



human  
rights

law  
resource  
centre



# ANNUAL DIRECTORS' REPORT 2008/09



**Human Rights Law Resource Centre Ltd**

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ABN 31 117 719 267

## ABOUT THE HUMAN RIGHTS LAW RESOURCE CENTRE

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The Human Rights Law Resource Centre promotes and protects human rights and, in so doing, alleviates poverty and disadvantage, ensures equality and fair treatment, and enables full participation in society.

The Centre also aims to build the capacity of the legal and community sectors to use human rights in their casework, advocacy and service delivery.

***The HRLRC has made an enormous impact on human rights in Australia since its inception just over three years ago.***

***When it was set up, the HRLRC filled an important gap in the Australian human rights landscape; it provides direct legal services to individuals in need, undertakes innovative advocacy projects and publishes vital human rights resources.***

-- Professor Sarah Joseph, Director, Castan Centre for Human Rights Law

The Centre achieves these aims through human rights litigation, education, training, research, policy analysis and advocacy. The Centre undertakes these activities through partnerships which coordinate and leverage the capacity, expertise and networks of pro bono law firms and barristers, university law schools, community legal centres, and other community and human rights organisations.

***The Centre has demonstrated itself to be an organisation which is ready, willing and able to provide assistance to lawyers and community organisations in relation to human rights issues. The Centre has a strong track record of working collaboratively with a wide range of lawyers, academics and community organisations.***

-- Nicolas Patrick, Pro Bono Partner, DLA Phillips Fox

The Centre works in four priority areas: first, the effective implementation and operation of state, territory and national human rights instruments, such as the *Victorian Charter of Human Rights and Responsibilities*; second, socio-economic rights, particularly the rights to health and adequate housing; third, equality rights, particularly the rights of people with disabilities, people with mental illness and Indigenous peoples; and, fourth, the rights of people in all forms of detention, including prisoners, involuntary patients, asylum seekers and persons deprived of liberty by operation of counter-terrorism laws and measures.

The Centre has been endorsed by the Australian Taxation Office as a public benefit institution attracting deductible gift recipient status.

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## 1. Joint Report of Chairperson and Executive Director

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Early in the life of the Rudd Government, the Human Rights Law Resource Centre prepared a paper entitled '*Strengthening Human Rights: Some Initiatives for Government at the International and Domestic Levels*'. The paper set out a range of initiatives that would, if enacted, strengthen human rights at the local, regional and international levels, demonstrate human rights leadership, and promote responsible international citizenship.

Just two years on, it is deeply heartening that many of these initiatives have been, or are in the process of being, implemented.

At the international level, after a period of some detachment and disengagement, Australia is again constructively engaging with the international human rights system. In recent speeches, the Prime Minister, the Foreign Minister and the Attorney-General have all committed to reclaim Australia's 'reputation as a leader in the international protection of human rights'.

***At the international level, after a period of some detachment and disengagement, Australia is again constructively engaging with the international human rights system.***

Over the last 2 years, Australia has begun this journey by ratifying the *Convention on the Rights of Persons with Disabilities* and the *Optional Protocol to the Convention on the Elimination of Discrimination against Women*. Additionally, Australia has signed the *Optional Protocol to the Convention against Torture*, and issued a standing invitation to Special Procedures of the Human Rights Council. Significantly, Australia has also formally endorsed the *Declaration on the Rights of Indigenous Peoples*, reversing its pariah position as one of only four states to oppose the seminal instrument. The Rudd Government is also running hard to obtain a seat on the strategically important UN Security Council and, notably, has made 'respecting human rights' one of the four key pillars of that campaign.

Periodic reporting and review by UN human rights treaty bodies is a critical aspect of this commitment. At a recent review of Australia by the UN Human Rights Committee, the government delegation stated that 'Australia welcomes and needs this form of international scrutiny to ensure adherence with its human rights obligations'. Non-government organisations are playing an increasingly important role within the UN human rights system, including through the preparation of NGO reports to treaty bodies, to promote a constructive and rigorous dialogue between states and independent human rights experts. The purpose of these dialogues is twofold: first, to comprehensively analyse the human rights situation 'on the ground'; and, second, to develop recommendations to promote the full and effective realisation of human rights.

The coordination and presentation of NGO reports to UN treaty bodies has been a key activity of the Centre over the last year. In March 2009, the Centre presented a major NGO report to the UN Human Rights Committee in New York. The report included contributions from over 30 human rights experts and was endorsed by over 220 NGOs. It was described by the Vice-

Chair of the Committee, Sir Nigel Rodley, as 'a model of professional NGO contribution to the work of the Committee'.

In May 2009, Centre staff presented a major NGO report to the UN Committee on Economic, Social and Cultural Rights in Geneva. The report was endorsed by over 100 NGOs and was cited by the Committee as the most 'comprehensive' and 'sophisticated' NGO report ever received by that treaty body. This work built on the Centre's previous success in lobbying and engagement with the UN Committee against Torture in 2008, with 17 of the Centre's recommendations being incorporated in that Committee's Concluding Observations.

At home, major advances have been made over the last two years, including the historic Apology to the Stolen Generations, the commitment to close the gap in Indigenous life expectancy and to address Indigenous disadvantage, the amendment of almost 100 laws to combat same-sex discrimination, and the abolition of the 'Pacific Solution'.

Perhaps most significantly in 2008/09, the Federal Government sponsored a national public consultation about the legal recognition and protection of human rights in Australia. For people and organisations concerned with the protection of fundamental rights and freedoms, this consultation was both a critical *opportunity* and *responsibility* to promote the enactment of a comprehensive Australian Human Rights Act.

***Throughout the consultation, the Human Rights Law Resource Centre made the case that human rights legislation can improve governance, address disadvantage, and promote dignity and equality.***

The Centre made three major submissions to the consultation: *Engage, Educate, Empower* in April 2009; *A Human Rights Act for All Australians* in May 2009; and a *Supplementary Submission on Religion and Human Rights* in June 2009. These submissions, together with our collection of case studies, online materials and comprehensive discussion paper entitled *Engaging in the Debate*, were extensively cited and endorsed in many other submissions.

Throughout the consultation, the Human Rights Law Resource Centre made the case that human rights legislation can improve governance, address disadvantage, and promote dignity and equality. We sought to dispel the myths that a Human Rights Act would be somehow undemocratic and a lawyer's picnic.

We also sought to discharge key responsibilities in the consultation: a responsibility to promote a participatory, informed, rational and evidence-based debate; and a responsibility to share the stories of human rights failures – of the homeless, the elderly, prisoners and people with a disability for whom the protections of parliamentary sovereignty and the common law were not enough.

It is a notorious fact that Australia is the only developed democracy without a national Human Rights Act or constitutional protection of rights. Sixty years ago, Australia was a key architect of the *Universal Declaration of Human Rights*. This landmark document recognized human rights as the foundation of peace, justice, security and development. Sixty years on, Australians have an opportunity to bring this legacy home by calling on the federal parliament to enact a comprehensive Human Rights Act.

We are proud of the role that the Centre has played in bringing the Victorian *Charter* to life.

In the courtroom, we have sought and obtained leave to make persuasive submissions as amicus curiae in four *Charter* test cases: one in the Court of Appeal (relating to the interpretation and limitation of rights), one in the Supreme Court (relating to the right to life and police and coronial duties) and two in the Victorian Civil and Administrative Tribunal (relating to mental health and homelessness).

Outside of the courtroom, on the ground where human rights do their most important work, we have used the *Charter* to successfully promote and defend the rights of people experiencing homelessness, children with Autism Spectrum Disorders, young people with acquired brain injury, and prisoners subject to oppressive conditions.

In addition to attending to unfinished business, the Centre is also committed to developing and pursuing an ambitious human rights agenda. For the period 2010 to 2013, we have identified 10 campaign priorities around which we will be structuring our strategic litigation, policy, advocacy and educational work. The agenda includes:

1. working to improve **transparency, accountability and standards in places of detention**, including through ratification and operationalisation of the *Optional Protocol to the Convention against Torture*;
2. promoting enhanced **legal protection of human rights**, including through the enactment, enforcement and strengthening of legislative human rights instruments at the national, state and territory levels;
3. promoting **equality**, including working towards the development of a comprehensive national Equality Act which promotes substantive equality and addresses systemic discrimination;
4. encouraging Australia's development as a **regional and international human rights leader**, by promoting the mainstreaming and integration of human rights in Australian foreign policy (including in the areas of aid, development, trade, investment and security), and by contributing to the development of regional norms and institutions through education, capacity building and technical assistance;
5. seeking to enhance **parliamentary scrutiny and protection of human rights**; and
6. working towards better **police regulation and oversight**, particularly with respect to the use of force.

These are ambitious campaigns, and will require the Centre to work in a highly collegiate, collaborative and integrated way with our key partners in the community sector, the private sector, universities, and government – united as human rights advocates and activists.

At the Centre, we are acutely aware and appreciative of the contributions that many individuals and institutions make to our movement, and we would like to offer some thanks.

First, we would like to thank the Victorian Bar and private sector leaders such as Allens Arthur Robinson, Blake Dawson, Clayton Utz, DLA Phillips Fox, Freehills, Lander & Rogers, Mallesons Stephen Jaques and Minter Ellison, all of whom have made substantial pro bono contributions to the Centre over the last year.

