



National Human Rights Action Plan Baseline Study

The New South Wales Council for Civil Liberties (CCL) is grateful for the opportunity to make this submission.

CCL is committed to protecting and promoting civil liberties and human rights in Australia.

CCL is a Non-Government Organisation (NGO) in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

CCL was established in 1963 and is one of Australia's leading human rights and civil liberties organisations. Our aim is to secure the equal rights of everyone in Australia and oppose any abuse or excessive power by the State against its people.

The Introduction, and Section 2.2: Progress on human rights.

The Introduction claims that Australia continues to make progress on human rights. In some respects this is true—the moves towards equality for same sex attracted people, for instance, and accession to United Nations treaties. But in some respects, Australia has gone backwards, especially in the anti-terrorist legislation. Whether this legislation is justified or not is not to the point (though CCL believes that some of it is not); the introduction of detention without charge and control orders in particular are contrary to rights, and should be acknowledged as such and decreed to be temporary.

The revised study should also deal with the powers conferred on police and other enforcement bodies in response to the threat of terrorism, and the extension of those powers into other areas. The action plan should include measures to wind back those powers.

Chapter 1

Section 1.4: Legal Protections.

Absent from this section is any discussion of how international rights treaties to which Australia is a part can be given greater weight in the courts. CCL continues to believe, along with the National Human Rights Consultation Committee (the Brennan Committee), that there is a need for a legislated bill of rights. Since the Government has decided not to go down this path, the revised study should address the possibility of alternative legislation, including the amendment of the Administrative Decisions Judicial Review Act 1975 (Cth) as recommended by the Brennan Committee, to make a definitive list of Australia's international human rights obligations a relevant consideration in Government decision making.

The revised study (and the new action plan) should deal with legislation to protect the rights of children under the Convention on the Rights of the Child.



Chapter 2

Section 2.3: Use of force by police.

CCL welcomes the inclusion of this section in the draft plan. Of particular concern here is the use of force with fatal consequences in circumstances that could not be objectively justified. While we accept that police place themselves in dangerous and life-threatening situations in the course of their duties, the revised study should address the need for zero tolerance for the fatal misuse of force.

Privacy.

There should be a section on Privacy within Chapter Two. This section should outline existing protections of privacy and their limitations, and include material on the proposal that was endorsed by the Australian Law Reform Commission for the introduction of a tort of privacy invasion. The Government should commit to introducing such a tort, especially after the revelations about activities by journalists and others within News Corporation.

Freedom of speech, censorship and classification.

There should be a section within Chapter Two on these matters, setting forth the rights to read, view, watch and play; and setting forth also the present legal restrictions. The Action Plan should commit the Government to at least maintain the present access to literature, films, plays, television and the Internet and electronic games. There should also be material on the rights of whistleblowers and freedom of the press.

Chapter Three

Section 3.9: People in prisons.

When the courts impose a prison sentence, the punishment is the deprivation of liberty. Other rights are not removed. Those who have the responsibility of looking after prisoners, including governments, must not treat poor conditions in prisons as part of the punishment. In particular, negligence in matters of safety should not be acceptable just because it happens in prisons. The revised plan should address these matters.

Section 3.10: Asylum seekers.

In addition to the material already in the draft plan, some matters specific to asylum seekers who arrive offshore should be dealt with. (The following material is based on telephone interviews with individuals involved with off shore processing of asylum seekers.)



Asylum Seekers are frequently unable to speak English, yet they are responsible for finding their own lawyer to assist them in filing an appeal application in the Federal Magistrates Court and the Federal Court. An asylum seeker is unable to do this single handedly.

Asylum seekers are being held for inordinately lengthy periods in detention due to the backlog of claims waiting to be heard in the Federal Magistrates and Federal Courts.

Mental health issues are one of the major sources of the problems within the processing system. It is not possible for a person suffering from mental health issues to be fairly interviewed.

Accessing detainees held in remote centres is arduous, especially for independent merit reviewers, making the admission of meaningful submissions extremely difficult. Access is also made unreasonably difficult for professionals and others who wish to assist asylum seekers.

Asylum seekers are not assigned a single case worker who can track their claim through the various processes resulting in situations where the asylum seekers is unaware of the status of his/her claim. This impacts on the role of the legal professional or advocate who invariably has to spent time trying the track the file, often from all over the country.

The situation of asylum seekers who are deemed to be refugees but are held in limbo for long periods because they have not been given security clearance by ASIO is intolerable.

There are long delays in security clearance for all detainees. The Government should commit itself to reducing these.

Workers' Rights.

The draft plan does not address the human rights issues of employment. It is desirable that the revised plan should do so.

General.

CCL looks forward to there being definite, precise commitments in the Action Plan, in place of the sometimes vague and general commentary at the end of each chapter in the draft study. Those commitments should be given timelines, and a process of evaluation set in place.

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