



Human Rights Protection in Australia

AASW Submission to the
National Human Rights Consultation

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Introduction

The Australian Association of Social Workers (AASW) is the professional body representing social workers in Australia. The AASW is the accrediting body for all tertiary social work programs in Australia and also for the assessment of overseas qualified social workers.

Social workers are employed at the interface between the person and their environment, and AASW members provide a range of services across a number of different areas. These include child and family welfare, child protection, disability, rehabilitation, income support, corrections and juvenile justice, housing support and homeless services, aged care, health and mental health. These interactions with vulnerable people give social workers a unique perspective on human rights.

Social work interventions are typically multi-level and multi-layered. Interventions may include individual counselling, psycho-education, advocacy, practical support for family and carers, family therapy involving client and family, and case work with groups of clients or families. Social workers work with families and communities to improve their health and well-being within a human rights framework.

The AASW *Code of Ethics* positions social work as a profession that is committed to:

The pursuit and maintenance of human well-being. Social work aims to maximise the development of human potential and the fulfillment of human needs... the pursuit and maintenance of human well-being. Social work aims to maximise the development of human potential and the fulfilment of human needs. (Australian Association of Social Workers, 1999)

The Code of Ethics also highlights human dignity and the pursuit of social justice as key values guiding the work of the profession.

In carrying out their professional tasks and duties, social workers give equal priority to respect for human dignity and worth and the pursuit of social justice. This commitment is demonstrated through advocacy to advance the international civil and political rights of individuals, as well as working to ensure people can meet their economic, cultural and social rights:

The bread and butter work of most social workers. It involves putting services in place to meet rights like the right to education, health care, housing, income and so on. (Calma, 2008)

Australia remains the only developed nation without a constitutional or legislative Bill of Rights at the national level and bases its recommendations following a review of diverse policy and legislative responses regarding current protection of human rights. The AASW is highly supportive of National human rights legislation and strongly endorses the current consultation process and is hopeful this will proceed to further implementation of a broad Human Rights legislative framework being adopted in the future.

The AASW welcomes the opportunity to input to the National Human Rights Consultation.

Summary of Recommendations

Recommendation 1: Legal Protection of Human Rights

The AASW supports the development of National legislation to protect and promote human rights in Australia.

Recommendation 2: Obligations on Public Authorities

The AASW supports the articulation, and enforcement, of obligations on public authorities to comply with rights articulated in the proposed legislation.

Recommendation 3: Compatibility Statements

The AASW supports the inclusion of human rights compatibility statements within new pieces of legislation.

Recommendation 4: Human Rights Awareness and Culture

The AASW supports the development and implementation of measures aimed at promoting and educating Australians about their rights under the proposed legislation.

Recommendation 5: Human Rights Limitations

The AASW supports measures aimed at ensuring that rights are not restricted to those articulated within the proposed legislation.

Recommendation 6: Human Rights Accountability

The AASW supports the appointment of an independent monitor, to provide advice to Government and monitor the operation of the proposed legislation.

Recommendation 7: United Nations Universal Declaration of Human Rights

The AASW supports the adoption of key rights articulated within the *United Nations Universal Declaration of Human Rights* within the proposed legislation.

Recommendation 8: Rights of Indigenous Peoples

The AASW supports the adoption of key rights articulated within the *United Nations Declaration on the Rights of Indigenous Peoples* within the proposed legislation.

Recommendation 9: Rights of Persons with Disabilities

The AASW supports the adoption of key rights articulated within the *United Nations Convention on the Rights of Persons with Disabilities* within the proposed legislation.

Recommendation 10: Rights of the Child

The AASW supports the adoption of key rights articulated within the *United Nations Convention on the Rights of the Child* within the proposed legislation.

Recommendation 11: Civil and Political Rights

The AASW supports the adoption of key rights articulated within the *International Covenant on Civil and Political Rights* within the proposed legislation.

Recommendation 12: Economic, Social and Cultural Rights

The AASW supports the adoption of key rights articulated within the *International Covenant on Economic, Social and Cultural Rights* within the proposed legislation.