Second, we would like to thank the community legal centres and other grassroots human rights organisations with which we collaborate, particularly the Victorian Federation of Community Legal Centres and the National Association of Community Legal Centres.

Third, with the adequacy and security of funding being an important determinant of our success, we would like to thank the Victorian Department of Justice for their recurrent financial support. Being a national human rights legal centre, we hope that the Federal Government will soon follow Victoria's lead.

Fourth, we are very grateful for generous financial contributions from the Victorian Legal Services Board, the R E Ross Trust, the Helen Macpherson Smith Trust, the Reichstein Foundation and the Victoria Law Foundation. Special mention must also be made of DLA Phillips Fox, Mallesons Stephen Jaques, Allens Arthur Robinson and Blake Dawson, each of which provides financial as well as in-kind assistance to the Centre. Thanks also to Qantas for once again supporting the Centre through the provision of flights to New York for the UN Human Rights Committee Review of Australia.

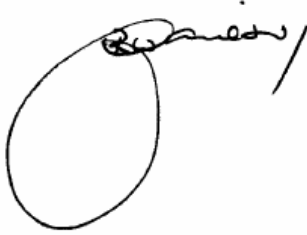
As Chair and Director, we have the privilege of working with a dynamic, innovative and highly committed team: Ben Schokman on permanent secondment as the DLA Phillips Fox Human Rights Lawyer, Rachel Ball, whose position is generously jointly funded by the Helen Macpherson Smith Trust and the Ross Trust; and Emily Howie, whose position is generously funded by the Victorian Legal Services Board. These staff consistently produce work of extraordinary quality and quantity – 37 major law reform submissions in 2008/09 alone – and contribute to a very collaborative and collegiate workplace.



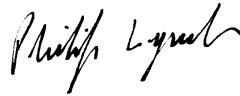
*From L-R: Mat Tinkler (Acting Executive Director of PILCH), Phil Lynch (Director of the Human Rights Law Resource Centre), Rachel Ball (Lawyer, HRLRC), the Hon Justice Michael Kirby, Emily Howie (Senior Lawyer, HRLRC), Ben Schokman (Senior Lawyer, HRLRC)*



Finally, it is appropriate and important to thank members of the Centre's Board and Advisory Committee, all of whom give very generously of their time and provide invaluable strategic guidance and direction.

A handwritten signature in black ink, appearing to read 'R Jamieson', written over a large, empty oval shape.

Robert Jamieson  
Chairperson  
24 September 2009

A handwritten signature in black ink, appearing to read 'Philip Lynch', written in a cursive style.

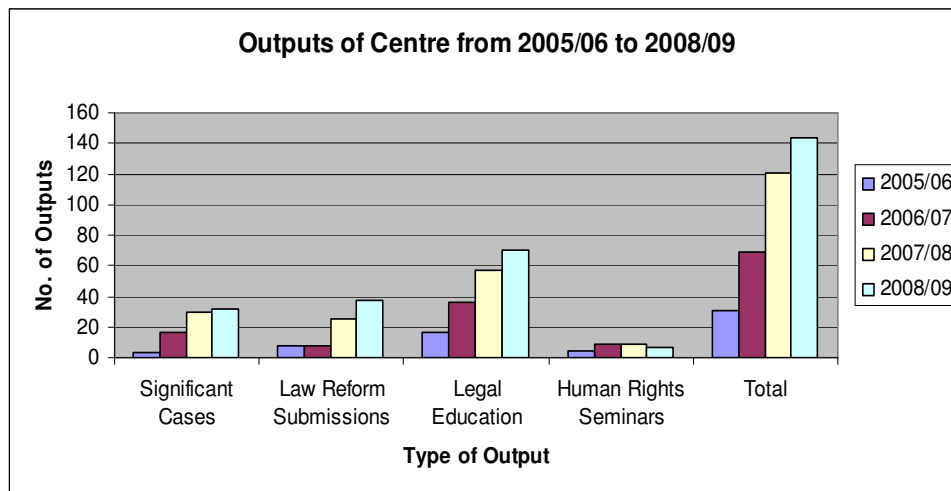
Philip Lynch  
Executive Director

## 2. Operations, Outputs and Impacts

### 2.1 Introduction

The Human Rights Law Resource Centre undertakes case work and litigation, law reform, policy and advocacy work, legal education and capacity building to promote and protect human rights.

The graph below represents the volume and growth of work in each of these areas between 2005/06 and 2008/09.



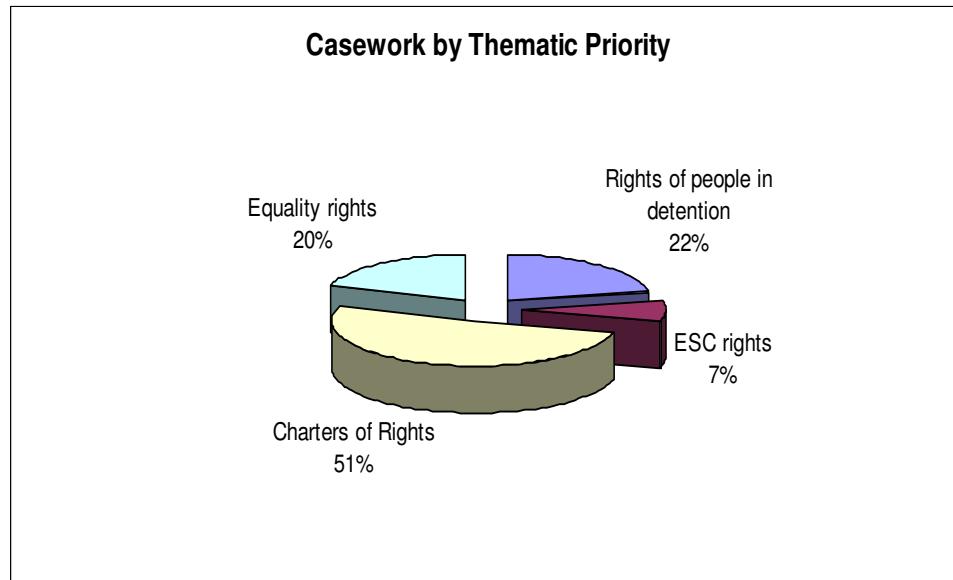
### 2.2 Casework and Litigation

The Centre opened 32 significant cases during 2008/09.

Recognising the need to use limited resources to provide services in a targeted and strategic way, the Centre focused its work on four thematic priorities, namely:

- the development and the effective implementation and operation of state, territory and national human rights instruments, such as the Victorian *Charter of Human Rights and Responsibilities*;
- socio-economic rights, particularly the rights to health and adequate housing;
- equality rights, particularly the rights of people with disabilities, people with mental illness and Indigenous peoples; and
- the rights of people in all forms of detention, including prisoners, involuntary patients, asylum seekers and persons deprived of liberty by operation of counter-terrorism laws and measures.

Although these areas are not exclusive, a very significant proportion of the Centre's casework and activities has been directed at these priorities.



The Centre's capacity to undertake strategic and test case litigation through partnerships with major law firms, the Victorian Bar and community legal centres is a distinguishing feature.

***The Centre's work in the area of human rights litigation is unparalleled in Australia.***

-- Nicolas Patrick, Pro Bono Partner, DLA Phillips Fox

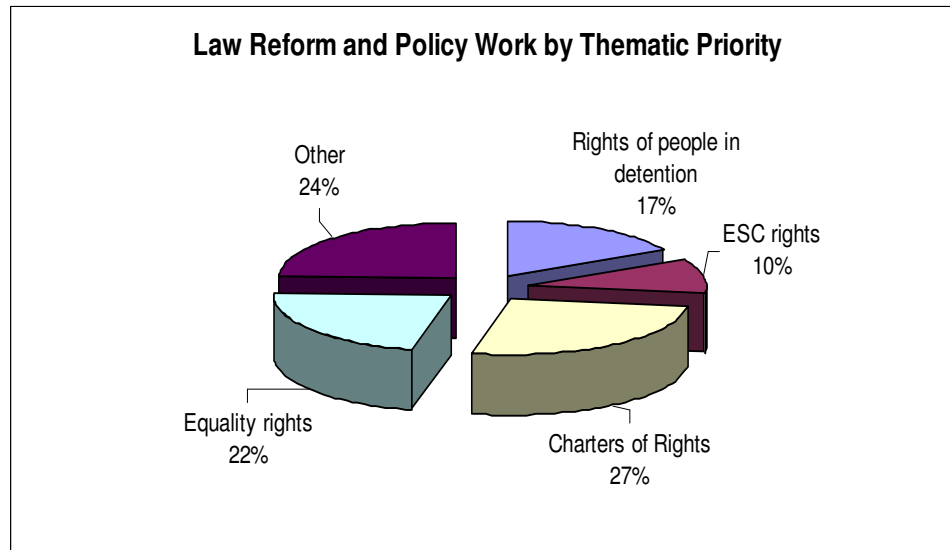
The Centre would particularly like to acknowledge the outstanding pro bono litigation contributions of leading commercial law firms Allens Arthur Robinson, Blake Dawson, Clayton Utz, DLA Phillips Fox, Freehills, Lander & Rogers and Mallesons Stephen Jaques.

