



ALHR Submissions to the 2020 Summit

April 2008

Introduction

Australian Lawyers for Human Rights (ALHR) is pleased to make a series of submissions to the 2020 Summit process. ALHR will be represented at the Summit by President Susan Harris Rimmer, ex-President Simon Rice, ex-Secretary Robin Banks, National Committee member Ben Saul and ACT member George Williams.

The 2020 Summit will be considering the following themes:

1. Future directions for the Australian economy – including education, skills, training, science and innovation as part of the nation's productivity agenda
2. Economic infrastructure, the digital economy and the future of our cities
3. Population, sustainability, climate change, and water
4. Future directions for rural industries and rural communities
5. A long-term national health strategy – including the challenges of preventative health, workforce planning and the ageing population
6. Strengthening communities, supporting families and social inclusion
7. Options for the future of indigenous Australia
8. Towards a creative Australia: the future of the arts, film and design
9. The future of Australian governance: renewed democracy, a more open government (including the role of the media), the structure of the Federation and the rights and responsibilities of citizens
10. Australia's future security and prosperity in a rapidly changing region and world.

For more information, see the Summit website: www.australia2020.gov.au.

ALHR has attempted to make a submission in every category to show the importance of human rights as a framework that applies to a wide range of subject matter.

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Who we are

Australian Lawyers for Human Rights Inc (ALHR) was established in 1993, and incorporated as an association in NSW in 1998 (ABN 76 329 114 323).

ALHR is a network of Australian lawyers active in practising and promoting awareness of international human rights standards in Australia. ALHR has a national membership of over 1,300 people, with active National, State and Territory committees.

Through training, information, submissions and networking, ALHR promotes the practice of human rights law in Australia. ALHR has extensive experience and expertise in the principles and practice of international law, and human rights law in Australia.

ALHR is a member of the Australian Forum of Human Rights Organisations. It is a member of the Commonwealth Attorney General's NGO Forum on Human Rights, and the Department for Foreign Affairs Human Rights NGO Consultations.

Issues addressed by ALHR include anti-terrorism laws, refugee and asylum seeker issues, proposed reforms of the Human Rights and Equal Opportunity Commission, amendments to anti-discrimination laws, and Australia's National Human Rights Action Plan.

To help lawyers use human rights remedies in their daily legal work, ALHR runs seminars on the use of international human rights standards in daily legal practice, in areas such as family law, tenancy, anti-discrimination, crime, corporations, land and environment, and employment. We have recently commissioned a training package that we hope to roll out to articulated clerks and APS graduate intakes.

Future Directions for the Australian Economy: Education, skills, training, innovation and productivity (two submissions)

Australia's sustained economic growth has created opportunities for many Australians to increase their wealth, raise their living standards and improve their lifestyles. It also provides an opportunity for greater action to be taken to ensure that all Australians are given the chance to share in the benefits that economic prosperity provides. Australian Lawyers for Human Rights (ALHR) is concerned that the pursuit of economic growth is at risk of being transformed into an end in itself, rather than a means by which social justice can be achieved. ALHR considers that taking steps to reduce economic inequality whilst increasing equal opportunity throughout Australian society is an important means by which to maintain balance between social justice, and economic growth. Ensuring the provision of economic, social and cultural rights to socially disadvantaged groups within society is an economically sound and morally imperative method of investing the profits of Australia's economic strengths back into Australian society.

ALHR supports measures and initiatives designed to allow and encourage foreigners to live and work in Australia. However, ALHR is concerned that the desire to recruit foreign workers, especially in the growing primary industries sector, is leading to the hiring of visa-holders under conditions of employment that discriminate against them on the basis of their visa status. Subclass 457 visa holders are employed according to a legislative scheme that is designed as a safeguard against exploitation by mandating that visa holders are paid the minimum award wage for their occupation. However in industries where salaries are greater than the award due to demand in the labour market, the relative vulnerabilities of visa holders in terms of language, social dislocation, and the simple fact of their contingent visa status, employers are able to award significantly lower salaries to visa holders than Australian citizens. ALHR submits that legislative reform of the *Migration Act 1958* is necessary in order to strengthen the safety net against employer practices that discriminate against Subclass 457 visa holders. ALHR further believes that it is necessary, in developing and implementing schemes to recruit overseas workers that greater attention in general needs to be paid to upholding human rights standards of non-discrimination and equality.

