

Human Rights Leadership:

Initiatives to Promote Human Rights at Home and Abroad

1. Introduction

1. In May 2008, the Human Rights Law Resource Centre prepared a paper for the Federal Government entitled '*Strengthening Human Rights: Some Initiatives for Government at the International and Domestic Levels*'. The paper set out a range of initiatives to strengthen human rights at the local, regional and international levels, demonstrate human rights leadership, and promote responsible international citizenship.
2. It is significant and laudable that, in just over a year, the Federal Government has acted consistently with many of those initiatives, including by undertaking a National Human Rights Consultation, ratifying the *Convention on the Rights of Persons with Disabilities* and the *Optional Protocol to the Convention on the Elimination of Discrimination against Women*, signing the *Optional Protocol to the Convention against Torture*, issuing a standing invitation to Special Procedures of the Human Rights Council, and endorsing the *Declaration on the Rights of Indigenous Peoples*.
3. This paper outlines a number of further institutional measures to improve the protection and promotion of human rights in Australia and through Australian foreign policy. The paper does not address the many substantive human rights issues confronting Australia.¹ Rather, the paper considers initiatives which the Government could take to establish and strengthen normative, preventative and remedial mechanisms to promote and protect human rights locally, regionally and internationally.
4. The initiatives are designed both to respond to existing human rights challenges and to capitalise on emerging human rights opportunities. They are drawn from a range of sources, including the Centre's submissions to various parliamentary and law reform inquiries, non-

¹ For a useful summary of these issues, see the recent Concluding Observations on Australia by the Human Rights Committee (UN Doc CCPR/C/AUS/CO/5 [2 April 2009]) and the Committee on Economic, Social and Cultural Rights (UN Doc E/C.12/AUS/CO/4 [22 May 2009]).

- government reports submitted to UN human rights treaty bodies (together with the recommendations of such bodies), and a roundtable of leading Australian and international human rights experts convened in October 2008.
5. The paper identifies areas for action and reform, but does not provide extensive background or detail. Further information is available on request.

2. International and Regional Human Rights Initiatives

2.1 Adopt an Explicit and Integrated Human Rights Approach to Foreign Policy

6. Australia has a profound national interest in a rule-based international system that values and promotes human rights, human security, democracy and good governance.
7. Australia has a range of characteristics that position it to be a highly effective human rights promoter state, including that it is democratic, globalised, multicultural but with relatively low levels of social stratification, economically developed, politically stable and secure, with an active and networked civil society.
8. Australia also has a significant opportunity to be an influential and not merely rhetorical human rights promoter state, being a middle power in the only region of the world without a regional human rights instrument or mechanism, and a region confronting significant human rights and development issues.
9. The manifold benefits of Australia positioning itself as a humanitarian internationalist state and human rights promoter include:²
- (a) enhanced policy coherence and effectiveness as human rights is used as a common framework for domestic, bilateral and multilateral policy and relations;³
 - (b) enhanced international credibility and diplomatic capital;
 - (c) the development of diverse, cross-cutting international networks with other promoter states;⁴

² See generally, Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009).

³ There is strong evidence that Canada's domestic Charter of Rights and Freedoms and its foreign policy on 'Human Rights, Democracy and Good Governance' have formed a virtuous circle and been mutually reinforcing: see, eg, Louise Arbour, 'The Responsibility to Protect and the Duty to Punish: Politics and Justice in a Safer World' (2001) 59 *Behind the Headlines* 1; Alison Brysk, *Global Good Samaritans: Human Rights as Foreign Policy* (2009), 91, 226.

⁴ For example, Australia should consider joining the Human Security Network, a group of like-minded states such as Canada, Ireland, Costa Rica and Norway, formed to further develop and enact the 'human security agenda', including the 'responsibility to protect' doctrine (see <http://www.humansecuritynetwork.org/menu-e.php>).

