fair Trial, legal Representation, Compensation for Wrongful Imprisonment); *Jarman v Australia* CCPR/C/58/D/700/1996 (Equality before Courts); *JL v Australia* CCPR/C/45/D/491/1992 (legal practice); *Jensen v Australia* CCPR/C/71/D/762/1997 (Denial of Parole); *Juma v Australia* (Alleged unfair trial due to inadequate translation); *K. L. B.-W. v. Australia* CCPR/C/47/D/499/1992 (Compensation for abuse); *Katsuno v Australia* CCPR/C/88/D/1154/2003 (Alleged unfair trial due to inadequate translation); *Karawa v Australia* CCPR/C/84/D/1127/2002 (removal); *Kwok v Australia* CCPR/C/97/D/1442/2005 (Deportation, Death Penalty); *Laing v Australia* CCPR/C/81/D/901/1999 (Removal and family law); *Lamagna v Australia* CCPR/C/65/D/737/1997 (civil); *Lim v Australia* CCPR/C/87/D/1175/2003 (Expulsion from

Australia); *Lindon v Australia* CCPR/C/64/D/646/1995 (Fair Trial, Independence of Courts); *Love and ors* CCPR/C/77/D/983/2001 (Age Discrimination); *Lovell v Australia* CCPR/C/80/D/920/2000 (Fair Trial); *Madafferi v Australia* (2004) CCPR/C/81/D/1011/2001 (removal); *Mankarious v Australia* CCPR/C/74/D/1065/2002 (Access to Social Rights, Compensation); *Minogue v Australia* CCPR/C/82/D/954/2000 (Prison); *Pasla v Australia* CCPR/C/65/D/751/1997 (Legal Representation); *Perera v Australia* CCPR/C/53/D/536/1993 (Fair Trial); *Toonen v. Australia* CCPR/C/50/D/488/1992; *Tillman v Australia* CCPR/C/98/D/1635/2007 (Preventive Detention/Double Jeopardy/Arbitrary Detention); *Shams* (1255/2004), *Atvan* (1256/2004), *Shahrooei* (1259/2004), *Saadat* (1260/2004), *Ramezani* (1266/2004), *Boostani* (1268/2004), *Behrooz* (1270/2004), *Sefed* (1288/2004) *v Australia* CCPR/C/90/D/1255, 1256, 1259, 1260, 1266, 1268, 1270&1288/2004 (Arbitrary detention, asylum); *Rogerson v Australia* CCPR/C/74/D/802/1998 (Right to trial without delay); *Shafiq v Australia* CCPR/C/88/D/1324/2004 (Immigration Detention, risk of torture on return); *Uebergang v Australia* CCPR/C/71/D/963/2001 (Compensation for Wrongful Imprisonment); *Werenbeck v Australia* CCPR/C/59/D/579/1994 (Fair Trial, Medical Treatment in Prison) *Wilson v Australia* CCPR/C/80/D/1239/2004 (Fair Trial, Unlawful Imprisonment); *Winata v Australia* CCPR/C/72/D/930/2000 (Removal); *X v Australia* CCPR/C/57/D/557/1993 (Racism in Family Law); *Y v Australia* CCPR/C/69/D/772/1997 (Immigration Detention, Legal Representation); *Young v Australia* (Same Sex Discrimination).

<sup>63</sup> [http://www.bayefsky.com/complain/ccpr\\_outcomechart.php](http://www.bayefsky.com/complain/ccpr_outcomechart.php)

<sup>64</sup> see the High Court's decision in *Coleman v Power* [2004] HCA 39; 220 CLR 1.

<sup>65</sup> HUMAN RIGHTS COMMITTEE, Ninety-fifth session, New York, 16 March- 3 April 2009,

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT, Concluding observations of the Human Rights Committee, AUSTRALIA

<sup>66</sup> *Ibid.*, 2.

<sup>67</sup> *Ibid.*, 3.

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*, 4.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*

<sup>73</sup> *Ibid.*, 5-6.

<sup>74</sup> *Ibid.*, 6.

<sup>75</sup> *Ibid.*, 6.

<sup>76</sup> UPR Speech.

<sup>77</sup> Crime and Misconduct Commission, Evaluating TASER Reforms: A Review of Queensland Police Service Policy and Practice, April 2011.

<sup>78</sup> <http://www.abc.net.au/news/stories/2011/04/28/3202233.htm?section=justin>

<sup>79</sup> West Heidelberg Community Legal Service, Background Paper: Capsicum Spray and the Appropriate Use of Police Violence.

<sup>80</sup> *UN Code of Conduct for Law Enforcement Officials Adopted by General Assembly resolution 34/169 of 17 December 1979*

<sup>81</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en)

<sup>82</sup> <http://www.geneva.mission.gov.au/gene/Statement159.html>

<sup>83</sup> COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, Forty-second session, Geneva, 4 to 22 May 2009

<sup>84</sup> *Ibid.*, 2.

<sup>85</sup> *Ibid.*

<sup>86</sup> *Ibid.*, 4.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Ibid.*, 5.