Future Directions for the Australian Economy: Education, skills, training, innovation and productivity (submission two)

Australian Lawyers for Human Rights (ALHR) is concerned that the pursuit of economic growth is at risk of being transformed into an end in itself, rather than a means by which social justice can be achieved.

ALHR is committed to Article 13 of the International Covenant on Economic, Social and Cultural Rights, and therefore to the 'essential features' of the right to education, being its availability, accessibility, adaptability and acceptability. ALHR is concerned that efforts to improve education results contribute to neglect of the critical issue that there are significant groups within Australian society for whom acceptable basic levels of education, taken for granted by the rest of society, are unattainable.

Reform of education should ensure that indigenous and homeless children and children with significant intellectual impairments and especially those with associated behavioural issues are not allowed to slip through the cracks. Out of the box approaches to education must be developed to ensure that children are not totally excluded from education and the ability to socialise with their peers. Due to the decision of *Purvis v New South Wales* (2003) 217 CLR 92, discrimination laws do not presently protect students who are excluded from schools due to behavioural issues, even where those behavioural issues stem from significant economic or family hardship or from disabilities such as ADHD etc. Exclusion from schools not only means these children will not be able to attain the skills necessary to play a meaningful part of our economy in the future, they will be prevented from attaining the social skills necessary to be involved in Australian society for the term of their lives. Alternative solutions and additional funding is vital in preventing this from occurring.

Economic infrastructure, the digital economy and the future of our cities

Australian Lawyers for Human Rights (ALHR) supports the Adelphi Charter on creativity, innovation and intellectual property which sets out the broad principles of a human rights-based intellectual property regime (<http://www.adelphicharter.org/>). ALHR also supports the A2K (Access to Knowledge) movement (<http://www.cptech.org/a2k/>). A2K takes concerns with copyright law and other regulations that affect knowledge and places them within an understandable social need and policy platform: access to knowledge goods. ALHR also supports Creative Commons licences (<http://www.creativecommons.org.au/>).

Human rights call on us to ensure that everyone can create, access, use and share information and knowledge, enabling individuals, communities and societies to achieve their full potential.

The expansion in the law's breadth, scope and term over the last 30 years has resulted in an intellectual property regime which is radically out of line with modern technological, economic and social trends. This threatens the chain of creativity and innovation on which we and future generations depend.

ALHR calls upon governments and the international community to adopt the following principles from the Adelphi Charter.

- Laws regulating intellectual property must serve as means of achieving creative, social and economic ends and not as ends in themselves.
- These laws and regulations must serve, and never overturn, the basic human rights to health, education, employment and cultural life.
- The public interest requires a balance between the public domain and private rights. It also requires a balance between the free competition that is essential for economic vitality and the monopoly rights granted by intellectual property laws.
- Intellectual property protection must not be extended to abstract ideas, facts or data.
- Patents must not be extended over mathematical models, scientific theories, computer code, methods for teaching, business processes, methods of medical diagnosis, therapy or surgery.
- Copyright and patents must be limited in time and their terms must not extend beyond what is proportionate and necessary.
- Government must facilitate a wide range of policies to stimulate access and innovation, including non-proprietary models such as open source software licensing and open access to scientific literature.

- Intellectual property laws must take account of developing countries' social and economic circumstances.

In making decisions about intellectual property law, governments should adhere to these rules:

- There must be an automatic presumption against creating new areas of intellectual property protection, extending existing privileges or extending the duration of rights.
- The burden of proof in such cases must lie on the advocates of change.
- Change must be allowed only if a rigorous analysis clearly demonstrates that it will promote people's basic rights and economic well-being.
- Throughout, there should be wide public consultation and a comprehensive, objective and transparent assessment of public benefits and detriments.

ALHR calls upon the Rudd Government to adopt these principles. Australia should pay particular attention to the intellectual property rights of Australia's indigenous peoples.

Population, sustainability, climate change, and water (two submissions)

Australian Lawyers for Human Rights (ALHR) submits Australia has significant obligations towards sustainability, climate change and use of natural resources.

Sustainability:

The 'Earth Summit' in Rio in 1992 recognised climate change and sustainable development include three key considerations: social, economic and environmental. All Australian governments adopted the NSESD in 1992. However, implementation is neither integrated nor consistent across resources or jurisdictions. ALHR urges greater cooperation between legislatures to facilitate achieving the goals. Cooperation and consistency is necessary to achieve both long and short term strategies.