- (d) the development of a more stable and predictable international and regional policy environment; and
 - (e) the mobilisation of constructive national values and identities.
10. **Australia should strategically position itself as an outstanding international citizen and human rights promoter, including by developing a comprehensive policy and strategy on human rights and foreign policy.⁵ The policy should seek to mainstream and integrate human rights across all areas of Australian foreign policy, including aid, development, trade, investment, migration and security. It should contain concrete measures and commitments to promote and protect human rights in the region and internationally.**

2.2 Human Rights and Australia's Security Council Candidacy for 2013-2014

11. Australia is seeking election as a non-permanent member of the UN Security Council for 2013-2014. A Department of Foreign Affairs brochure outlining the candidacy identifies 'Respecting human rights' as one of four key pillars and promotes Australia as a 'principled advocate of human rights for all'.⁶
12. Australia has played a significant and constructive role in the development and operation of international human rights norms and institutions. **Australia should commit its Security Council candidacy to the promotion and protection of fundamental rights and freedoms, including through the further elaboration of human rights standards and the strengthening of institutions and mechanisms at the international, regional and domestic levels.**
13. As a Security Council candidate, Australia should commit to taking a principled and consistent approach to human rights and to ensuring that domestic policies and practices are human rights compliant. **Australia should use its Security Council candidacy as a vehicle to promote Australia's objectives and national interest in promoting international human rights, the rule of law and good governance.**
14. **If Australia is elected to the Security Council, it should engage the Council in effectively responding to major human rights challenges and implications, including in relation to climate change, poverty, financial instability and food insecurity.**
15. **Australia should also use its candidacy and seat if successful to further develop and pursue a progressive international human rights agenda, including by advocating for:**

⁵ For an example of a leading state in this regard, see Ministry of Foreign Affairs (Netherlands), *Human Dignity for All: A Human Rights Strategy for Foreign Policy* (at <http://www.minbuza.nl/dsresource?objectid=buzabeheer:53627&type=org>).

(1) the universal abolition of the death penalty and a moratorium on executions; (2) the advancement of Indigenous peoples globally; (3) the further elaboration of robust international and domestic regulatory frameworks for business and human rights; (4) progress in gender equality and non-discrimination, including reducing violence against women and children; (5) addressing the threat of terrorism in a human rights and human security framework; (6) the operationalisation of the ‘responsibility to protect’ principle; and (7) addressing poverty in a human rights framework, particularly in Asia and the Pacific Each of these priorities would strategically align with Australia’s domestic interests and commitments.⁷

2.3 Ratify the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*

16. On 10 December 2008, the UN General Assembly adopted the *Optional Protocol to the International Covenant on Economic, Social and Cultural Rights*. The Optional Protocol will open for signature on 29 September 2009 by States who are party to the ICESCR, and will enter into force upon ratification or accession by ten states.
17. Australia is a party to the ICESCR and played an important and constructive role in the development of that instrument. In the final session of the Working Group for the development of an Optional Protocol, Australia played a valuable role in achieving compromise and developing consensus on the text that was ultimately adopted.
18. The benefits of ratification of the Optional Protocol include that it will:
 - (a) complement and strengthen rights that matter to Australians;
 - (b) re-affirm Australia’s commitment to constructive engagement with the UN system;
 - (c) confirm Australia’s position internationally as human rights leader;
 - (d) enhance public awareness and understanding of social and economic rights;
 - (e) enable Australia to contribute to the development of standards and jurisprudence concerning social and economic rights; and

⁶ See ‘Australia: Security Council Candidate 2013-2014’ (at <http://www.dfat.gov.au/un/unga.html>).

⁷ In 2007, the Ministry of Foreign Affairs of the Netherlands published *Human Dignity for All: A Human Rights Strategy for Foreign Policy* (at <http://www.minbuza.nl/dsresource?objectid=buzabeheer:53627&type=org>). The Policy commits the Netherlands to 100 concrete activities to advance human rights in six priority areas, being: (1) abolition of the death penalty; (2) an absolute ban on torture; (3) the relationship between freedom of religion and other rights and freedoms; (4) women’s rights; (5) children’s rights; and (6) non-discrimination on the basis of sexuality.