2. Problems with Current Human Rights Protections

In recent years and months, the adequacy of human rights protections in Australia has been the subject of heated debate. The AASW believes that despite a number of positive changes, there are serious weaknesses in current human rights protections in Australia. The AASW endorses the considerations of the United Nations Committee on Economic, Social and Cultural Rights in their report tabled in May. These include:

- ❖ Welcoming the parliamentary apology to the victims of the *Stolen Generations* policies;
- ❖ Noting that the Australian Government had repealed legal provisions which discriminated against same-sex couples in relation to financial and work related benefits;
- ❖ Noting that the *Fair Work Act 2009* introduces new employment standards and improves the protection of the right to work in line with the Committee's recommendations;
- ❖ Welcoming steps taken to combat violence against women, in particular, the establishment of the *National Council to Reduce Violence Against Women and Their Children*; and
- ❖ Welcoming the ratification by the Australian Government of the *United Nations Convention on Persons with Disabilities*, the Optional Protocol to the *Convention on the Elimination of Discrimination Against Women*, and, its formal support of the *United Nations Declaration on the Rights of Indigenous Peoples*. (United Nations Economic and Social Council, 2009)

However, the Committee also noted the following:

- ❖ That the current National Human Rights Consultation does not specifically call for the consideration of economic, social and cultural rights;
- ❖ The principle of interdependency and indivisibility of human rights, and called on the Australian Government to include economic, social and cultural rights when considering the submissions received;
- ❖ The lack of a legal framework for the protection of economic, social and cultural rights at the Federal level, as well as of an effective mechanism to ensure coherence and compliance of all jurisdictions in the country with the Australian Government's obligations under the Covenant;
- ❖ Concern that some of the measures adopted by the Australian Government as part of the Northern Territory Emergency Response are inconsistent with the Covenant rights, in particular the principle of non-discrimination, and have a negative impact on the realisation of the rights of indigenous peoples;
- ❖ That the Northern Territory Emergency Response was adopted without adequate consultation with the indigenous peoples concerned;

- ❖ That insufficient measures have been taken by the Australian Government to ensure an adequate standard of living for persons with disabilities. In particular, it noted with concern that Section 52 of the *Disability Discrimination Act 1992* exempts migration laws, regulations, policies and practices from the effects of the Act, leading to negative immigration decisions based on disability or health conditions. The Committee expressed concern at the fact that this situation has had a particularly negative impact on the families of asylum seekers;
- ❖ The high unemployment rates among indigenous people, asylum seekers, migrants and people with disabilities, and the significant difficulties they face to enjoy their right to work equally;
- ❖ That the social security system in Australia does not ensure universal coverage and the insufficient amount of certain benefits do not provide an effective income support system. The Committee expressed concern that existing conditionalities for the payment of benefits have a negative impact on disadvantaged and marginalized individuals;
- ❖ Despite sustained economic prosperity, twelve per cent of the Australian population lives in poverty, and poverty rates remain very high among disadvantaged and marginalized individuals and groups such as indigenous peoples, asylum seekers, migrants and persons with disabilities. It regretted that the Australian Government has not yet adopted a comprehensive strategy to combat poverty and social exclusion, and, that no steps have been taken to adopt an official poverty line;
- ❖ The retention of the mandatory detention policy for asylum seekers for unauthorised arrivals, and noted that in its *Immigration Detention Report 2008*, the Australian Human Rights Commission expressed serious concerns about the immigration detention facilities, in particular on Christmas Island. It is also concerned at the fact that some asylum seekers are detained for prolonged and indefinite periods of time, which results in a negative impact on their mental health, in spite the measures taken by the Australian Government to improve the protection of asylum seekers;
- ❖ That the incidence of homelessness has increased over the last decade, primarily affecting indigenous peoples, in spite of the measures undertaken to address homelessness in Australia;
- ❖ The insufficient support for persons with mental health problems, as well as the difficult access to mental health services, in particular for indigenous peoples, prisoners and asylum seekers in detention;
- ❖ Despite the reforms to the Native Title system, the high cost, complexity and strict rules of evidence applying to claims under the *Native Title Act 1993* have a negative impact on the recognition and protection of the right of indigenous peoples to their ancestral lands. (United Nations Economic and Social Council, 2009)

2.1 Anti-Terrorism Measures

The AASW notes that the Australian Security Intelligence Organisation (ASIO) is empowered to detain suspects with indefinite delays between the time of arrest and the time of charge. In our most high profile case, Dr Mohammed Haneef was detained under these laws for twelve days before being charged. He was subsequently released and

deported.

ASIO may also detain and interrogate people who are not suspects for up to a week. The control orders regime can also mean that people who are not suspects can be confined under house arrest for up to a year if they may possibly commit a terrorism offence in future. Other Australian States have also passed anti-terrorism legislation allowing the preventative detention of non-suspects for up to two weeks. Under current laws, records of emails, text messages and computers of innocent people may also be seized without their consent or knowledge.

The AASW is therefore concerned about the scope of these measures to affect those who are not suspected of any crime, highlighting a need to repeal these measures.