Climate Change and Energy:

ALHR applauds the Rudd government's ratification of Kyoto. Australia remains one of the world's largest energy consumers (per head/capita). To become a global leader, ALHR submits that Australia must move beyond Kyoto and set binding emissions targets of at least 30% by 2020 and 80% by 2050. ALHR submits this must be addressed urgently.

In considering energy and the newly announced emission trading scheme (ETS), Australia must:

- Stop 'bad' biofuels (such as from regions where natural biodiversity or food security is destroyed or suffers detrimentally to grow plantation energy sources e.g. palm oil – as per the European ETS)
- Ensure safeguards to protect the marginalised/low socio-economic people from increasing costs of energy usage. Examples could include: subsidised schemes similar to Queensland's 'waterwise' program for energy; supply of 'green energy powered' public housing; private housing subsidised by government via tax incentives for 'green' and 'social' investors/superannuation funds charging below 'market rent rates' for disadvantaged groups
- Providing greater financial support for the community, families and individuals rather than only subsidisation of corporations
- Implement mandatory minimum supplies of renewable energy sources by 2020 of at least 25%, which could be started through end-user subsidies rather than corporate subsidies
- Greater levels of recycling incentives e.g. plastics, car tyres (e.g. incentives such as recycling refunds)
- Develop an integrated national scheme of 'carbon capture and storage' rather than *ad hoc* systems at State levels, leaving socio-legal confusion in areas such as tenure security.

Australia must be more active in negotiation of a multilateral post-Kyoto framework with tough binding emission targets. ALHR recommends putting greater pressure on our major trade and diplomatic partners (e.g. US, China). ALHR also seeks government reassurance that refugees and displaced persons affected by consequences of climate change be assisted.

Population, sustainability, climate change, and water (two submissions)

Australian Lawyers for Human Rights (ALHR) submits Australia has significant obligations towards sustainability, climate change and use of natural resources.

Water:

ALHR submits water scarcity is not a recent consideration, nor will it be a short term consideration. ALHR submits Parliamentary Debates in New South Wales and Queensland recognised this problem in the late 1800s. Legal practitioners of the time, including James Hogg and Duncan Kerr, prophetically called for integrated management of this resource. The *National Water Initiative* is one step towards this. ALHR submits this is not sufficient and recommends looking at water in conjunction with other natural resource and biodiversity considerations.

ALHR further submits Australia has human right obligations on the right to water. ALHR submits Australia has obligations to this treaty through signature under the Vienna Convention on the Law of Treaties, regardless of ratification. The UN Committee on ESC Rights recognised this in General Comment 15 (2002). Key obligations, based on Articles 11 & 12 of the ICESCR, include:

- Ensuring water affordability
- Inclusion of indigenous peoples in decision making processes
- Protection of water supplies from pollutants to ensure clean and safe drinking water

To plan for long term goals such as accessibility of water for increased population, ALHR recommends the federal government, in partnership with the States, consider:

- Better infrastructure for water storage or desalination plants, taking into account all elements and costs of ecologically sustainable development, including **direct** and **indirect consequences** for both biodiversity and necessary **human needs**
- Financial incentives (either taxation rebates, subsidised services or grants) to encourage houses to become more 'water efficient' (for an excellent example see <http://www.homewaterwise.com/>)
- Removal of restrictions (in some regions) on, and greater encouragement of, 'grey water' usage and mandatory tanks in new houses
- Encourage MNCs and other companies to commit to the UN endorsed *Water Mandate* calling on global CEOs to facilitate better water management
- Greater measures to encourage higher density living in 'major regional centres' with transport infrastructure, reducing both

strain on already tight water resources in cities and reducing urban sprawl.

Future directions for rural industries and rural communities

Australian Lawyers for Human Rights (ALHR) takes the view that the future direction for rural and remote communities should be one where the rights of Australians living in these areas are protected in the same way as their urban counterparts, so that all Australians, regardless of their geographical area, have access to high quality, affordable services. A number of issues are particularly pressing:

Technology

Improving the quality and accessibility of digital technology in rural and remote areas is of fundamental importance, providing spin-off benefits for the protection of human rights in other crucial areas. Education services, for example, can increasingly be provided remotely via the internet. The Internet also provides an opportunity to access a great array of essential information – on topics including health and access to government services.

Education

As noted above, improving access to communication services is a key aspect of ensuring the availability and standard of education available in rural and remote communities is comparable to that available in urban centres.