- (f) be capable of being implemented with relative ease in Australia's legal and political structures, without opening the way for a flood of litigation.
19. **Australia should be a member of the first group of states to sign and ratify the Optional Protocol to the ICESCR and thereby bring it into force.**

2.4 Ratify other International Human Rights Instruments

20. Australia is a party to the significant majority of core international human rights treaties and protocols. In addition to becoming party to the Optional Protocol to ICESCR (discussed above), Australia should expedite ratification of, or accession to, the following outstanding instruments:
- (a) the *Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (which Australia has signed but not acceded to);⁸
 - (b) the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*; and
 - (c) the *International Convention for the Protection of All Persons from Enforced Disappearance*.⁹

2.5 Build Human Rights Capacity in the Pacific

21. Together with Asia, the Pacific is the only area in the world without a regional human rights law or institution. Within the Pacific, states confront a range of significant human rights and rule of law issues, including entrenched poverty, systemic gender inequality, inadequate health care and an increasing incidence of HIV/AIDS. The human rights implications of climate change for the Pacific could be catastrophic.
22. Despite this, the Pacific has the lowest human rights treaty ratification rate of any global region, notwithstanding that treaties such as the ICCPR and ICESCR provide clear, comprehensive, internationally accepted principles that can enhance governance and improve accountability. The Pacific also has the smallest number of National Human Rights Institutions of any region in the world, although Nauru and Samoa are both actively considering establishing such mechanisms.

⁸ This Convention has been ratified or acceded to by a number of comparable and like-minded states, such as Denmark, France, Germany, New Zealand, Spain, Sweden and the United Kingdom.

⁹ This Convention has been signed by a number of comparable and like-minded states, such as Brazil, Denmark, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway and Sweden.

23. There are a number of reasons for the low level of treaty ratification and NHRI establishment, including that, in many Pacific states, both governments and civil society have limited financial and human resources and lack the technical capacity and expertise to fulfill treaty obligations, particularly monitoring and reporting requirements.
24. As a developed democracy and influential middle-power with an active and engaged civil society, Australia has an important leadership role to play in promoting and supporting the development of regional laws and institutions to promote, protect and mainstream human rights.
25. **To build Pacific civil society capacity in the area of human rights, Australia should fund the establishment of an Oceania Human Rights Network.** This would comprise a coalition of human rights focused NGOs from the Pacific, Australia and New Zealand which seeks to facilitate dialogue, networking, capacity building and collaboration between NGOs across the region, and to work constructively with governments to promote human rights standards and institutions.
26. **To build Pacific governmental capacity, Australia should sponsor the establishment of an adequately resourced unit within the Pacific regional office of the UN High Commissioner for Human Rights in Suva, Fiji, to promote and facilitate:**
 - (a) **human rights treaty ratification, implementation, monitoring and reporting;**
 - (b) **the development of an appropriate and effective regional human rights instrument and mechanism that accords with the spirit of the Paris Principles;**
 - (c) **the development of appropriate, independent, effective and sustainable NHRIs consistent with the Paris Principles; and**
 - (d) **enhanced parliamentary scrutiny and judicial enforcement of human rights.**

2.6 Prepare for Universal Periodic Review by the UN Human Rights Council in 2011

27. Australia is scheduled to go through the Human Rights Council's Universal Periodic Review process in 2011. The recent Canadian appearance demonstrated the need to ensure adequate planning and 'open, transparent, timely and substantive engagement' with both government and civil society in preparation for the UPR. Consistent with the recommendations of Canada's Senate Standing Committee on Human Rights,¹⁰ the Centre considers that:

¹⁰ Standing Senate Committee on Human Rights (Canada), *Canada's Universal Periodic Review before the United Nations Human Rights Council* (May 2009) (at <http://www.parl.gc.ca/40/2/parlbus/commbus/senate/comm-e/huma-e/rep-e/rep02may09-e.htm>).