### **2.3 Law Reform and Policy Work**

The Centre made 37 major law reform submissions during 2008/09, many of which significantly influenced human rights policy and practice in Australia and internationally.

In 2008/09, approximately 75 per cent of our law reform and policy submissions were directed to domestic bodies, including parliamentary committees, law reform commissions and government departments. The remaining 25 per cent were made to international bodies, including UN human rights treaty bodies and Special Procedures of the UN Human Rights Council.

As with the Centre's case work program, our law reform and policy work is focused in four key priority areas.

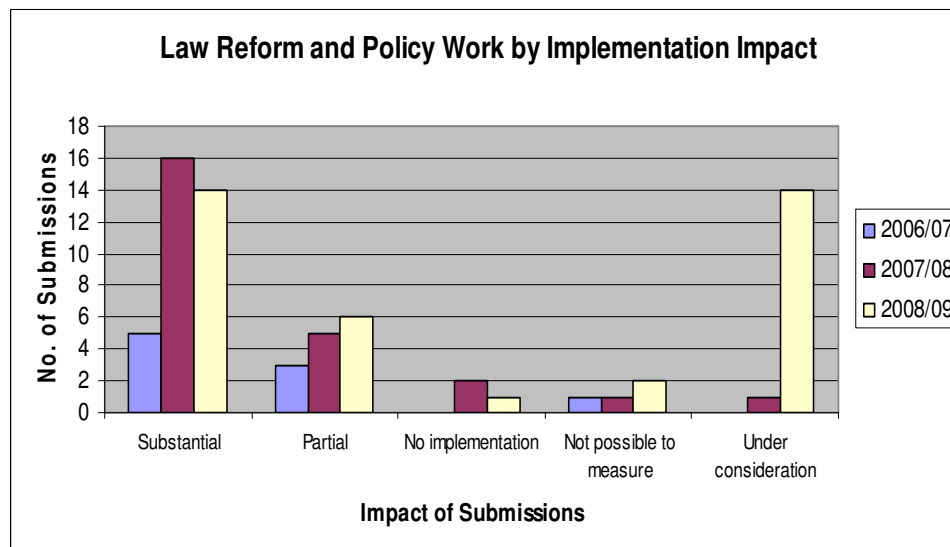


Also similarly to our litigation program, much of the Centre's policy work is undertaken in partnership with major law firms, the Victorian Bar and community legal centres.

The Centre is committed to measuring and evaluating its impact on policy development and law reform. To this end, using a methodology adapted from the Australian Law Reform Commission, the Centre assesses the 'implementation impact' of our work by monitoring the adoption of our recommendations by the body to which they are directed.

Almost 50 per cent of the Centre's policy work has '**substantial impact**', rising to over 65 per cent when proposals under consideration or not possible to measure are not included.

Almost 70 per cent has at least 'partial' impact, rising to over 90 per cent when submissions still under consideration or not possible to measure are excluded.



## 2.4 Human Rights Resources, Education and Training

Building human rights capacity and expertise in the legal and community sectors is a key priority for the Centre.

During 2008/09, the Centre's educational and capacity-building activities included:

- publishing 12 editions of the very highly regarded *Human Rights Law Bulletin*, which now has over 3000 subscribers;
- convening a major Human Rights Seminar Series with leading international and local human rights advocates;



*Lord Thomas Bingham, former Senior Law Lord of the United Kingdom, addresses the Human Rights Law Resource Centre on 'Dignity, Fairness and Good Government: The Role of a Human Rights Act at Mallesons Stephen Jaques*

- publishing and periodically updating a comprehensive online *Guide to the Victorian Charter of Human Rights and Responsibilities* and a *Human Rights Law Manual for Practitioners*;

- publishing an annual 'Human Rights Briefing Paper' which considers significant contemporary human rights issues, challenges and developments in Australia; and
- developing and maintaining [www.hrlrc.org.au](http://www.hrlrc.org.au), which enables access to human rights legal briefs, articles, commentary, case notes and a searchable database of jurisprudence. The website now receives over 10,000 visitors per month;
- regularly publishing human rights opinion pieces in publications including *The Age*, the *Herald-Sun*, the *Australian Financial Review* and the *Alternative Law Journal*.

Additionally, the Centre provided targeted human rights training and seminars to commercial law firms, the Victorian public service, legal aid, university law schools, and a wide range of community legal centres and NGOs.

***The publications and resources produced by the Centre, such as their bulletin, online human rights manual and case database, are an invaluable resource for community legal centres who wish to explore how they can make use of the Victorian Charter and international human rights instruments for the benefit of their clients.***

-- Brendan Sydes, Principal Solicitor, Environment Defenders Office (Victoria)

### 3. National Human Rights Consultation

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On 10 December 2008, the Commonwealth Attorney-General announced a national public consultation into the need for better human rights protection in Australia. The consultation is an historic opportunity for all Australians to have their say about the protection of human rights.

The Centre made three major submissions to the consultation:

- *Engage, Educate, Empower* (April 2009)
- *A Human Rights Act for All Australians* (May 2009)
- *Supplementary Submission on Religion and Human Rights* (June 2009)

These submissions, together with our collection of case studies, online materials and comprehensive discussion paper entitled *Engaging in the Debate*, were extensively cited and endorsed in many other submissions.

***The HRLRC is an innovative, well-managed community legal centre with an excellent reputation. It has played a key role in facilitating Australian NGOs, including Australian community legal centres, to engage with and more effectively use domestic and international human rights instruments. It has built strong relationships and partnerships across the NGO, government and private sectors that position it well to continue this work.***

-- Hugh de Kretser, Executive Officer, Federation of Community Legal Centres (Vic)

#### 3.1 A Human Rights Act for Australia

In May 2009 the Centre made a submission to the National Human Rights Consultation, entitled *A Human Rights Act for All Australians*. The submission calls for the enactment of a comprehensive Human Rights Act to enhance our democracy and protect fundamental values such as freedom, respect, dignity and a fair go.

The state of human rights for many disadvantaged groups in Australia remains precarious. Many basic rights remain unprotected and others are haphazardly covered by an assortment of laws.

The Centre supports an Australian Human Rights Act that enshrines the fundamental civil, political, economic, social and cultural rights that are necessary for all people to live with dignity and participate fully in our community.

In addition to enshrining peoples' rights in law and providing redress for the existing gaps in human rights protection, a Human Rights Act would also provide important social, economic and cultural benefits, including:

- improving law-making and government policy;

- improving public service delivery and outcomes;
- protecting marginalised Australians by addressing disadvantage;
- contributing towards the establishment of a human rights culture;
- creating and adding economic value;
- more fully implementing Australia's international obligations;
- promoting Australia's reputation as a good international citizen and regional and global human rights leader; and
- 'bringing rights home' by enabling complaints to be heard and determined domestically rather than in New York or Geneva.

An Australian Human Rights Act should be modelled on legislation such as the Victorian *Charter of Human Rights* and Human Rights Acts in the UK and the ACT. Each of these acts establishes mechanisms to ensure that human rights are taken into account by parliament, the courts and public services when developing and applying law and policy. This promotes a conversation between the three arms of government about how best to protect human rights, address disadvantage and promote dignity.

***Human Rights Acts have great potential to address disadvantage and improve lives.***

The evidence from authorities such as the UK Audit Commission, the British Institute of Human Rights, and the ACT and Victorian Human Rights Commissions is very clear: the institutionalisation of a human rights culture through legislation leads to better public services and outcomes. A report by the UK Department of Constitutional Affairs found that Human Rights Acts lead to a 'shift away from inflexible or blanket policies towards those which recognize the circumstances and characteristics of individuals'.

Human Rights Acts have great potential to address disadvantage and improve lives. A snapshot of recent examples is illustrative. Over the past three years, UK cases have established that the right to life requires the state to provide support to vulnerable persons to prevent destitution; that the right to freedom from cruel treatment requires authorities to protect children from abuse and neglect; and that the eviction of a disabled woman from public housing when the public authority had not ensured that she had adequate alternative accommodation violated her right to private life and the home. These are commonsense decisions that have improved lives.

The Human Rights Law Resource Centre aims to ensure that the debate about the need for a Human Rights Act is rational, evidence-based and avoids myths and misperceptions. A Human Rights Act would not be undemocratic or shift power from the parliament to the judiciary. Human rights are profoundly democratic. The Victorian *Charter of Rights and Responsibilities*, for example, enshrines a body of civil and political rights to ensure that all people can fully participate in our community.



Entrenchment of the rights to free expression, assembly, association and public participation enhance democracy. The Victorian *Charter* does not give courts the power to strike down legislation, but merely to remit a law to parliament for reconsideration if it cannot be interpreted compatibly with human rights. Parliament retains absolute sovereignty to respond to these declarations as it sees fit.

Another common myth is that the legislative protection of human rights results in a 'lawyers' picnic'. This is simply not supported by evidence. A comprehensive 2 year review of the ACT Human Rights Act noted there has been no flood of litigation. Even in the UK, where the Act has been in force for 10 years, a major independent report found that there has been no increase in the volume, length or costs of litigation.

Australia is the only developed democracy without a national Human Rights Act or constitutional protection of human rights. Sixty years ago, Australia was a key architect of the *Universal Declaration of Human Rights*. This landmark document recognized human rights as the foundation of peace, justice, security and development. Sixty years on, Australians have an opportunity to bring this legacy home by calling on the federal parliament to enact a comprehensive Human Rights Act.