ALHR supports programs that provide incentives to attract high quality teachers to rural and remote areas. Further, ALHR supports scholarships and financial assistance programs to assist those living in rural and remote communities to attend university.

Right to health, especially mental health

ALHR notes the specific mental health issues related to living in a remote part of Australia. In some areas, mental health services are non-existent. The need for better mental health services for rural and remote communities is pressing.

More generally, ALHR supports programs designed to bring health care in rural and remote parts of Australia to best practice standards. ALHR also supports schemes to attract and train medical professionals in rural and remote areas.

Further, incentive schemes designed to attract health care professionals to work in rural and remote communities should be encouraged and adequately resourced.

Access to legal services

ALHR supports the work of Community Legal Centres (CLCs) servicing rural and remote communities, and urges the government to ensure CLCs and Legal Aid is accessible and adequately funded, particularly with respect to rural and remote areas.

Although years have passed since the Royal Commission on Aboriginal Deaths in Custody, many recommendations have not been implemented, including access to indigenous legal services. ALHR urges the government to review the outstanding recommendations with a view to implementing them.

Overcoming indigenous disadvantage

ALHR strongly supports prioritising programs to address disadvantage faced by indigenous Australians, many of whom live in regional and remote locations and suffer denial of basic human rights such as the rights to health and housing. ALHR welcomed the apology to the stolen generation and urges the government to continue to prioritise reconciliation on both symbolic and practical levels.

These are some pressing human rights issues facing rural and remote communities. ALHR strongly urges the government to adopt a rights-based approach to service delivery in regional and remote areas to redress the existing inequalities rural and remote communities are faced compared to urban communities.

Options for the future of indigenous Australia (two submissions)

Australian Lawyers for Human Rights (ALHR) believes that by the year 2020 Australia should endorse the UN Declaration on the Rights of Indigenous People 2007.

ALHR believes that achieving the wellbeing and rights of indigenous Australians is the most important human rights challenge Australia faces.

ALHR supports a treaty or new agreement with indigenous Australians. We recommend to the Rudd Government the text *Treaty* by Sean Brennan, Larissa Behrendt, Lisa Strelein and George Williams, published by The Federation Press, Sydney, 2005.

ALHR welcomed the apology to the stolen generations. We urge the Government to implement all the recommendations contained in the Final Report of the *Bringing Them Home* inquiry for the Human Rights and Equal Opportunity Commission in 1997, including reparations. The Stolen Generation Compensation Bill should be supported but is only one aspect of reparations.

ALHR supports compensation for stolen wages. The obligation to provide effective remedies for the violations identified by the 2006 Senate inquiry is best met through a national scheme, ensuring adequate compensation for all Indigenous Australians affected by the protection acts and their descendents. A very useful model for such a scheme may be found in the submission prepared by the Public Interest Advocacy Centre to the panel established by the NSW government on the Aboriginal Trust Fund Reparation Scheme.

ALHR supports strong indigenous representation to government, including Parliamentary representation.

ALHR supports the 'Close the Gap' Campaign for Indigenous Health Equality as a priority human rights issue (<http://www.closesthegap.com.au/>).

ALHR supports the recommendations of Terri Janke and Michael Frankel's [report](#) *Our Culture, Our Future* report on Indigenous intellectual property - particularly with regard to the need for recognition of communal ownership of economic and moral rights in Indigenous copyright works; the establishment of a right of resale, and an effective authenticity marks scheme; as well as the recognition of informed consent and benefit-sharing in respect of access to genetic resources schemes. There is a further need to establish a *sui generis* system to accommodate those rights. There is also a need to revise the native title regime to ensure that native title rights include traditional knowledge. Similarly, there is a need to ensure that cultural heritage laws include intangible property.

Options for the future of indigenous Australia (Submission Two)

Australian Lawyers for Human Rights (ALHR) welcomes the ALP election commitment to a national plan to address domestic violence. It should focus on keeping women and children in their homes and removing the perpetrators, such as the Tasmanian Government's 'Safe at Home' model. ALHR also urges that the protection of indigenous women and children be pursued with increased resources and urgency, but on a non-discriminatory basis.

ALHR has strong concerns about the Northern Territory Intervention, primarily because the legislation supporting the intervention partially suspends the legislative prohibition on racial discrimination contained in the *Racial Discrimination Act 1975* (the RDA). Section 51(xxvi) arguably permits the Federal Government to make discriminatory legislation.

