



## **Express law** *fast track information for clients*

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### **Report on the National Human Rights Consultation released**

On 8 October 2009, the Attorney-General released the National Human Rights Consultation Committee's [Report on the National Human Rights Consultation](#). The Report identifies options for the Government to consider to enhance the protection and promotion of human rights in Australia, including the enactment of a Human Rights Act.

#### ***The consultation***

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The Government launched the consultation on 10 December 2008 to mark the 60th Anniversary of the *Universal Declaration of Human Rights*. The purpose of the consultation was to seek the views of the Australian community on human rights in Australia. The consultation was undertaken by the Committee which comprised Father Frank Brennan AO (Chairperson), Mary Kostakidis, Mick Palmer AO APM and Tammy Williams.

#### ***Key recommendations***

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##### **Creating a human rights culture**

The Committee recommended that education be the highest priority for improving and promoting human rights in Australia. This would be facilitated by the development of a national plan to implement a comprehensive framework of education in human rights and responsibilities in schools, universities, the public sector and the community generally.

##### **Human rights in policy and legislation**

The Committee made certain recommendations that it considered should be implemented regardless of whether a Human Rights Act was introduced, including that:

- the Government conduct an audit of all federal legislation, policies and practices to determine their compliance with Australia's human rights obligations, and amend legislation, policies and practices, as required, so that they become compliant
- the Government compile a list of Australia's human rights obligations
- a statement of compatibility be required for all Bills introduced into Parliament, all Bills before the third reading (so as to allow scrutiny of amendments) and legislative instruments, and
- a Parliamentary Joint Committee on Human Rights (Joint Committee) be established to review all Bills and relevant legislative instruments for compliance with the list of Australia's human rights obligations.

## Human rights in practice

The Committee also recommended that:

- human rights compliance be incorporated in the Australian Public Service Values and Code of Conduct
- the *Administrative Decisions (Judicial Review) Act 1977* (Cth) be amended to make the list of Australia's human rights obligations a relevant consideration in government decision making
- in the absence of a Human Rights Act, the *Acts Interpretation Act 1901* (Cth) be amended to require that, as far as it is possible to do so consistently with the legislation's purpose, all federal legislation be interpreted consistently with the list of Australia's human rights obligations, and
- the Australian Human Rights Commission's functions be augmented, including to allow the Commission to examine Bills upon request from the Attorney-General or the Joint Committee to ascertain consistency with the list of Australia's human rights obligations.

## Human rights and Indigenous Australians

The Committee made specific recommendations in relation to protecting the human rights of Indigenous Australians. It recommended that:

- a statement of impact on Aboriginal and Torres Strait Islander peoples be provided to Parliament when the intent is to legislate exclusively for those peoples, to suspend the *Racial Discrimination Act 1975* (Cth) or to institute a special measure, and
- the Government develop and implement, in partnership with Indigenous communities, a framework for self-determination and strategies for increasing Indigenous Australians' participation in institutions of democratic government.

## A Human Rights Act

The most contested option for better protection and promotion of human rights was the introduction of a Human Rights Act. The Committee's Report analyses the statutory models of human rights protection and sets out the case both for and against a Human Rights Act.

The Committee ultimately recommended that Australia adopt a federal Human Rights Act that:

- is based on the 'dialogue' model which sets out a list of human rights and accords the executive, the legislature and the judiciary specific roles in the protection and promotion of those rights. Versions of the dialogue model are the *New Zealand Bill of Rights Act 1990* (NZ), *Human Rights Act 1998* (UK), *Human Rights Act 2004* (ACT) and *Charter of Human Rights and Responsibilities Act 2006* (Vic), which are discussed and compared in chapter 11 of the Report
- protects the rights of human beings only, and imposes the obligation to act in accordance with those rights on federal public authorities only (which includes Ministers, officials and entities)
- specifies certain non-derogable civil and political rights
- includes a limitation clause for derogable civil and political rights
- requires statements of compatibility for all Bills and legislative instruments
- empowers the Joint Committee to review all Bills and relevant legislative instruments for compliance with the human rights expressed in the Human Rights Act

- contains an interpretative provision (which would not apply to economic, social and cultural rights) requiring federal legislation to be interpreted in a way that is compatible with the human rights expressed in the Human Rights Act and consistent with Parliament's purpose in enacting the legislation
- extends to the High Court of Australia a power to make a declaration of incompatibility. The Committee relied on advice from the Solicitor-General, Stephen Gageler SC and AGS Consultant Counsel (formerly Chief General Counsel) Henry Burmester QC that such a declaration of incompatibility would be consistent with the exercise of judicial power under the Constitution, provided specified requirements were met. The Committee noted, if this recommendation proves impractical, that any Act not extend to courts the formal power to make a declaration of incompatibility
- imposes an obligation on federal public authorities to act in a manner compatible with human rights (other than economic, social and cultural rights) and to give consideration to relevant human rights (including economic, social and cultural rights) when making decisions, and
- enables individuals to institute an independent cause of action against federal public authorities for breaches of human rights (other than economic, social and cultural rights).

### ***The Government's response***

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The Government will now consider the Committee's report and is expected to outline its response in the coming months.

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