*The Hon Rob McClelland MP, Attorney-General of Australia, addresses the Human Rights Law Resource Centre on 'Strengthening Human Rights and the Rule of Law' at Mallesons Stephen Jaques*

### 3.2 Engage, Educate and Empower: Building a Culture of Human Rights

In April 2009, the Centre made a separate submission to the National Human Rights Consultation, *Engage, Educate, Empower*. This submission makes a range of recommendations to strengthen and complement the human rights protection that would be afforded by a Human Rights Act, including by:

- expanding the role, functions and resources of the Australian Human Rights Commission;
- developing, mainstreaming and integrating human rights education at all levels of the curricula;
- expanding access to justice, including through additional funding for the legal aid and community legal sectors and through government procurement practices;
- building human rights capacity in Australian civil society, including through additional resources, taxation reform, and dialogue with government;
- enhancing Australian engagement with the international human rights system and mainstreaming and integrating human rights in Australian foreign policy, including with respect to aid, development, trade, investment and security;
- establishing a Joint Parliamentary Committee on Human Rights to lead parliamentary engagement with and understanding of human rights issues at both the domestic and international levels;
- holding a national, public inquiry into the merits of a single, comprehensive Equality Act; and
- developing and deploying a range of soft and hard power options for promoting the human rights responsibilities of business.

## 4. Victorian Charter of Human Rights

### 4.1 Opinion and Analysis: The Victorian Charter at Three

As the national debate on a Human Rights Act continues, it is time to look to the evidence and draw some conclusions from the operation of the Victorian *Charter of Rights* after two years.

Critics of the Victorian *Charter* have abjectly failed in their predictions of a flood of litigation, the transfer of power from parliament to judges, or the end of democracy. Instead, the *Charter* is being used to improve lives.

Far from a tidal wave, the flow of cases has been barely a trickle. In accordance with the provisions of the *Charter*, every case litigated was also brought on non-*Charter* grounds. The myth that Charters of Rights create a lawyers' picnic is unsubstantiated. With almost no exceptions, *Charter* cases for disadvantaged Victorians are run pro bono.

***Victoria's Charter minimises litigation by requiring that human rights are taken into account by parliament and public services when developing policy and delivering services.***

The *Charter of Rights* has not shifted power to the judiciary. Contentious social policy issues, such as same-sex marriage, abortion and access to IVF, have been determined by parliament.

Far from threatening democracy, the Victorian *Charter* entrenches democratic values such as free expression, peaceful assembly and public participation. The *Charter* does not give courts the power to strike down legislation, but merely to send a law back to parliament for reconsideration. Parliament can respond as it sees fit.

The most recent anti-*Charter* tactic is to hysterically highlight any misconceived *Charter* case, regardless of its outcome. You won't read it in the anti-*Charter* commentary, but Carl William's attempt to delay his criminal prosecution because his 'lawyer of choice' was not available on the court dates fixed was quickly dismissed. Channel 9's reliance on the right to freedom of expression in its appeal against the suppression of *Underbelly* was similarly rejected. So too was a doctor's reliance on the presumption of innocence in contesting his de-registration following charges of rape.

The *Charter's* impact in the courtroom to date is negligible. Far from being a failure, that is how it should be. Victoria's *Charter* minimises litigation by requiring that human rights are taken into account by parliament and public services when developing policy and delivering services.

Outside the courtroom, however, the Victorian *Charter* is being used to address disadvantage and promote dignity; a fact conveniently ignored by critics.

You won't have read, for example, that the *Charter* prevented the eviction of a single mother and her kids from public housing into homelessness or that it assisted an elderly woman with brain injury to access critical medical assistance.

You're unlikely to have heard that a 19-year-old woman with cerebral palsy relied on the *Charter* to obtain support services and case management.

And you won't have read that children with autism were deemed eligible for disability support services after their advocates invoked the Victorian *Charter of Rights*. Announcing an additional \$2.75 million in support, the Community Services Minister said, 'this will make a major difference to the lives of many Victorian families facing the challenge of raising a child with an autism spectrum disorder'.

These are all common-sense decisions in real life cases which show how the *Charter* can improve lives and promote fundamentally Australian values like freedom, respect, dignity and a fair go.

Of course, the *Charter* is not a panacea for disadvantage in Victoria and the State Government still has some way to go if the *Charter* is to truly improve accountability and embed a culture of rights and respect.

For starters, the Government should spend less money on defending human rights claims and denying *Charter* obligations, and more on public sector education and community empowerment. In the longer term, the *Charter* should be amended to enshrine not only civil and political rights, but also the economic and social rights – such as health, housing and education – that are necessary for all people to participate fully in our community.

*Philip Lynch is Director of the Human Rights Law Resource Centre*

#### 4.2 **Our Impact: Promoting the Human Rights of People with Mental Illness**

On 23 April 2009, Justice Bell, President of the Victorian Civil and Administrative Tribunal, handed down a much anticipated decision which discussed in detail important aspects of the application and operation of the *Charter*. The case concerned the compulsory medical treatment of a man, Mr Kracke, without his consent, and without this treatment having been reviewed by the Mental Health Review Board as required by the *Mental Health Act 1986* (Vic).

***Reviews are the responsibility of the board to commence, conduct and complete within the specified time limits. The terms of the legislation and the human rights of people with mental illness deserve nothing less.***

-- Justice Bell, *Kracke v Mental Health Review Board* [2009] VCAT 646

Because the application was in many respects a test case, the Human Rights Law Resource Centre sought and was granted leave to appear as *amicus curiae*. The Centre was represented on a pro bono basis by Allens Arthur Robinson, together with

Mark Moshinsky SC and Chris Young of counsel. Mr Kracke was represented by the Mental Health Legal Centre.

In a landmark decision, and consistent with the Centre's submissions, Bell J made a declaration that the Mental Health Review Board breached Mr Kracke's human right to a fair hearing under the *Charter* by failing to conduct the reviews of his involuntary and community treatment orders within a reasonable time.

In addition to being a significant *Charter* case, the decision should also result in systemic reform to the timing and conduct of review hearings.

#### **4.3 Our Impact: Access to Support Services for Children with Autism**

A 13 year old boy with Asperger Syndrome was ineligible to receive disability support services because the Victorian Department of Human Services did not consider Asperger Syndrome to be a 'disability'. With the assistance of the Human Rights Law Resource Centre, the child's mother applied to VCAT for a review of the DHS decision and advocated for an inclusive and contextual interpretation of 'disability', in light of the rights contained in the Victorian *Charter*.

Before the application proceeded to hearing, the Victorian Government announced that it would acknowledge Autism Spectrum Disorders (including Asperger Syndrome) as disabilities under the Act. The Government backed this announcement with \$2.75 million in additional funding for disability assistance.

The President of the Autistic Family Support Association commented that she did not think that the policy change would have occurred had the litigation not been initiated.

David O'Callaghan SC and Penny Neskovic of Counsel, together with Lander & Rogers, provided outstanding and significant pro bono assistance in this matter.

#### **4.4 Our Impact: Caring for Young People with Acquired Brain Injuries**

The Centre was approached by a disability advocate acting on behalf of several young people with acquired brain injuries. The rehabilitation centre where the young people were residing (which operated as part of a public hospital) was seeking to discharge the young people because their two year contractual period had ended. However, the only alternative care facilities available were aged care facilities, which would not provide the social environment, or support services (such as speech therapy), needed for the young people to continue their recovery.

With the assistance and advice of the Centre, together with pro bono lawyers from Mallesons Stephen Jaques, the disability advocate raised the *Charter* with a representative of the rehabilitation centre. The facility subsequently agreed not to move the young people until the rehabilitation centre had fully considered its human rights obligations.

## 5. Equality Rights

### 5.1 Opinion and Analysis: Making Equality Real in Australia

When the *Sex Discrimination Act* was introduced into parliament in 1983 it was derided as the brainchild of radical feminists and a death knell to functioning society. A quarter of a century later much of the smoke blown on the debate has cleared and the SDA has emerged a constructive, but flawed document.

In its current form, the SDA is only capable of addressing some forms of discrimination, some of the time. It employs a narrow definition of discrimination, applies to limited areas of public life, and fails to provide the tools necessary to address systemic discrimination and promote substantive equality.

A recent parliamentary inquiry into the SDA affords an opportunity to address the legislation's shortcomings. If we are to move towards real and effective equality, our laws must offer a more progressive and robust vision for Australian women and men.

This vision is not amorphous or imaginary. It already exists at the international level and is encapsulated in the *Convention on the Elimination of All Forms of Discrimination against Women*. CEDAW requires equal outcomes and the elimination of the structural causes of inequality.

***The individual complaints process that is the SDA's main weapon against discrimination serves an important function, but is not designed to address entrenched discrimination.***

The disparity between CEDAW and the SDA is disappointing given that the SDA was Australia's legislative response to the ratification of CEDAW and should therefore have reflected the convention's expansive aims. The SDA sits in contrast to the *Racial Discrimination Act*, which aims to give full effect to the *International Convention on the Elimination of All Forms of Racial Discrimination* and closely follows the language of that convention.