The NT legislation does not allow for judicial scrutiny of the question as to whether the measures qualify as a special measure, pre-empting the matter with the declaration that they are a special measure. To the extent that a subsequent Bill has the legislative capacity to over-ride the original RDA this may be within the legislative power of the Commonwealth, however the RDA's constitutional basis depends on the relevant UN treaty which is the *International Convention on the Elimination of All Forms of Racial Discrimination* (CERD). There are therefore real questions over whether the NT intervention complies with Australia's obligations under international law. There are also outstanding issues over whether the legislation complied with section 50 of the Australian Constitution to acquire property on just terms.

There is also a right to consultation contained within Article 3 of the UN Declaration on the Rights of Indigenous Peoples which should have been allowed in this case.

It is difficult to believe that the NT intervention can achieve the outcome of fulfilling the rights of indigenous Australians when the basis of the laws may not be valid either under domestic or international law.

A long-term national health strategy – including the challenges of preventative health, workforce planning and the ageing population (two submissions)

Australian Lawyers for Human Rights (ALHR) believes that any long-term national health strategy should be based on achieving the right to physical and mental health under Article 12 of the International Covenant on Economic, Social and Cultural Rights. A crucial part of this goal is access to essential medicines.

In the wake of the Doha Declaration on the TRIPS Agreement and Public Health 2001 and the WTO General Council Decision 2003, there is a need for industrialised nations to implement legislation to enable the export of pharmaceutical drugs to address public health concerns.

ALHR would argue that the Patents Act 1990 (Cth) should make provision for the grant of a compulsory licence over a patented invention in circumstances of 'a national emergency or other circumstances of extreme urgency, or in cases of public non-commercial use'. Such a measure is necessary to deal with the possibility of public health epidemics that may take place in Australia - for instance, to deal with a future outbreak of the SARS virus or avian influenza.

The Australian Patents Act 1990 (Cth) should also be amended to allow for the export of pharmaceutical drugs to developing countries, as allowed under Paragraph 6 of the Doha Declaration on Public Health and the TRIPS Agreement 2001. There is a need for a regime for access to medicines, which overcomes the limitations of existing models, such as the Jean Chrétien Pledge To Africa Act 2004 (Can). There should be a flexible mechanism to allow for the export of pharmaceutical drugs in an efficient and timely fashion. There is no need, though, for drugs manufacturers to have a first right of refusal. The definition of pharmaceutical drugs, vaccines and diagnostics should be broad. The definition of a national emergency and public health epidemic should be left to individual nations to determine. Furthermore, the legislation should include WTO members, as well as non-WTO members, such as East Timor. ALHR would urge the Australian Government to play a leadership role in respect of the international debate in respect of patent law and access to essential medicines.

The Federal Government should lobby for the inclusion of a more effective domestic mechanism for the export of pharmaceutical drugs than the cumbersome WTO General Council Decision 2003 in the TRIPS Agreement 1994.

A long-term national health strategy – including the challenges of preventative health, workforce planning and the ageing population

Australian Lawyers for Human Rights (ALHR) believes that any long-term national health strategy should be based on achieving the right to physical and mental health under Article 12 of the International Covenant on Economic, Social and Cultural Rights.

ALHR would note that the Australian Government is currently seeking to negotiate a number of bilateral and regional free trade agreements with our trading partners. Such agreements will, of course, feature Intellectual Property Chapters. The Australian Government will gain much credibility and legitimacy in such negotiations, if it can demonstrate a willingness to implement its multilateral obligations under the TRIPS Agreement 1994, with respect to access to essential medicines. Otherwise, the Australian Government will be left vulnerable to the accusation that it has little commitment to a development agenda in respect of international intellectual property.

Finally, ALHR believes that the development of a mechanism for the export of patented pharmaceutical drugs would complement Australia's humanitarian aid policy in respect of combating infectious diseases, particularly in the region of South-East Asia. There is a need for the Australian Federal Government to reform its intellectual property laws in order to deal with public health epidemics, such as HIV/AIDS, malaria, tuberculosis, the SARS virus, and avian influenza. The provision for a mechanism within the Patents Act 1990 (Cth) to allow for the export of pharmaceutical drugs to tackle such public health epidemics would be a further sign of this serious commitment.

Towards a creative Australia: the future of the arts, film and design (Two submissions)

Australian Lawyers for Human Rights (ALHR) commends the Australian Labor Party for its continued outspoken criticism of the sedition laws and urges the Government to put its words into action and remove “these clumsy, poorly-drafted...ill-conceived”¹ and archaic provisions in their entirety².