2.2 Freedom of Expression

In a recent paper, the Australian Law Reform Commission highlighted problems with Australian laws in the area of Treason, where a person may commit an offence and potentially be sentenced to life imprisonment for criticising military actions carried out by the Australian Defence Force. (Australian Law Reform Commission, 2008)

Current laws also hinder the protection of journalists' sources. Officials who leak information to the media may also be prosecuted. (Australian Law Reform Commission, 2008) The AASW is concerned that about the impact of these measures on public debate, particularly where public servants may want to come forward with information that serves the national interest.

2.3 Stolen Generations

The AASW acknowledges the role that non-indigenous social workers had in the creation of the stolen generation. The systematic removal of Aboriginal and Torres Strait Islander children from their families resulted in the fragmentation of families and communities, the loss of cultural knowledge and the erosion of a cultural identity. As a consequence, generations of Aboriginal and Torres Strait Islander children have been reared without culturally appropriate parental role modes.

Contemporary Social work is committed to working with Aboriginal and Torres Strait Islander people, helping them to achieve self-determination and to having their social, economic, and cultural rights acknowledged and validated. It is the moral and ethical obligation of our profession to work to address these issues. It is within this spirit that the AASW acknowledges the profession's previously inadequate response to the needs of Aboriginal and Torres Strait

Islander people. We now commit ourselves to working with communities to heal the past, grieve the losses and rebuild family and community structures, to achieve better social, cultural and economic outcomes for Aboriginal and Torres Strait Islander people.

2.4 People's Inquiry into Immigration Detention

The *People's Inquiry into Immigration Detention* was established in 2005 as an open, independent, transparent and inclusive process by the Australian Council of Heads of Schools of Social Work around the country, in order to bear witness to events in Australian immigration detention facilities. The *People's Inquiry* was supported financially and

materially by the AASW. The AASW sees the issues that were uncovered by the *People's Inquiry* as indictments on the weaknesses of current human rights protections as identified within the Inquiry's four main themes: Journeys into detention, the processing of claims, the experiences of detention and life after detention.

The *People's Inquiry* examined the stories of a number of detainees in immigration detention, including the high profile case of Cornelia Rau. According to Rau's sister, her detention compromised her mental health:

While she was an unnamed illegal immigrant, the only treatment she got for mental illness was longer periods in lock-up as punishment for bad behaviour. Yet as soon as she was found to be an Australian resident, she was whisked away to a teaching hospital, seen by psychiatrists and medicated. During which leg of her flight from Baxter to Adelaide did she suddenly gain the basic human right to medical treatment? (Australian Council of Heads of Schools of Social Work, 2006)

The *People's Inquiry* also heard from asylum seekers on board the Siev-4, the boat at the centre of the Children Overboard controversy. Force was used against the boat, carrying 223 people including 76 children, despite the legality of seeking asylum in Australia. Many of the accounts were harrowing:

It's just a small fishing boat. The Navy personnel intercepted our boat where we were on board and were about to reach Christmas Island, but then they shifted the direction of that boat towards Indonesia back again. Those Navy personnel, ... they jumped to the cabin and they just destroyed the navigator and the rudder in order not to find our direction and they just left. (Australian Council of Heads of Schools of Social Work, 2006)

The Inquiry also looked at the Siev-X tragedy, in which 353 people, including 146 children, drowned after a heavily overcrowded boat sank. One survivor gave a harrowing account of the ordeal:

They [the Australian Navy officers] finally came and said that we can take you to Christmas Island but we are not going to accept you. We will not allow you stay in Australia; we will take you there only temporarily until the Government decides about you. (Australian Council of Heads of Schools of Social Work, 2006)

Ultimately, the *People's Inquiry* called for greater human rights protections in Australia, highlighting the plight of the witnesses who came forward to give evidence.

The inquiry recommends that three fundamental changes are needed to address the human rights issues arising from the evidence presented to it. These are to remove racism from, restore human rights to and reinstate accountability for immigration policy. (Australian Council of Heads of Schools of Social Work, 2006)

The AASW regards the stories exposed by the Inquiry as an example of the weaknesses within our current system, and cite this as an example of the problems in current human rights protection.

3. How Australia Could Better Promote Human Rights

Given the problems with existing protections of human rights in Australia, the AASW supports the enactment of National legislation protecting human rights in Australia. In the Australian Capital Territory (ACT) and Victoria, legislation protecting and promoting rights has already been enacted.

Recommendation 1: Legal Protection of Human Rights

The AASW supports the development of legislation to protect and promote human rights in Australia.

Although a number of valid criticisms have been made in relation to the operation of the laws in the ACT and Victoria, the AASW submits that significant improvements have been made under both models.