There are many examples that demonstrate the gaps in the SDA. Consider the broad failure to recognise the parental caring responsibilities of both women and men. When combined with the dominant cultural assumption that women bear the primary responsibility to care for children, the result is that women do not enjoy equality in the workforce. Flow-on effects include women's financial disadvantage and under-representation in public and political life.

The SDA stares blankly at this problem. The individual complaints process that is the SDA's main weapon against discrimination serves an important function, but is not designed to address entrenched discrimination. The SDA's individualised approach needs to be supplemented by mechanisms that can respond to systemic issues. These mechanisms should include a free-standing provision guaranteeing equality before the law. Such a guarantee would allow women to challenge laws, procedures

and practices that create or perpetuate inequality. It is a protection that exists in every Western, industrialised country except Australia.

The SDA should also adopt a general prohibition of discrimination. The SDA's current aim of prohibiting narrowly defined acts of discrimination in specified fields of public life is inadequate. The fact is that much of the discrimination experienced by women finds its source outside the SDA's defined spheres of activity. The SDA needs to reach issues such as the undervaluing of women's work and women's susceptibility to male violence.

Finally, for the SDA to realise its full practical and symbolic potential, the permanent exemptions must be removed. Currently, the SDA permits discrimination in certain areas, including within sporting clubs, religious bodies and charities. Discrimination should only be permissible when it can be shown to be a necessary and proportionate response to a legitimate need. Absent this analysis, exemptions perpetuate traditional social structures that discriminate disproportionately against women.

These recommendations are not novel – they have appeared in a stream of high-level calls for reform that have been largely ignored by successive Australian governments. It's time to confront the forces that have stunted the evolution of the SDA. The Labor Party's own policy platform compels them to 'make equality real' for women and to harmonise domestic law with international human rights standards. To achieve these goals the SDA must be strengthened so that it has the capacity to address discrimination, in all its guises.

*Rachel Ball is a lawyer with the Human Rights Law Resource Centre*

***The Centre works tirelessly to protect the right to equality for people subjected to systemic or compounded discrimination or disadvantage. It does this not just through casework but by taking a thought leadership position in the areas of strategic litigation, law reform work and capacity building. It also operates in an innovative manner by partnering with other organisations whose skills and resources add to the specialist skills of the Centre. This results in outcomes that have much greater reach and impact.***

-- Elizabeth Broderick, Sex Discrimination Commissioner and Commissioner responsible for Age Discrimination, Australian Human Rights Commission

## **5.2 Our Impact: Senate Recommends Overhaul of Sex Discrimination Act to Promote Equality**

On 12 December 2008, the Senate Legal and Constitutional Affairs Committee tabled a major report entitled *Effectiveness of the Sex Discrimination Act 1984 in Eliminating Discrimination and Promoting Gender Equality*.

The Report recommends an innovative new approach to equal opportunity and anti-discrimination laws, including a focus on the elimination of systemic discrimination and a shift away from the current reactive, complaints-based system.

For the last 25 years, Australia's sex discrimination legislation has been criticised for its gaps and inadequacies. The Report promises a progressive, strengthened regime which would promote equality for women and assist in the realisation of Australia's international human rights obligations.

The Human Rights Law Resource Centre made a major and highly influential submission to the inquiry, with the majority of our recommendations being accepted. The Centre's submission is cited approvingly over 20 times in the Senate report.

The report makes some very significant recommendations which, if implemented, would substantially contribute to equality in Australia.

### **5.3 Our Impact: Promoting Women's Rights at the Domestic and International Levels**

In May 2008, the Rudd Government announced plans to consider whether Australia should become a party to the *Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women*. As part of the consultation process, the Centre made a submission to the National Interest Analysis and the Joint Standing Committee on Treaties supporting Australia's accession to the Optional Protocol.

The Optional Protocol establishes two procedures: a communication procedure and an inquiry procedure. The communication procedure allows individuals or groups (or people acting on their behalf) to submit a communication to the Committee on the Elimination of Discrimination against Women alleging violations of the substantive rights protected under the *Convention on the Elimination of All Forms of Discrimination against Women*. The inquiry procedure allows the Committee to initiate inquiries into reliable information indicating grave or systematic violations of CEDAW by a State.

In the Centre's submission, it was argued that accession to the Optional Protocol would strengthen the protection of women's rights in Australia by providing a mechanism under which individual and more widespread violations of CEDAW could be examined, assessed and remedied. It would also signal Australia's re-engagement with the UN and commitment to international human rights standards.

On the eve of the International Day for the Elimination of Violence Against Women, 25 November 2008, Australia ratified the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women*.

### **5.4 Our Impact: UN Committee on the Elimination of Racial Discrimination Demands Urgent Action on Northern Territory Intervention**

The UN Committee on the Elimination of Racial Discrimination has requested that the Australian Government take urgent action to ensure that the Northern Territory



Intervention complies with the *Convention on the Elimination of All Forms of Racial Discrimination*. In an open letter dated 13 March 2009, the Committee called upon the Australian Government to report in four months' time on the progress it has made to reinstate the *Racial Discrimination Act 1975* (Cth) and to build a new relationship with Aboriginal Australia.

The Committee's letter was sent in response to a Request for Urgent Action made by the Centre to the Committee on behalf of a group of 20 Indigenous Australians affected by the Northern Territory Intervention. The Request for Urgent Action argued that the suspension of the *Racial Discrimination Act* and the Australian Government's failure to consult adequately with affected Aboriginal communities violates fundamental rights and freedoms under the CERD.

The Committee's urgent procedures mechanism is designed to respond to situations requiring immediate attention to prevent or limit serious violations of the CERD.

## 5.5 Our Impact: Contributing to the Normative Development of the Right to Equality and Non-Discrimination

In May 2009, the UN Committee on Economic Social and Cultural Rights adopted *General Comment No. 20: Non-Discrimination in Economic, Social and Cultural Rights*, an authoritative interpretation of art 2(2) of the *International Covenant on Economic, Social and Cultural Rights*. Article 2(2) requires States Parties to guarantee the rights in ICESCR 'without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.' The General Comment elaborates the content and meaning of art 2(2), including in respect of states' obligations, the prohibited grounds of discrimination, and the measures necessary to ensure national implementation.

In 2008, the Human Rights Law Resource Centre, together with the Public Interest Law Clearing House, made a joint submission to the Committee in response to an early draft of the General Comment. In the submission, PILCH and the Centre welcomed the Committee's commitment to elaborating the nature and scope of states' obligations under art 2(2), but urged it to strengthen the General Comment in a number of key areas. In particular, the submission urged the Committee to:

- elucidate states' obligations to eliminate systemic discrimination;
- explain the positive and negative elements of the obligation to eliminate discrimination;
- emphasise the obligation to effectively remedy individual and structural discrimination;
- highlight the obligation to implement temporary special measures and clarify their meaning;
- clarify that differential treatment is permissible only if it pursues a legitimate purpose and is a proportionate response to the aim that it seeks to achieve; and
- further clarify prohibited grounds of discrimination.

It is very significant that many of these recommendations are reflected in General Comment No. 20.

In the General Comment, the Committee explained that, in order to guarantee the right to non-discrimination in the exercise and enjoyment of economic, social and cultural rights, States Parties must eliminate formal and substantive discrimination in the form of direct and indirect discrimination, in both the public and private spheres. In accordance with the recommendations made by PILCH and the Centre, the Committee further explained that States Parties must not only refrain from discrimination; they must also take positive steps to eliminate discrimination, including, in particular, systemic discrimination. In certain circumstances, states may be required to adopt temporary special measures. Reflecting the recommendations in the PILCH/Centre submission, the Committee clarified that '[s]uch measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress *de facto* discrimination and are discontinued when substantive equality has been sustainably achieved.'

The Committee also affirmed that not all differences in treatment will constitute discrimination requiring elimination under art 2(2). In line with the views of PILCH and the Centre, the Committee explained that differential treatment will not be characterised as discriminatory if the justification for the differentiation is 'reasonable and objective' and there is a 'clear and reasonable relationship of proportionality between the aim sought to be realised and the measures or omissions and their effects.'

In light of the submission's recommendation for further clarification around the prohibited grounds of discrimination in art 2(2), it is significant that the General Comment usefully elaborates the nature and scope of those grounds. In particular, it provides important insights into the breadth of attributes that may fall under the umbrella of the prohibited ground of 'other status,' noting that:

[t]he nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of 'other status' is thus needed to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognised grounds in Article 2(2). These additional grounds are commonly recognised when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalization.

Taking into account the importance of eliminating all forms of discrimination and ensuring substantive equality, General Comment No. 20 is especially significant in that it gives content and meaning to art 2(2) of ICESCR and provides normative guidance on the nature and scope of state obligations in this regard. As the Federal Government considers how to improve the protection and promotion of human rights in Australia, it is important that it seriously considers its obligations under ICESCR, including under art 2(2).

*Simone Cusack is Public Interest Lawyer at the Public Interest Law Clearing House (Vic)*

## 5.6 Our Impact: Parliament Recommends Ratification of Optional Protocol to Disability Convention

On 12 March 2009 the Joint Standing Committee on Treaties tabled its report on the *Optional Protocol to the United Nations Convention on the Rights of Persons with Disabilities* and recommended that Australia accede to the Optional Protocol.