- (a) **the Government should develop a detailed plan for its preparation for, and response to, the Universal Periodic Review. This plan should outline a process that will ensure open, transparent, timely and substantive engagement with civil society, parliamentarians, and the Australian public with respect to Australia's human rights obligations; and**
- (b) **the Government should commit to table in Parliament its submissions and responses to the UPR, as well as any of the Council's reports regarding Australia's review.**

2.7 Institutionalise Support for NGO Reports to UN Treaty Bodies

- 28. The Australian Government is committed to constructive engagement with the United Nations and to fully complying with its international human rights obligations.
- 29. Periodic reporting and review by UN human rights treaty bodies is a critical aspect this commitment. At a recent review of Australia by the UN Human Rights Committee, the Australian delegation stated that 'Australia welcomes and needs this form of international scrutiny to ensure adherence with its human rights obligations'.
- 30. Non-government organisations are playing an increasingly important role within the UN human rights system, including through the preparation of NGO (or 'Shadow') Reports to treaty bodies, to promote a constructive and rigorous dialogue between states and independent human rights experts.
- 31. Over the last two years, the Australian Government has financially supported the engagement of NGOs with UN treaty bodies. However, while this support is welcome and valuable, it is provided in a largely fragmented and ad hoc way. For example, the Office for the Status of Women provided \$100,000 for an NGO report to the Committee on the Elimination of Discrimination against Women, while the Attorney General's Department provided \$15,000 for an NGO report to the Human Rights Committee and \$20,000 for a report to the Committee on the Elimination of Racial Discrimination. No funding was provided for the review by the Committee on Economic, Social and Cultural Rights and, to date, no funding has been made available for forthcoming reviews under the *Convention on the Rights of the Child* or the *Convention on the Rights of Persons with Disabilities*.
- 32. **Given the valuable and constructive contributions that NGO reports can make to the human rights review process and the domestic protection of such rights, the Centre considers that it would be useful for Government to develop a consistent and streamlined approach to funding to facilitate coordinated NGO engagement with the UN human rights system.**

2.8 Nominate Experts to UN Human Rights Treaty Bodies and Special Procedure Mandate Holders

33. The strength of the UN's human rights mechanisms, including both the treaty bodies and the Special Procedures of the Human Rights Council, is significantly reliant on the appointment of high quality candidates. At present, there is only one Australian who is a member of a treaty body (being Professor Ron McCallum as a member of the Committee on the Rights of Persons with Disabilities) and one Australian who is a Special Procedure mandate holder (being Professor Philip Alston as Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions).
34. In the Centre's view, **Australia should more actively engage in the nomination and selection of treaty body members and Special Procedure mandate holders. Further, rather than engaging in vote trading, Australia should emphasise competence, independence and qualifications as the primary criterion for nomination and selection.**¹¹

2.9 Establish the Post of Australian Human Rights Ambassador

35. Over the last two decades, a number of international human rights promoter states have established the post of Human Rights Ambassador, including the Netherlands, Norway, Sweden, France and Spain.
36. In general, the posts are established to ensure that human rights are integrated and promoted within and across all areas of foreign policy and development cooperation. They are generally based in-country but participate in, and often lead, government delegations and dialogue. Human rights ambassadors also often play a role in engaging with domestic and international civil society, acting as a focal point to 'propagate human rights policy and acquire new ideas'.¹²
37. In Canada, the Standing Senate Committee on Human Rights has recently unanimously recommended that 'the Government of Canada put into place a Canadian ambassador for human rights, based in Canada, to work in coordination with relevant federal departments. The ambassador should be Canada's permanent representative to the Human Rights Council and coordinate Canada's negotiations on human rights issues in a consistent manner across all international forums.' The Committee considered that:

¹¹ In this regard, see also the recommendations of Canada's Senate Standing Committee on Human Rights, *Canada and the United Nations Human Rights Council: Time for Serious Re-Evaluation* (June 2008) (at <http://www.parl.gc.ca/39/2/parlbus/commbus/senate/com-e/huma-e/rep-e/rep13jun08-e.pdf>).

¹² The mandate of the Dutch Human Rights Ambassador is set out at: http://www.minbuza.nl/en/Key_Topics/Human_Rights/Dutch_Human_Rights_Policy/The_human_rights_ambassador.