In October 2005 the now Minister for the Environment, Heritage and the Arts, Peter Garrett, spoke directly to the impact of the sedition clauses in Australia’s anti-terror legislation on the free expression of opinion, principally in relation to the arts. He stated that “Australians involved in the artistic and creative fields are particularly vulnerable to the risk of prosecution under the regime”³.

ALHR consider that the offences contained in the sedition provisions in Australia’s Terrorism laws constrain the freedom of expression of artists and commentators inhibiting one of their key roles to exercise their human right to represent, discuss and critique ideas⁴.

The work of artists - be they painters, cartoonists, songwriters, filmmakers or satirists - is often oblique and metaphorical, inherently obscured by ambiguity. The idea of ‘influence’ under the Terror laws is largely undefined. Assistance to terrorists or terrorist organisations ‘by any means whatever’ is punishable by 7 years imprisonment.

While acknowledging the ‘good faith’ defence present in the legislation, ALHR believe that the narrowness of the provision, coupled with the burden of proof resting with the artist, is unsatisfactory.

When the sedition provisions were first debated, self-censorship was heralded as the likely effect – seeing artists and commentators tailoring their work so as to avoid contentious issues out of fear of possible misinterpretation of their work or abuse of power by government.

With the benefit of hindsight we can now clearly see that these were not vague and empty concerns. SBS has insisted that filmmakers now police their own work for seditious material including a sedition clause in its standard TV licensing agreement. Sedition concerns have extended into classification, where the active influence of Government in censorship was highlighted in July 2006 when the Classification Review Board ‘refused classification’ for two Islamic books, *Defence of the Muslim Lands* and *Join the Caravan*.

ALHR draws the Government’s attention to the engaging and articulate response to Australia’s ‘war on terror’ in relation to the impact on the work and

¹ The Hon Nicola Roxon MP, Media Statement, 13 September 2006

² The Hon Peter Garrett MP, Parliament: Main Committee - Australian Law Reform Commission Report, 9 October 2006, <http://www.petergarrett.com.au/231.aspx>

³ The Hon Peter Garrett MP, Media Statement, 30 October 2005 <http://www.petergarrett.com.au/103.aspx>

⁴ Article 19 Universal Declaration of Human Rights – “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”

freedoms of academics made my George Williams and Edwina MacDonald. ALHR submits that their words lend themselves easily to the influence the law is having, and will continue to have, on the media and artistic community should it remain unchanged. In particular - continued knowledge and understanding of the complex issues facing society today require “an environment in which [citizens] can freely exchange ideas, challenge conventional wisdom and debate controversial issues”⁵.

ALHR is of the opinion that the Australian response to the ‘war on terror’ infringes the role of media and the arts, industries that should be protected and fostered as invaluable prisms of debate, information and insight.

⁵War on Terror threatens solutions to terrorism, G. Williams & E. MacDonald
<http://www.onlineopinion.com.au/view.asp?article=4961>

Towards a creative Australia: the future of the arts, film and design

Disability Rights

At least one in five people in the Australia has a disability. Equal access to, and participation in, artistic and cultural life is recognised in international law as a human right,⁶ including for people with disabilities.

Australian Lawyers for Human Rights (ALHR) urges the Government to continue working towards accessibility of performance and exhibition spaces by people with disabilities and thereby facilitating their participating in the creation or appreciation of art. This should include access to and within heritage sites the implementation of international best-practice guidelines for the design of accessible websites.

Indigenous Rights

ALHR is of the opinion that Intellectual Property protections in Australia need to be considered in respect of the unique significance arts and culture holds for Indigenous peoples.

In particular, ALHR recognises that there are various protections that could be afforded to Indigenous cultural heritage, including: the protection of the underlying ideas or information that is put into a work; a style or method of art; some performances such as dance and music regardless of whether they have been recorded; and a community's rights in an artwork.

⁶ International [Covenant on Economic, Social and Cultural Rights](#), Article 15

The future of Australian governance: renewed democracy, a more open government (including the role of the media), the structure of the Federation and the rights and responsibilities of citizens (two submissions)

Australian Lawyers for Human Rights believes that a national charter of rights would improve the protection of rights and also provide an accessible statement of the rights that are fundamental to a life of dignity and value. The development of a culture of human rights and adherence to the rule of law will be greatly assisted by a national charter. ALHR is devoted to the establishment of a Charter of Rights at the Commonwealth level, which would complement legislative efforts already made in the ACT and Victoria, and soon WA and Tasmania.