<sup>89</sup> *Ibid.*

<sup>90</sup> *Ibid.*

<sup>91</sup> *Ibid.*, 7.

<sup>92</sup> *Ibid.*, 8.

<sup>93</sup> *Ibid.*

<sup>94</sup> *Ibid.*, 8.

<sup>95</sup> *Ibid.*

<sup>96</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en)

<sup>97</sup> Bob Marley and the Wailers' 1976 Island Records, *Rastaman Vibration*

<sup>98</sup> *Barbaro v Australia* CERD/C/51/D/7/1995 CERD/C/57/D/12/1998 (Race Discrimination); *Z.U.B.S v Australia* CERD/C/51/D/7/1995 CERD/C/55/D/6/1995 (Racial Discrimination); *B.M.S v Australia*

CERD/C/51/D/8/1996 CERD/C/54/D/8/1996 (Foreign Doctor Registration); *DR v Australia*

CERD/C/75/D/42/2008 (NZ Special category Visa discrimination); *Hagan v Australia*

CERD/C/62/D/26/2002 (aboriginal vilification); *DF v Australia* CERD/C/72/D/39/2006 (NZ

Discrimination).

<sup>99</sup> [http://www.bayefsky.com/complain/cerd\\_outcomechart.php](http://www.bayefsky.com/complain/cerd_outcomechart.php)

- <sup>100</sup> [http://www.bayefsky.com/pdf/australia\\_t5\\_cerd\\_26\\_2002.pdf](http://www.bayefsky.com/pdf/australia_t5_cerd_26_2002.pdf)
- <sup>101</sup> Committee on the Elimination of Racial Discrimination, Seventy-seventh session , 2–27 August 2010, Consideration of reports submitted by States parties under article 9 of the convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Australia.
- <sup>102</sup> Ibid.
- <sup>103</sup> Ibid, 3.
- <sup>104</sup> Ibid.
- <sup>105</sup> Ibid. 4.
- <sup>106</sup> Ibid.
- <sup>107</sup> Ibid, 5.
- <sup>108</sup> Ibid, 6.
- <sup>109</sup> Ibid.
- <sup>110</sup> Ibid, 7.
- <sup>111</sup> Ibid, 7-8.
- <sup>112</sup> Ibid.
- <sup>113</sup> Ibid, 9.
- <sup>114</sup> UPR Speech
- <sup>115</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en)
- <sup>116</sup> Optional Protocols to the Convention on the Rights of the Child on the Involvement of Children in armed conflict, on 21 October 2002 and ratified it on 26 September 2006.
- <sup>117</sup> the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography on 18 December 2001 and ratified it on 8 January 2007
- <sup>118</sup> <http://www.hrlrc.org.au/content/topics/international-human-rights-mechanisms/childrens-rights-comments-to-australian-government-on-draft-3rd-optional-protocol-to-convention-on-the-rights-of-the-child-11-nov-2010/>
- <sup>119</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en)
- <sup>120</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en)
- <sup>121</sup> <http://www.disabilityrightsnow.org.au/node/57>
- <sup>122</sup> <http://www.humanrightsaactionplan.org.au/nhrap/focus-area/disability-rights>
- <sup>123</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9&chapter=4&lang=en)
- <sup>124</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-9-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-9-b&chapter=4&lang=en)
- <sup>125</sup> [http://www.bayefsky.com/complain/cat\\_outcomechart.php](http://www.bayefsky.com/complain/cat_outcomechart.php)
- <sup>126</sup> UPR Speech
- <sup>127</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)
- <sup>128</sup> Ibid.
- <sup>129</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en)
- <sup>130</sup> The Committee reported on Australia in 1992, 1995, 2004, 2008 and 2010.
- <sup>131</sup> Committee on the Elimination of Racial Discrimination, Seventy-seventh session , 2–27 August 2010, Consideration of reports submitted by States parties under article 9 of the convention, Concluding observations of the Committee on the Elimination of Racial Discrimination, Australia.
- <sup>132</sup> Ibid, 3.
- <sup>133</sup> Ibid, 5.
- <sup>134</sup> Ibid, 7.
- <sup>135</sup> Ibid, 8.
- <sup>136</sup> <http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm>
- <sup>137</sup> <http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm>
- <sup>138</sup> <http://en.wikipedia.org/wiki/Statelessness>
- <sup>139</sup> <http://www.immi.gov.au/about/reports/annual/2009-10/html/outcome-2/departamental2-1-1.htm#figure14>
- <sup>140</sup> <http://www.immi.gov.au/about/reports/annual/2009-10/html/secretarys-review/year-at-a-glance.htm#table1>
- <sup>141</sup> [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en)
- <sup>142</sup> Entered into force on 1 July 2003.
- <sup>143</sup> <http://www.amnesty.org.au/refugees/comments/20435/>
- <sup>144</sup> <http://www.smh.com.au/world/un-rights-chief-slams-racist-australia-20110526-1f4yy.html>