Such an ambassador could boost both the profile and effectiveness of Canada's human rights efforts at the Council by ensuring that Canada has the capacity to undertake elevated diplomatic initiatives and fully evolve into its role on the Council. The ambassador could essentially play the role of focal point within the Canadian government to concentrate on human rights as part of Canadian foreign policy. A human rights ambassador would significantly enhance Canada's role and capacity at the Council, raise the standing of human rights as a foreign policy issue, and re-focus Canada on the necessity of implementing its international human rights obligations in domestic law.¹³

38. **The Australian Government should actively consider the establishment of the post of Australian Human Rights Ambassador to promote human rights within and across all areas of foreign policy and development cooperation, and ensure a coordinated and coherent approach to human rights at the international level.**

2.10 Expand the AusAID Human Rights Small Grants Scheme

39. Australia's Human Rights Small Grants Scheme provides much needed funding to 'build the capacity of civil society and NGOs in developing countries to protect and promote human rights at the grassroots level'. The recent decision to expand this fund is very welcome.
40. Under the Scheme, funding is provided on a *short-term project basis* only for *existing organisations* that are *based in developing countries*. While this support is invaluable, the Centre considers that the **Small Grants Scheme should be expanded or supplemented by a Human Rights Grant Scheme which provides longer-term funding for national, regional and international NGOs that are working on human rights issues relevant to developing countries**. In the Netherlands, for example, the Human Rights Fund of the Foreign Ministry provided 22.5 million euros to a diverse range of national, regional and international human rights NGOs in 2008. This will rise to 25 million euros in 2009 and 27.5 million euros in 2010.¹⁴

¹³ Standing Senate Committee on Human Rights (Canada), *Canada and the United Nations Human Rights Council: Time for Serious Re-Evaluation* (June 2008) (at <http://www.parl.gc.ca/39/2/parlbus/commbus/senate/com-e/huma-e/rep-e/rep13jun08-e.pdf>).

¹⁴ See http://www.minbuza.nl/en/News/Newsflashes/2008/04/The_Netherlands_pledges_extra_funding_for_human_rights. The Fund provides core, recurrent funding for a range of NGOs, including the International Service for Human Rights, the Association for the Prevention of Torture and the International Commission of Jurists. An independent evaluation of the Fund in 2004 found that the funded organisations were efficient, accountable and effective in promoting and protecting human rights: see http://www.euforic.org/iob/detail_page.phtml?&username=guest@euforic.org&password=9999&groups=IOB&&page=docs_eval_content.

3. Domestic Human Rights Initiatives

3.1 Enhance Parliamentary Scrutiny of Human Rights

41. Compliance with obligations arising under both international and domestic human rights laws requires effective monitoring systems. In this regard, it is notable that the UN Human Rights Committee's recent Concluding Observations on Australia recommended that Australia establish a mechanism to consistently ensure the compatibility of domestic law with the ICCPR¹⁵ and establish appropriate procedures to implement views of the Committee in individual cases.¹⁶
42. **As an aspect of implementing this important recommendation, the Centre considers that Government should lead the establishment of a Joint Parliamentary Human Rights Committee to:**
- (a) **scrutinise all Bills and subordinate legislation for compatibility with protected rights;**
 - (b) **conduct thematic inquiries into human rights issues; and**
 - (c) **monitor and report on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of the Special Procedures of the UN Human Rights Council.**
43. The UK Joint Committee on Human Rights has similar functions and is an example of a highly effective parliamentary committee. It has been described as 'one notable way in which parliamentary accountability is being enhanced'.¹⁷
44. The scrutiny of new and existing legislation for compatibility with protected rights is an important preventative measure that can reduce the risk of legislation infringing human rights. The Committee should be given the power to review all legislation – proposed or existing, primary or subordinate – of its own motion, in response to a report from an independent body such as the Australian Human Rights Commission, or following referral from either House of Parliament. The Committee should have the usual powers of parliamentary committees, including receiving submissions from relevant stakeholders and reporting back to Parliament with findings and recommendations.