ALHR welcomes the government's commitment to signal acceptance of the UN Declaration on the Rights of Indigenous People 2007 and its community consultation process. We urge the government to indicate to the General Assembly its unequivocal endorsement of the rights and principles contained in the Declaration and its commitment to a full implementation of the goals of the Declaration by the year 2020.

ALHR support the 58-08 campaign to repeal federal laws which discriminate against same-sex couples (<http://www.girl.org.au/58/>), based on the recommendations of the HREOC's *National Inquiry into Discrimination against People in Same-Sex Relationships* (2007). ALHR hopes for the eventual recognition of same-sex unions in every State and Territory.

ALHR supports the full implementation of the UN Convention on Disabilities and its Optional Protocol into Australian domestic law. We urge the Government to speed up the process of ratification so that Australia can have some input into the selection of the treaty body.

ALHR recommends that Australia sign as a matter of urgency the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). Australia needs to ensure equal pay for women, protection from all forms of violence, paid maternity leave and equal political representation for Australian women.

ALHR welcomes the Rudd Government's policy focus on homelessness and insecure housing in Australia and hopes that the White Paper process will bear fruit. ALHR considers that homelessness must be seen as a human rights and social exclusion issue, not just a matter for welfare or private charity.

ALHR welcomed the Government's announcement that Australia will sign the Optional Protocol to the Convention Against Torture (CAT), and will clarify the criminal sanctions against torture in Australian law.

ALHR believes that the counter-terrorism laws passed since September 2001 contain significant human rights breaches and need to be reviewed and amended to achieve compliance with our international obligations.

ALHR welcomed the Government's signing of the Kyoto Protocol, and asks that a full assessment of the human rights impacts of climate change for Australia, including 'climate refugees' from the region, be made a matter of urgent policy review.

ALHR calls for the immediate repeal of the inhumane and internationally condemned regime of mandatory, indefinite detention of unlawful non-citizens, the repeal of the excision regime, and the closure of the Christmas Island detention centre.

Strengthening communities and supporting working families

Australian Lawyers for Human Rights (ALHR) believes that a national charter of rights would improve the protection of rights and also provide an accessible statement of the rights that are fundamental to a life of dignity and value. It is crucial that this 2020 vision of human rights for Australians include equality for women.

Australia needs to ensure equal pay for women, protection from all forms of violence, paid maternity leave and equal political representation for Australian women. ALHR welcomes the ALP election commitment to a national plan to address domestic violence. It should focus on keeping women and children in their homes and removing the perpetrators, such as the Tasmanian Government's 'Safe at Home' model. ALHR also urges that the protection of indigenous women and children be pursued with resources and urgency, but on a non-discriminatory basis.

ALHR is concerned that paid maternity leave is only being examined by the Productivity Commission, the implication being that maternity leave is only to encourage women's economic roles as workers. Paid maternity leave should be part of a much larger policy discussion about how government can best support parents and children to make choices that benefit both the individual family and Australian society.

ALHR supports the 58-08 campaign to repeal federal laws which discriminate against same-sex couples (<http://www.girl.org.au/58/>), based on the recommendations of the HREOC's *National Inquiry into Discrimination against People in Same-Sex Relationships* (2007). ALHR hopes for the eventual recognition of same-sex unions in every State and Territory.

ALHR has some key recommendations for the machinery of government to help improve gender justice in Australia by 2020.

- Move the Office for Women back into the Department of Prime Minister and Cabinet (PM&C). Put the Minister for Women back into Cabinet. Direct the Australian Public Service to consider the effect on women of new policies at the Cabinet Submission stage.
- Deliver on election promise to sign the Optional Protocol to the Convention for the Elimination of Discrimination Against Women (CEDAW).
- Increase the statutory powers of the Sex Discrimination Commissioner. Place the equal pay monitoring unit back into the Department of Education, Employment and Workplace Relations.
- Create a Parliamentary Joint Standing Committee to inquire into issues affecting women in Australian society.
- Reinstigate the collection of gender data so that policy can be evidence-based – for example, revive the Women's Data Unit in the ABS,

redirect the Personal Safety Survey back to the original Women's Personal Safety Survey, and fund Australian Institute of Criminology to once again monitor homicides as a result of domestic violence.