The Optional Protocol establishes two procedures designed to supplement the *Convention on the Rights of Persons with Disabilities* and strengthen and promote its implementation. The communication procedure allows individuals or groups to submit a communication to the Committee on the Rights of Persons with Disabilities alleging violations of the substantive rights protected under the CRPD. The inquiry procedure allows the Committee to initiate inquiries into reliable information indicating grave or systematic violations of the CRPD by a State Party.

Consistently with the Centre's submission to the inquiry, JSCOT reported that the *Optional Protocol* would provide an additional mechanism to protect and promote the rights of persons with disabilities and would demonstrate Australia's commitment to human rights.

## 6. The Rights of People in Detention

### 6.1 Opinion and Analysis: Victorian Prisoners' Deserve Dignity

In late 2007, the Victorian Ombudsman handed down a damning report that uncovered a culture of violence and brutality at the Melbourne Custody Centre. It found that guards had assaulted a remand prisoner during a strip search. Premier John Brumby's reaction was swift, denouncing the violence and vowing 'to make sure that circumstances like this don't occur again in the future'. But against this public commitment, the Victorian Government is doing the very opposite.

Legislation recently passed by Parliament makes our jails even less accountable. Under the new law, any compensation over \$10,000 paid by the state or private prison operators to prisoners for wrongs they might suffer in jail is quarantined for at least 12 months and publicised in newspapers and elsewhere, purportedly to allow victims with potential claims against the prisoner to access the compensation.

While the goal of properly compensating victims is worthy, the law will have the reverse effect by deterring prisoners from claiming compensation, irrespective of how badly they were treated in jail.

***Repeated studies and inquiries confirm that independent monitoring and strong accountability mechanisms are critical to preventing abuse of prisoners.***

Women prisoners sexually assaulted by prison guards, prisoners denied medical care and prisoners bashed and abused in circumstances that could and should have been prevented are unlikely to pursue a claim knowing that compensation will be compulsorily quarantined from them and advertised in a newspaper.

In reality, the new law does nothing for the vast majority of victims of crime and by deterring claims it may deprive victims of compensation they might otherwise have gained.

Worse, the law is likely to create more victims in our prisons and our community. Deterring justifiable compensation claims makes prisons even less accountable. Prisons that abuse, neglect and mistreat prisoners are less likely to be held to account.

Repeated studies and inquiries confirm that independent monitoring and strong accountability mechanisms are critical to preventing abuse of prisoners.

What independent monitoring and accountability procedures do we have? The Office of the Correctional Services Review, formerly the Corrections Inspectorate, is, according to the Corrections Minister, Bob Cameron, designed to strengthen the independent inspection, monitoring and review of correctional services. Yet, like its predecessor, it is merely a 'business unit' within the Department of Justice, the very same department that operates Victoria's public prisons and oversees private prisons.

It has no real independence. None of its reports has ever been made public or been provided to Parliament. Indeed, the Government is appealing against an order from the Victorian Civil and Administrative Tribunal to release one of those reports under freedom of information legislation. Not even last year's Ombudsman's review of the former inspectorate has been made public.

In February, Australia's only independent prison watchdog criticised the lack of transparency of Victoria's prisons. The Western Australian Inspector of Custodial Services, Professor Richard Harding, described the system of monitoring abuse and corruption in Victoria's jails as 'well short of what a democratic society is entitled to'.

***Lack of effective public accountability makes Victorian jails less safe and this makes Victorian communities less safe.***

Against this backdrop, prisoner abuse keeps occurring. In 2005, asthmatic remand prisoner Ian Westcott died in his cell after scrawling a note that read 'Asthma attack. buzzed for help. No response'. The intercom in his cell was broken.

In 2007, the Nine Network aired secret files disclosing allegations of guards sexually assaulting female prisoners at the women's prison in Deer Park. One incident concerned a guard who allegedly raped a mentally ill prisoner who became pregnant.

In 2006, four Port Phillip Prison officers including a supervisor were sacked for their role in an incident in which a prisoner was coerced into inserting a 15 to 20-centimetre package into his anus and then strip-searched by guards.

In 2008, the Victorian Ombudsman reported that prisoner complaints about Victoria's private prisons have increased by as much as 400% in the past two years.

This is taking place at a time when Victoria's prison population, and prison spending, is increasing dramatically. Prison numbers have risen by close to 60% in the past 10 years. Prisons costs Victorians nearly half a billion dollars a year, with the Government in May announcing an additional \$591 million for more cells. About half of Victoria's prisoners have backgrounds of multiple and related serious disadvantage, including mental illness, intellectual disability, drug and alcohol issues, unemployment and homelessness.

Lack of effective public accountability makes Victorian jails less safe and this makes Victorian communities less safe. Safe, humane and accountable prisons are essential for community safety. Prisoners subjected to violence, mistreatment and abuse in jail are more likely to re-offend on release.

Victoria urgently needs a shake-up of its approach to prisons and its increasing use of imprisonment. Laws that facilitate abuse are unacceptable. Prison secrecy breeds impunity and indifference and undermines the rehabilitation of prisoners and creates more victims in prisons and community. The cycle of harm can and must be stopped.

*Hugh de Kretser is executive officer of the Federation of Community Legal Centres (Vic) and Melanie Schleiger is a Board member of the Human Rights Law Resource Centre*

## 6.2 Our Impact: Implementing the Recommendations of the UN Committee against Torture

In mid 2008, Australia appeared before the UN Committee Against Torture as part of its regular reporting obligations as a party to the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment*.

The Committee issued its Concluding Observations on Australia, including 27 specific recommendations, in May 2008. The Committee made recommendations in relation to various areas of Australian law, policy and practice, including: immigration and asylum-seeker law; refoulement, extradition and expulsion; Indigenous Australians; prisoners and conditions of detention; and counter-terrorism laws and practice. It is significant that 17 of the Committee's 27 recommendations were adopted from the Centre's NGO report on Australia's compliance with the Convention.

In response to the Concluding Observations – and in line with its stated commitment to engage positively with the UN human rights treaty bodies – the Australian Government initiated a consultation on follow-up action to the Concluding Observations. The Government called for suggestions as to what action should be taken in response to the Committee's recommendations.

The Centre's submission to the Government considered the specific areas addressed by the Committee and highlighted the need for protections against torture and ill-treatment to be legislatively entrenched. Examples of recommendations made by the Centre include:

- that the *Migration Act 1958* (Cth) should be amended to comprehensively prohibit the refoulement of a person from Australia in circumstances where they may be exposed to a risk of torture or other cruel, inhuman or degrading treatment or punishment;
- that the Australian Government should review, update and implement recommendations from the *1991 Royal Commission into Aboriginal Deaths in Custody*; and
- that Australia should comprehensively review all counter-terrorism laws and practices to ensure that they are in compliance with international human rights standards.

The Centre's submission also recommended that the Australian Government develop domestic mechanisms to independently monitor and report on the implementation of the Concluding Observations of UN treaty bodies.

## 6.3 Our Impact: Improving Transparency and Accountability in Places of Detention

On 19 May 2009, consistent with submissions of the Human Rights Law Resource Centre, Australia signed the *Optional Protocol to the Convention against Torture*.

The *Optional Protocol* establishes a system of regular visits to places of detention by both international and domestic independent expert bodies in order to prevent torture and other forms of ill-treatment.

Australia's signature is consistent with a July 2008 submission by the Centre which examined the benefits of Australia's accession to the *Optional Protocol* and outlined what the domestic implementation of the obligations contained therein would entail.

The Centre now urges the Australian Government to accede and become a party to the *Optional Protocol*.

The Centre considers that Australia's accession to the *Optional Protocol* would:

- protect the human rights of persons deprived of liberty and reduce the incidence and likelihood of ill-treatment of such persons;
- complement and strengthen existing domestic inspectorate and monitoring mechanisms for places of detention and promote human rights compatible detention management;
- foster and promote systematic analysis (and systemic change where necessary) of laws and policies affecting the rights of persons deprived of their liberty;
- strengthen Australia's leadership role within the international community; and
- be consistent with the Australian Government's commitment to constructive engagement with the UN human rights system and to the harmonisation of domestic laws, policies and practices with international human rights standards.

The Centre also considers that the *Optional Protocol* can be implemented with relative ease within Australia's existing political and legal structures.

#### **6.4 Our Impact: Review of Corrections Regulations to Promote Human Rights**

In February 2009, the Centre made a submission regarding proposed Corrections Regulations in Victoria. In preparing the submission, the Centre received substantial assistance from Clayton Utz and the Federation of Community Legal Centres.

The submission addressed aspects of the Proposed Regulations that the Centre considers do not comply with established international and comparative jurisprudence relating to the treatment of prisoners, including in relation to the use of force, the use of restraints, classification and placement of prisoners, visitation rights and strip searching.

On 20 April 2009, the Centre was informed by the Department of Justice that provisions of the Proposed Regulations had been amended in response to the Centre's recommendations. Consequential changes include:

- requirements that restraints be applied for no longer than is necessary and the use of any restraint must be reported to the Prison Manager;
- mandatory consideration of a prisoner's medical and psychiatric condition when deciding placement or making a separation order;

- the introduction of a 'checklist' to promote the right to a fair hearing in prison disciplinary proceedings;
- amendments to improve prisoner access to visitors and correspondence; and
- a requirement that an officer 'believe on reasonable grounds' that a strip search is necessary in order for that search to be lawful.