¹⁵ Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia* [8], UN Doc CCPR/C/AUS/CO/5 (2009).

¹⁶ Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia* [10], UN Doc CCPR/C/AUS/CO/5 (2009).

¹⁷ Anthony Lester, 'Parliamentary Scrutiny of Legislation under the Human Rights Act 1998' (2002) 33 *Victoria University of Wellington Law Review* 1, 2.

45. The JPCHR could also lead parliamentary engagement with, and understanding of, international human rights issues and monitor and report on the implementation of the Concluding Observations and Views of UN treaty bodies and the recommendations of the Special Procedures of the UN Human Rights Council.

3.2 Convene Roundtable on Follow Up to Concluding Observations of Human Rights Committee and Committee on Economic, Social and Cultural Rights

46. The Attorney-General's Department is to be congratulated on its important recent initiative to seek NGO input on follow up to the Concluding Observations of the Committee against Torture and the Human Rights Committee.¹⁸
47. The Centre considers it would be very useful to supplement this initiative with a small conference or roundtable involving relevant government officials and departments, NGOs and, where appropriate, state and territory government representatives, to discuss implementation issues in further detail. Such a conference should discuss follow up on the Concluding Observations under both the ICCPR and ICESCR, perhaps by identifying and focusing on 4-5 major cross-cutting themes identified by the respective treaty bodies.
48. In the Centre's view, such a conference or roundtable could build on the collaborative work already undertaken in the treaty body processes by government and NGOs and develop a mutual program of action and implementation in key areas. It would also be a useful forum in which government and NGOs could share insights and discuss approaches to forthcoming reviews by CERD, CEDAW, CRPD and CRC.

3.3 Promote Engagement of Business and Human Rights

49. Business entities can have a significant impact, both positive and negative, on the enjoyment of human rights. While Australian businesses are already subject to some human rights laws and mechanisms, there is considerable scope to increase the human rights accountability of the corporate sector.
50. In April 2008 the UN Special Representative on Business and Human Rights released his 'Protect, Respect and Remedy' framework, which is considered to be the authoritative model for addressing ways in which to impute human rights duties to business.¹⁹
51. The Special Representative's framework sets out three duties and responsibilities:

¹⁸ See, eg, <http://www.ag.gov.au/humanrights>.

¹⁹ John Ruggie (United Nations Special Representative on Business and Human Rights), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 (7 April 2008).

- (a) States are under a *duty to protect* human rights;
 - (b) States are under a duty to provide *access to a remedy* for breach of human right by third parties (such as corporations); and
 - (c) business has a *responsibility to respect* human rights.²⁰
52. **The Special Representative's framework should be adopted by the Government as a basis for its corporate human rights policy and approach.**
53. **Further, the Government should actively support and engage with the work of the Special Representative, including by officially inviting him to undertake a mission to Australia to meet with government, business, human rights NGOs and other key stakeholders.**
54. According to the Special Representative, one of the most effective means by which to promote rights compliance is to develop corporate cultures in which respecting rights is seen as being an integral part of doing business.²¹ Government is uniquely placed to stimulate the development of these cultures. By devising innovative mechanisms which harness the power of the market, and by leveraging its regulatory and service-provision functions, government can simultaneously encourage business entities to respect human rights and enable them to pursue their business objectives.
55. **The Federal Government should consider the following soft power tools to operationalise the 'Protect, Respect and Remedy' framework for business and human rights:**
- (a) **incorporate human rights provisions in governmental contracts;**
 - (b) **conduct or require Human Rights Impact Assessments, particularly on large-scale projects;**
 - (c) **support socially-responsible market indices and certification programs. At a minimum government should, for example, take these indices and programs into account as part of its procurement policy and practice;**
 - (d) **provide the Australian Human Rights Commission with funding to establish a unit dedicated to promoting human rights within business;**
 - (e) **develop voluntary national guidelines for business on how to act compatibly with human rights; and**

²⁰ John Ruggie (United Nations Special Representative on Business and Human Rights), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 (7 April 2008), [9].