3.1 Experiences from the ACT Model

In 2003, the ACT introduced the country's first Act of its kind in Australia, the *Human Rights Act 2004*. The Act protects civil and political rights, such as equality before the law, protection from torture, freedom of expression, rights to security, and rights to a fair trial. It also articulates the rights of minorities. (Human Rights Act ACT 2004) Amendments to the Act were also adopted, affording protection of economic, cultural and social rights.

The Act also confers obligations on public authorities, with provisions being introduced in the ACT to enable people to take action against authorities who violate the rights articulated by the Act. (Human Rights Act ACT 2004) This has further empowered the operation of the Act. It also requires all new legislation tabled within the ACT Legislative Assembly to include a statement outlining its compatibility with the operation of the Human Rights Act.

Recommendation 2: Obligations on Public Authorities

The AASW supports the articulation, and enforcement, of obligations on public authorities to comply with rights articulated in the proposed legislation.

Recommendation 3: Compatibility Statements

The AASW supports the inclusion of human rights compatibility statements within new pieces of legislation.

One of the most important features of the Act in the ACT has been its provision of a human rights culture and education. The Law Council of Australia has noted the importance of this feature:

The introduction of specific statutory human rights protection has led to improved public awareness of human rights and very active human rights commissions. (Law Council of Australia, 2009)

Recommendation 4: Human Rights Awareness and Culture

The AASW supports the development and implementation of measures aimed at promoting and educating Australians about their rights under the proposed legislation.

3.2 Experiences from the Victorian Model

In 2006, the *Charter of Human Rights and Responsibilities Act 2006* was made law in Victoria. The Victorian Charter does not enable the courts to strike down laws which are inconsistent with stated rights. However, it goes some way towards supporting human rights by requiring consideration of the Charter's compatibility with new legislation, requiring the courts to interpret legislation in the framework of human rights, and requiring public authorities to comply with human rights. (Charter of Human Rights and Responsibilities Act Victoria 2006)

One important feature of the Victorian Charter is that it does not limit rights and freedoms to those it articulates. This overcomes some of the problems associated with defining and therefore limiting rights.

Recommendation 5: Human Rights Limitations

The AASW supports measures aimed at ensuring that rights are not restricted to those articulated within the proposed legislation.

Another provision within the Victorian Charter, similar to that of the ACT Act, requires proponents of legislation to develop a statement about the compatibility of new legislation with human rights.

The Victorian Charter also establishes accountability and reporting processes. It makes the Victorian Human Rights and Equal Opportunity Commission the independent monitor of the operation of the Charter, and requires the Commission to prepare an annual report and provide advice to the Attorney General on its operation. It also mandates reviews and empowers the Ombudsman to investigate whether administrative action is incompatible with the rights outlined within the Victorian Charter. (Charter of Human Rights and Responsibilities Act Victoria 2006)

Recommendation 6: Human Rights Accountability

The AASW supports the appointment of an independent monitor, to provide advice to Government and monitor the operation of the proposed legislation.

The AASW notes Tasmania and Western Australia in 2007 were considering enacting similar legislative human rights protections to those in the ACT and Victoria.

In 2007, a paper titled *A Charter of Rights for Tasmania* was issued, with ninetyfour percent of the submissions in favour of enacting a Charter of Human Rights. The report included recommendations to include a range of economic, social and cultural rights.

In Western Australia, community consultation process was also commenced in 2007, with the release of a draft *Human Rights Bill* that was followed up by the consultation's report. A number of changes to the Bill were recommended, including the addition of economic, social and cultural rights, in particular, within the areas of health, education, housing and property.

The AASW notes that there may be constitutional reasons for enacting State human rights protections covering the areas within the jurisdiction of State Government, but also emphasises the need for a national Charter or Bill of Rights.

4. Which Human Rights Should Be Promoted

4.1 Universal Declaration of Human Rights

The AASW submits that key rights articulated by the *United Nations Universal Declaration of Human Rights* should be protected by any legislation that may be introduced. These include the right to equality before the law, freedom of expression, rights to security, and rights to a fair trial.

Recommendation 7: United Nations Universal Declaration of Human Rights

The AASW supports the adoption of key rights articulated within the *United Nations Universal Declaration of Human Rights* within the proposed legislation.

In addition, the AASW recommends that key international conventions to which Australia is a signatory also be enshrined in law.

4.2 United Nations Declaration on the Rights of Indigenous Peoples

In April 2009, the Australian Government formally endorsed the *United Nations Declaration on the Rights of Indigenous Peoples*. The Declaration articulates the rights of Indigenous peoples to all human rights outlined in the Universal Declaration, the right to live free from discrimination, to self-determination, and the right to diversity of culture. Crucially, Article 19 stipulated that all signatory states must:

Consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them. (United Nations, 2007)

However, one month after endorsing these rights, the Australian Government supported the Northern Territory's *A Working Future: Remote Service Delivery Policy*. This included the proposed development of twenty growth towns as central hubs which will have the effect of forcing many remote communities from the Homelands.