## 7. Non-Government Reports to United Nations Treaty Bodies

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### 7.1 Civil and Political Rights: Human Rights Committee Review of Australia

The UN Human Rights Committee reviewed the state of civil and political human rights in Australia in March 2009 in New York.

On 16 and 23 March, the Human Rights Law Resource Centre was part of a coalition of leading Australian human rights organisations (which also included the National Association of Community Legal Centres, Kingsford Legal Centre and Amnesty International) which briefed the Committee.

The coalition provided the Committee with a major report on human rights in Australia, which was compiled with the assistance of substantial contributions from over 30 NGOs across Australia and endorsed by over 220 NGOs.



***The report and the whole briefing strategy are a model of professional NGO contribution to the work of the Committee.***

-- Sir Nigel Rodley, Vice-Chair, UN Human Rights Committee

The NGO report provided a comprehensive overview of the state of civil and political human rights in Australia, and made concrete recommendations regarding:

- the lack of constitutional or legislative recognition and protection of civil and political rights;
- groups within society that remain vulnerable to discrimination, such as Indigenous peoples, women and children, people with disability, asylum seekers and gay and lesbian couples;
- Australia's counter terrorism laws and measures;
- Australia's immigration law, policy and practice; and
- the treatment of people in detention, including prisoners and people in involuntary psychiatric detention.

On 3 April 2009, the UN Human Rights Committee released its Concluding Observations on Australia's compliance with the *International Covenant on Civil and Political Rights*.

***The Committee raised a number of serious concerns and made concrete recommendations for reform, including the implementation of comprehensive laws protecting human rights.***

The Committee commented on a number of positive human rights developments in Australia, including the National Human Rights Consultation and the Apology to the Stolen Generations. However, the Committee also raised a number of serious concerns and made concrete recommendations for reform, including the implementation of comprehensive laws protecting human rights.

The Committee also recommended a range of measures to improve human rights protection in Australia, including a review of the Northern Territory Intervention 'in direct consultation with the Indigenous peoples concerned, in order to ensure that they are consistent with the *Racial Discrimination Act 1995* and the Covenant'. The Committee gave Australia one year to report back on its progress in relation to the Intervention.

Australia was also given one year to report back on its implementation of the Committee's recommendations to:

- review terrorism laws to ensure compliance with human rights, including the right to be presumed innocent until proven guilty;
- strengthen efforts to combat violence against women, particularly Indigenous women; and
- abolish mandatory immigration detention, close Christmas Island and enact new migration legislation which respects fundamental rights.

Consistent with the recommendations contained in the NGO report, the Committee also made a range of other recommendations, including that Australia should:

- establish a national mechanism to provide reparations, including compensation, to the Stolen Generations;

- enact legislation to prevent people in Australia being returned to a country where they might face cruel or degrading treatment, torture or death;
- ensure that Australian agencies do not assist overseas law enforcement agencies if the assistance may result the imposition of the death penalty;
- address the excessive use of force by police without adequate oversight, including the use of Taser guns and lethal force;
- establish an appropriate independent and enforceable mechanism to investigate complaints about police brutality; and
- take further steps to address ongoing issues of homelessness.

## 7.2 **Opinion and Analysis: Australia Must Regain its 'AAA' Human Rights Rating**

Ten years ago, Australia was scrutinised by several United Nations human rights bodies. Responding to concerns raised by those organisations about issues such as mandatory sentencing and indefinite migration detention, then attorney-general Darryl Williams labelled the reports as lacking in credibility and an 'insult to Australia'. The Labor Opposition welcomed the reports as 'factual' and 'balanced'.

A decade on, and with the roles reversed, the Labor Government faces a significant test of its domestic and international human rights credentials after the UN Human Rights Committee — an organisation of 18 independent international experts — issued its first report card on Australia since 2000.

For, while the Committee commended Australia on the current national human rights consultation and the historic apology to the stolen generations, it has given the Government just one year to report back on human rights progress in the areas of immigration detention, counter-terrorism laws and violence against women. It has also called for an immediate re-design of the Northern Territory Intervention to conform with international human rights standards and our own *Racial Discrimination Act*.

The report comes at a critical time for Australia. Internationally, the Rudd Government is running hard to obtain a seat on the strategically important UN Security Council and has made 'respecting human rights' one of the four key pillars of that campaign. Regionally, the Government is seeking to develop a new relationship with Asia and the Pacific, including actively considering Australia's role in promoting and protecting human rights.

Locally, the Government is sponsoring a national human rights consultation, asking the Australian public whether and how we could better protect our rights and responsibilities.

The former government responded to the UN's report by attacking the committees themselves. In 2009, there are positive signs that Australia's response may be more mature and constructive this time.

For starters, the Australian delegation appearing before the Human Rights Committee in New York acknowledged that there are areas of profound disadvantage in Australia.

Second, in contrast with the former government, which criticised the UN's 'over-emphasis' on information and evidence from non-government organisations, the Australian Government welcomed the critical, but constructive, involvement of Australian NGOs in the reporting process. This is crucial. Mature states support a strong non-government sector and welcome constructive criticism by NGOs as an opportunity to identify and collaboratively address human rights problems.

***The Australian Government welcomed the critical, but constructive, involvement of Australian NGOs in the reporting process.***

The real test for the Government, however, will be to respond as constructively to the substance of the review as to the process, as the Committee expressed grave concern that the state of human rights for many disadvantaged groups in Australia remains precarious and vulnerable.

At a macro level, the Committee noted that Australia is alone among developed Commonwealth countries in its failure to enact comprehensive national human rights laws. It lamented the lack of parliamentary or judicial mechanisms to ensure that Australian law and policy are compatible with our fundamental human rights obligations. And it noted that the rights to equality and non-discrimination are inadequately protected in federal law.

Of course, a national Human Rights Act would not, in itself, be a panacea to disadvantage and discrimination. However, the incorporation of international human rights — those core minimum standards that ensure all people can live with dignity and respect — into national law could ensure that human rights are actively considered at all levels of government.

In a rigorous report, the Committee also looked at the practical realisation of human rights, making 20 concrete recommendations to improve human rights 'on the ground'. Some of these recommendations will be politically easy for the Government to implement. The recommendations to take further steps to address homelessness and to establish an adequately resourced national indigenous representative body fit well with existing government policy and priorities.

Other recommendations, while not necessarily priorities for government, are simply no-brainers. It is imperative, for example, that Australian law prevent Australian officials from helping overseas law enforcement agencies if it may result in the imposition of the death penalty, such as occurred in the case of the 'Bali Nine'.

But many of the remaining recommendations will require greater political commitment and capital and will constitute the true test of the Rudd Government's human rights credentials. Having previously ruled out compensation, how will the Government respond to the committee's recommendation that Australia establish a national

mechanism to provide reparations to the stolen generations? Will the Government work with states and territories to address the use of force by police without adequate regulation or oversight? What priority will the Government give to improving access to justice by increasing funding to legal aid commissions, community legal centres and Aboriginal legal services?

In their closing comments to the Australian delegation in New York, the UN Human Rights Committee stated that Australia has both an opportunity and obligation to regain its reputation as a 'AAA' human rights country. For that to happen will require political leadership, concrete legislative reform and budgetary action.

*Philip Lynch is director of the Human Rights Law Resource Centre and a member of the Australian non-government delegation that briefed the UN Human Rights Committee in New York*

### 7.3 **Economic, Social and Cultural Rights: Committee on ESC Rights Review of Australia**

On 4 and 5 May, a non-government delegation, comprising representatives from the Human Rights Law Resource Centre, the National Association of Community Legal Centres and Kingsford Legal Centre, briefed the UN Committee on Economic Social and Cultural Rights as part of its review of Australia's compliance with the *International Covenant on Economic, Social and Cultural Rights*.

***The NGOs from Australia provided an example of best practice, providing fact sheets and keeping the work of the Committee focused.***

-- UN Committee on Economic, Social and Cultural Rights, Geneva

Issues raised by the delegation included:

- the lack of legal recognition and protection of economic, social and cultural rights;
- the nature and extent of poverty in Australia and the need for a comprehensive national poverty reduction strategy;
- Indigenous self-determination and disadvantage;
- the current housing crisis and the significant problem of homelessness;
- groups within society that remain vulnerable to discrimination, such as Indigenous peoples, women and children, people with disability, asylum seekers and gay and lesbian couples;
- violence against women;
- the inadequacy of income and social security supports;
- the regression of workers' rights;
- the crisis in mental health in Australia and the inadequacy of mental health care;

- the chronic under funding of both public health care and education; and
- the deleterious impacts of Australia's immigration law and policy on families and children.

In thanking the NGO delegation for its reports and briefing, the UN Committee stated that 'the NGOs from Australia had provided an example of best practice, providing fact sheets and keeping the work of the Committee focused'.

On 25 May 2009, the UN Committee on Economic, Social and Cultural Rights released its report card following a review of Australia's compliance with the *International Covenant on Economic, Social and Cultural Rights*. In a landmark report, the Committee called on Australia to take urgent action to address the human rights implications of climate change and to increase aid to developing countries; the first time that a UN treaty body has included recommendations on these issues in a human rights report.

The Committee commended Australia on recent initiatives and advances, including the national human rights consultation, efforts to combat violence against women, and the Apology to the Stolen Generations.