²¹ John Ruggie (United Nations Special Representative on Business and Human Rights), *Protect, Respect and Remedy: A Framework for Business and Human Rights*, UN Doc. A/HRC/8/5 (7 April 2008), [29].

- (f) **strengthen the OECD National contact point.**

3.4 Enact Comprehensive Equality Legislation

56. Equality is a significant determinant of national economic well-being, social inclusion and social cohesion. Australia's current legislative regime does not provide adequate protection and promotion of the right to equality and is deficient in that it:
- (a) is effective only in those areas where individuals choose to challenge specific instances of discrimination that fall within limited and defined spheres of activity;
 - (b) fails to actively promote equality or address systemic discrimination;
 - (c) does not cover all grounds of discrimination (for example, there is no federal legislative protection against discrimination based on carer responsibilities, sexuality, gender identity, homelessness or criminal record);
 - (d) does not adequately address multiple or compounded discrimination; and
 - (e) is ineffective in areas that have been granted permanent exemptions (such as, under the SDA, sporting clubs, religious bodies and charities).
57. In December 2008, the Senate Legal and Constitutional Affairs Committee tabled a comprehensive report on the effectiveness of the *Sex Discrimination Act 1984* (Cth). The report acknowledged many of the deficiencies identified above and made 43 recommendations to strengthen the effectiveness of the Act.²²
58. **In the short-term, the Government should enact the recommendations of the Senate Legal and Constitutional Affairs Committee in relation to the *Sex Discrimination Act 1984*, with a particular focus on addressing systemic discrimination and promoting gender equality.**
59. In the longer term, the Centre considers that the best way to address these deficiencies is through the enactment of a single, comprehensive and cross-jurisdictional Equality Act which:
- (a) provides a legal right to substantive equality;
 - (b) provides comprehensive coverage through a non-exhaustive list of prohibited grounds or protected attributes;
 - (c) has the capacity to retain distinct features regarding specific grounds of discrimination;
 - (d) takes account of the historical and contextual framework of disadvantage;

²² Senate Legal and Constitutional Affairs Committee, *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality* (December 2008) (at http://www.aph.gov.au/senate/committee/legcon_ctte/sex_discrim/report/index.htm).

- (e) directly challenges and seeks to eliminate systemic discrimination;
 - (f) recognises and addresses compounded or intersectional discrimination;
 - (g) allows for both representative and individual complaints;
 - (h) allows for temporary special measures and general conditions to promote equal opportunity; and
 - (i) covers public and private life, without any permanent exemptions or exceptions.
60. **The Government should hold a national, public inquiry into the merits of a single, comprehensive Equality Act.**

3.5 Mandate Human Rights Education

61. Education is an integral component of building a culture that understands, respects, and is committed to upholding human rights. Under international law, Australia has a duty to provide human rights education as an aspect of promoting and protecting human rights.
62. In its recent Concluding Observations, the UN Human Rights Committee noted that Australia lacks a framework and programme to promote knowledge of the ICCPR and the Optional Protocol among its population and recommended that Australia
- consider adopting a comprehensive plan of action for human rights education including training programmes for public officials, teachers, judges, lawyers and police officers on rights protected under the Covenant and the First Optional Protocol. Human rights education should be incorporated at every level of general education.²³
63. **The Centre recommends that the following initiatives be implemented in order to ensure such compliance:**
- (a) **Governments must provide clear directives that human rights education is an essential component of the curriculum, and also state where human rights education fits within the curriculum.**
 - (b) **All pre-service and in-service teachers should be provided with human rights education training.**
 - (c) **More human rights education materials should be developed by government departments or organisations, such as the Australian Human Rights Commission.**

²³ Human Rights Committee, *Concluding Observations of the Human Rights Committee: Australia* [27], UN Doc CCPR/C/AUS/CO/5 (2009).