The AASW supports the comments made by many Homelands Elders, who contend that it will threaten their culture and traditional way of life and expose their children to problems such as alcohol and drug abuse and violence endemic in the larger communities. This highlights the need for the rights articulated under the Declaration to be enshrined in law.

Recommendation 8: Rights of Indigenous Peoples

The AASW supports the adoption of key rights articulated within the *United Nations Declaration on the Rights of Indigenous Peoples* within the proposed legislation.

4.3 United Nations Convention on the Rights of Persons with Disabilities

The *United Nations Convention on the Rights of Persons with Disabilities* contains provisions that specifically relate to concepts of equality and non-discrimination as they apply to people with disabilities. It also contains articles dealing with the specific discrimination suffered by both women and children with disabilities, and stipulates that signatory states must adopt appropriate measures to ensure the full development and empowerment of women and children.

Women with disabilities are twice as likely to experience domestic and family violence as women without disabilities however currently women with disabilities are not represented on the National Council for Violence against Women and Children. Significant attention is also paid to issues surrounding accessibility and participation.

Recommendation 9: Rights of Persons with Disabilities

The AASW supports the adoption of key rights articulated within the *United Nations Convention on the Rights of Persons with Disabilities* within the proposed legislation.

4.4 United Nations Convention on the Rights of the Child

In ratifying the *United Nations Convention on the Rights of the Child*, Australia is required to raise awareness of the Convention, ensure that provisions within it relating to the rights and participation of children in society apply to each child, to make appropriate legislative and administrative to implement the rights of children and report to the United Nations Committee on the Rights of the Child regularly against progress that has been made in this area.

Recommendation 10: Rights of the Child

The AASW supports the adoption of key rights articulated within the *United Nations Convention on the Rights of the Child* within the proposed legislation.

4.5 International Covenant on Civil and Political Rights

The *International Covenant on Civil and Political Rights* protects the rights of people in the areas of physical integrity, procedural fairness, freedom of belief and expression and political participation. It also includes an optional component relating to the provision of mechanisms by which people can launch complaints against member states.

Recommendation 11: Civil and Political Rights

The AASW supports the adoption of key rights articulated within the *International Covenant on Civil and Political Rights* within the proposed legislation.

4.6 International Covenant on Economic, Social and Cultural Rights

The *International Covenant on Economic, Social and Cultural Rights* requires each state party to the Covenant to undertake steps to the maximum of its available resources to achieve the full realisation of the rights recognised Covenant by all appropriate means, including particularly the adoption of legislative measures. It articulates rights in the areas of economic participation, employment, advocacy, culture and freedom of association. It

also requires states to guarantee that the rights in the Covenant will be exercised without discrimination.

The social work profession is committed to maximising the well being of individuals and society. It considers that individual and societal wellbeing is underpinned by socially inclusive communities which emphasise principles of social justice and respect for human dignity and human rights, including the right to freedom from intimidation and terror in society.

Minimum standards of human rights also include the right to adequate housing, income, employment, education and health care. Homelessness, inadequate housing and forced evictions also represent violations of international human rights. The Covenant recognises the right to adequate housing which is regarded as more than the idea of just shelter.

Adequate shelter means... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost". Adequate housing enables other basic rights to be enacted, including the right to education and work, to vote, to participate in the community and optimise physical and mental well being, and incorporates: legal security of tenure, availability of services, materials, facilities and infrastructure, affordability, habitability, accessibility, location and cultural adequacy. (United Nations, 1976)

Despite the introduction of more integrated housing and homelessness initiatives and increased funding, Australian housing policies remain inadequate in addressing the level of housing need being experienced across the country that would address the rights to adequate shelter in terms of these international criteria.

Recommendation 12: Economic, Social and Cultural Rights

The AASW supports the adoption of key rights articulated within the *International Covenant on Economic, Social and Cultural Rights* within the proposed legislation.

5. Conclusion

Australia remains the only developed nation without a constitutional or legislative Bill of Rights at the national level.

The AASW has welcomed the opportunity to input to the National Human Rights Consultation and bases its recommendations following a review of diverse policy and legislative responses regarding current protection of human rights.

The AASW is highly supportive of national human rights legislation and strongly endorses the current consultation process. The AASW is hopeful this will proceed to further implementation of a broad National Human Rights legislative framework being adopted in the future.

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