Australia's future security and prosperity in a rapidly changing region and world (three submissions)

Australian Lawyers for Human Rights (ALHR) has a vision of Australia's future in the year 2020 as a nation whose security and prosperity is firmly grounded in respect for human rights. ALHR sees Australia as a regional and global leader in this regard.

To this end, ALHR believes strongly that the Australian Government should be promoting the development of a regional human rights instrument and mechanism. For example, the displacement of people in the Asia-Pacific region due to climate change is going to require a principled response based on burden-sharing, similar to the Comprehensive Plan of Action in the 1980s.

In order to achieve that vision, the other strategy for Australia to follow is to engage in multilateral diplomacy within the United Nations system, particularly the human rights system. For example, Australia can best protect its national security interests in the face of an increasingly complex threat spectrum by maintaining a balanced approach to 'terrorist' threats that is grounded in human rights and working within the UN system. Australia is better positioned to maintain fragile relationships with partners such as the US, China and India through being a multilateral player rather than taking an issue by issue bilateral approach. A first and crucial step would be to undertake a thorough (and well overdue) examination of Australia's engagement with the UN.

ALHR believes that Australia has sustained substantial damage to its international reputation through negative engagement with the UN human rights treaty bodies, notably the Human Rights Committee and the Committee for the Elimination of Racial Discrimination over treatment of asylum seekers and indigenous peoples.

Australia's future security and prosperity in a rapidly changing region and world (Submission Two)

Human rights are an area where Australia can and should be a regional and global leader by 2020. This is the vision of the Australian Lawyers for Human Rights (ALHR). Australia's most important initial contribution would be to fulfil our own human rights treaty obligations. Until Australia implements the commitments we have made by ratifying many treaties, we have no moral or political right to urge other countries to do so. We are still in breach of many treaties. Most importantly, ALHR believes that the counter-terrorism laws passed since September 2001 contain significant human rights breaches and need to be reviewed and amended to achieve compliance with our international obligations.

In the short term, ALHR urges the Rudd Government to:

- indicate Australia's acceptance of the Declaration on the Rights of Indigenous Peoples at the earliest opportunity;
- sign the Optional Protocol to the Convention of the Elimination of Discrimination Against Women (CEDAW); and
- implement the Convention on Disabilities into domestic law as soon as possible.

Australia must divest itself of the 'spoiler' role that it has assumed in the last decade in the development of many new international treaties. In this light, ALHR welcomes the early efforts by the Rudd Government to sign the Kyoto Protocol and the Optional Protocol to CAT. We urge the Government to indicate acceptance of the Declaration on the Rights of Indigenous Peoples at the earliest opportunity, and to sign the Optional Protocol to CEDAW. While adding Australia's signature to the Convention on Disabilities is a welcome development, it is crucial that Australia reclaims its position as a leader in the development, adoption and ratification of human rights treaties. Australia should also take a leadership role in securing industrialised country interest in ratifying instruments such as the Convention on the Rights of Migrant Workers. As a key indicator of its leadership, ALHR urges timely and effective incorporation of its human rights treaty obligations into Australian domestic law.

One area where Australia has played a leadership role is in the development of the 'Responsibility to Protect' framework for UN interventions. This is a role that should be supported by the Rudd Government. Australia should also closely align its ODA spending with reporting against the Millennium Development Goals.

Australia's future security and prosperity in a rapidly changing region and world. (Submission Three)

Australian Lawyers for Human Rights (ALHR) has a vision of Australia's future in the year 2020 as a nation whose security and prosperity is firmly grounded in respect for human rights. ALHR sees Australia as a regional and global leader in this regard.

ALHR believes that to maximise Australia's long-term influence and interests, we should change the manner in which we engage with the UN with regard to *personnel issues*. Namely, Australia should:

- institute the system of Australian secondments to the UN Junior Professional Officers scheme (JPO). JPOs are sponsored by their respective governments. Currently 23 donor governments participate in the Programme, many of which constitute middle power Western democracies.
- audit the presence of Australian nationals currently in the UN system and keep track of their career progression within the UN.
- reverse the existing longstanding practice of not providing support to the candidacy of Australian nationals to senior UN posts.
- recognise and reward Australians who make a significant contribution to the UN system, such as Erika Feller, Assistant High Commissioner for Refugees (Protection),, John Langmore, formerly Director of the Division for Social Policy and Development, UN Department of Economic and Social Affairs, and many others.