3.6 Reform Australian Taxation Laws to Enable Human Rights Advocacy

64. The capacity and sustainability of human rights NGOs would be greatly enhanced by amendment of the *Income Tax Assessment Act 1997* (Cth) to include 'the promotion and protection of human rights' as a charitable purpose. This would allow human rights organisations to more readily access deductible gift recipient and income tax-exempt charity concessions.
65. Currently, the common law definition of 'charity' excludes organisations involved in political activities (such as advocacy or lobbying government), which means that organisations involved in advocating social or structural change in favour of recognising human rights are denied access to a number of tax concessions. This restrictive approach means that human rights organisations, which are not-for-profit entities working towards the betterment of society, are unlikely to fall within the ambit of legal concessions such as DGR and ITEC.
66. In the United Kingdom, amendments to the *Charities Act 2006* now include 'the advancement of human rights, conflict resolution or reconciliation or the promotion of religious or racial harmony or equality and diversity' as a charitable purpose. This has significantly enhanced the ability of organisations such as Human Rights Watch and Amnesty International to raise funds and undertake activities in the UK.
67. **The Centre strongly encourages the Government to amend the *Income Tax Assessment Act* to include 'the promotion and protection of human rights' as a charitable purpose.** This would significantly increase the ability and capacity of NGOs in Australia to raise funds and undertake a range of activities to promote human rights.

3.7 Establish Human Rights Grants Scheme for Australian Human Rights NGOs

68. After more than a decade of neglect, the capacity of the Australian human rights sector is very limited. The Human Rights Law Resource Centre, for example, Australia's only national specialist human rights legal service, does not receive any federal funding. A strong and vibrant sector is necessary to provide guidance and assistance to government and to 'bring human rights home' to marginalised and disadvantaged communities and groups.
69. The Centre would warmly welcome any commitment by the government to build the capacity and resources of human rights NGOs in Australia as a very concrete and local aspect of its commitment to better promote and protect human rights.
70. **In particular, the Centre proposes that the Federal Government establish a Human Rights Grants Scheme for domestic NGOs similar to that available for foreign organisations through the AusAID Human Rights Small Grants Scheme.**

3.8 Convene Annual 'Whole of Government' Consultation with Human Rights NGOs

71. Both governments and civil society have critical roles to play in developing a culture of rights and delivering on human rights objectives. These roles are most effectively fulfilled when governments and NGOs enjoy a respectful relationship, engage in robust dialogue, and work in a cooperative and collaborative manner.
72. Recognising this, **the Government should convene an Annual 'Whole of Government' Human Rights Consultation between government and human rights NGOs.**
73. Both the Department of Foreign Affairs and Trade and the Attorney-General's Department currently convene annual human rights consultations with NGOs. These consultations are valuable forums for exchanging information, insights and advice on human rights issues within the portfolio responsibilities of those departments and should be continued.²⁴ Given the cross-cutting nature of many human rights issues, however, it would be sensible to assemble all relevant government departments in an overarching 2-3 day consultation with human rights NGOs. This consultation could be led by the Department of Prime Minister and Cabinet and would facilitate an integrated, coordinated, 'whole of government' approach to human rights issues.

3.9 Sponsor Annual Human Rights Summit for NGOs

74. The Centre considers that it would be valuable for the Government to provide support to allow human rights-focused community sector organisations around Australia to meet in an annual summit to discuss current issues and approaches.
75. One of the advantages of the human rights framework is that it enables people and groups from different sectors to use a common language to identify common interests and share information. By facilitating information-sharing around how the human rights framework can be used across sectors, an annual summit for rights-focused community sector organisations would enhance the capacity of civil society to contribute to the protection and promotion of human rights in Australia. In addition, communication and national coordination strengthen the ability of human rights organisations to provide guidance and assistance to government in the implementation of a human rights culture.
76. **The Federal Government should sponsor an annual summit for Australian human rights NGOs.**

Human Rights Law Resource Centre

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²⁴ See, for example, Department of Foreign Affairs and Trade, *Annual Report 2007-2008* (2008) (at: http://www.dfat.gov.au/dept/annual_reports/07_08/performance/1/1.1.9.html#human-rights).