However, the Committee also made 26 recommendations for Australia to improve its human rights performance, including by implementing comprehensive national human rights legislation.

#### **7.4 Opinion and Analysis: Rights in Rough Times**

About four years ago, I was involved in consultations with more than 100 homeless or formerly homeless people across Melbourne about whether a Charter of Rights could make Victoria a more inclusive and rights-respecting community.

The terms of reference for that consultation were limited to considering civil and political rights and not economic and social rights. While this may have made some (limited) sense to me as a lawyer, I was struck by how little sense it made to the homeless, to the rights-holders.

'Having freedom of movement and expression without the right to health and housing is like having icing without a cake,' said Bill, an elderly homeless man in his submission to the consultative committee.

I was struck again by the day-to-day importance and fragility of economic and social rights when a high-level United Nations committee released its report on Australia on 25 May.

The report was prepared after 2 days of dialogue and the exchange of extensive written reports between an Australian government delegation and the Committee on Economic, Social and Cultural Rights. The Committee also received submissions and heard from a non-government delegation, which provided them not only with statistical information and data, but also relayed stories such as those of Bill.

The result is a report, adopted by a Committee of 18 independent experts from across the world, which reflects the human rights situation 'on the ground' in Australia, but

also makes practical, evidence-based recommendations as to how we can improve our human rights performance.

The report is balanced and constructive. It commends Australia on recent initiatives and advances, but also makes 26 recommendations for improvement, noting that despite 'the absence of any significant factors impeding the effective implementation of economic and social rights' in Australia, substantial problems persist in areas such as mental health, poverty and homelessness.

***People with mental illness are significantly over-represented in key measures of disadvantage such as homelessness, unemployment, poverty and substance abuse.***

Mental health care services are chronically under-resourced in Australia. There are widespread problems with access to care, quality of care and adequate accommodation for people with mental illness. The Committee was particularly critical of the 'high rate of incarceration of people with mental diseases' and called on Australia to 'ensure all prisoners receive adequate and appropriate mental health treatment when needed'.

Despite previous UN recommendations, the Committee was told that Australia has not developed an official poverty line. Without such a measure, it is very difficult to monitor and progress and evaluate the effectiveness of poverty reduction policies and programs.

The Committee urged Australia to 'to develop a comprehensive poverty reduction and social inclusion strategy'. In a related recommendation, the Committee also called on Australia to ensure universal and adequate social security coverage and review potentially discriminatory and punitive measures, including the 'quarantining' of payments under the Northern Territory Intervention.

While the Committee welcomed the Rudd Government's significant commitment to halve homelessness by 2020, it noted that homelessness has increased over the last decade, a period of unprecedented prosperity.

The fact that 105,000 people experience homelessness every night is evidence that Australia needs to take further and urgent action to ensure an adequate standard of living for all.

Even during the good times, many disadvantaged groups did not have equal access to basic services. Now that we are in tougher times, sustained investment in basic human rights is critical. Human rights must be made recession proof.

The Australian Government has an obligation to ensure that basic entitlements, such as health care, education and adequate social security, are equally available to all.

The Committee also made a series of recommendations to address inequality at both the local and international levels. At the local level, the Committee recommended the enactment of comprehensive federal anti-discrimination laws, strengthened efforts to

improve gender equality, and special measures to improve workforce participation among disadvantaged groups.

Recognising that our human rights obligations do not end at home, the Committee requested that Australia take action to address the human rights implications of climate change and increase aid to developing countries; the first time that a UN treaty body has included recommendations on these issues in a country report.

While welcoming the current National Human Rights Consultation, the Committee reiterated that Australia should enact comprehensive national human rights legislation. A national Human Rights Act would not, of course, be a panacea to disadvantage and poverty. It could, however, promote more responsive and accountable government, improve public services, and enshrine fundamental values such as freedom, dignity, respect and a fair go.

Critically, the Committee said that any Human Rights Act should protect the full range of economic and social rights, such as the right to adequate healthcare and housing.

***Human rights must be a priority at a time when the global financial crisis threatens the dignity and equality of many poor and vulnerable groups.***

It is now imperative the Australian Government act promptly and positively on the UN report. Human rights must be a priority at a time when the global financial crisis threatens the dignity and equality of many poor and vulnerable groups, particularly given the expanding body of research which demonstrates a strong correlation between equitable social policy on the one hand, and economic development and growth on the other.

In any event, our obligation to protect basic social and economic rights doesn't recede during tough times. On the contrary, human rights protections are more important now than ever, because it is the most disadvantaged groups – the unemployed, the homeless, people with mental illness, single mothers and their children – who are most adversely affected.

*Philip Lynch is Director of the Human Rights Law Resource Centre and Ben Schokman is the Centre's DLA Phillips Fox Human Rights Lawyer*



## 8. The Future of Human Rights

### 8.1 Opinion and Analysis: Australia's Role in Promoting Human Rights in Asia and the Pacific

10 December 2008 marked the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights, which recognised that respect for equality, dignity and the rule of law is the foundation of peace, justice and development. It states that nations should promote universal respect for human rights domestically and *through international co-operation*.

Australia's role and responsibility in promoting universal observance of human rights in the region, in what Foreign Minister Stephen Smith terms a 'new era of Asia-Pacific influence', is both complex and critical. It is also the subject of a current inquiry by a joint parliamentary committee, which has been tasked to provide options on human rights models for the Asia-Pacific.

Asia and the Pacific are the only areas in the world without regional human rights laws or institutions. Europe and the Americas each have a Human Rights Convention and Court, Africa a Charter and Court of Human and Peoples' Rights, and the League of Arab States a Charter on Human Rights.

Asia and the Pacific are also regions that confront 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.

As a developed democracy and influential middle-power Australia has an important leadership role to play in promoting and supporting the development of a regional law and institutions to promote, protect and mainstream human rights.

***If we are to have a legitimate voice in a regional human rights dialogue, Australia must commit to effective domestic human rights implementation and adopt a principled and consistent approach to human rights in international affairs.***

Leadership comes in many forms. Effective leadership, however, is always respectful and sensitive to context. It is rarely a top down exercise of authority. The most effective means by which Australia can promote a regional human rights culture may not be to propose a 'human rights model', but rather to integrate human rights into all of our engagements with the region. The Prime Minister seemed to foreshadow such an approach with his Port Moresby Declaration on Australia's relationship with the Pacific in March. Foreign Minister Stephen Smith has described this 'ambitious' approach as being based on cooperative engagement and mutual respect; 'working and talking with, not at, our neighbours'.

It is within this framework of robust and respectful engagement that Australia should promote human rights in the region.

The task begins at home. If we are to have a legitimate voice in a regional human rights dialogue, Australia must commit to effective domestic human rights implementation, including through the adoption of a national Human Rights Act.

We must also adopt a principled and consistent approach to human rights in international affairs – from the death penalty, to child labour, to people trafficking. The promotion of human rights should be a core element of our regional aid, trade and security policies and programs. No country has a perfect record on human rights, but those that take their own obligations seriously are in a much better position to promote implementation abroad.

Any Australian leadership must recognise that there are many skilled and dedicated people doing human rights work in Asia and the Pacific. These people should be engaged, supported and resourced. The input and participation of civil society is essential to the success of any regional program to promote human rights. Australia could make a valuable contribution by providing human rights education and training to assist governments to understand and comply with their obligations, and empower individuals and groups to recognise and assert their rights.

Australia should also support increased Pacific engagement with the international human rights system. Currently, the Pacific has the lowest human rights treaty ratification rate of any global region. Treaties such as the *International Covenant on Civil and Political Rights* provide clear, comprehensive, internationally accepted principles that can enhance governance and improve accountability. Through a process of periodic reporting to the UN regarding treaty implementation, Pacific states could work with independent international human rights experts to develop recommendations and strategies to improve human rights. As a longstanding participant in these processes, Australia should provide Pacific states with legal and financial support to ratify and implement these treaties and engage with the UN.

Successful implementation of such programs may pave the way for the Pacific-led development of regional human rights laws and institutions. There are strong arguments for a regional human rights convention: it could bring localised knowledge and legitimacy to the international human rights framework and lead to the establishment of an independent and well-resourced regional human rights body.

Sixty years ago, Australia played an important role in the development of the historic *UDHR*. Today, the *UDHR's* vision remains vital but elusive. The failure has been not in the instrument but its implementation. Australia, alongside Pacific governments and civil society, now has an opportunity to contribute to the realisation of the *UDHR* vision of freedom, peace, justice and development in the region. This would lay a strong foundation for human rights protection – and regional security and prosperity – for the next 60 years.

*Rachel Ball is a lawyer with the Human Rights Law Resource Centre*

## 8.2 Our Impact: Developing a Human Rights Agenda and Action Plan

In 1948, the historic *Universal Declaration of Human Rights* was adopted in recognition of the fact that respect for human rights and the rule of law is the foundation of peace, justice, security and human development.

Australia played an important and constructive role in the development of this historic instrument and subsequent international human rights laws and mechanisms.

Australia's domestic, regional and international interests over the next 15 years and beyond require that we commit to collaborative and constructive leadership in developing and implementing modern and effective human rights standards, institutions and initiatives.

In this context, and on the occasion of the 60<sup>th</sup> anniversary of the *UDHR*, the Human Rights Law Resource Centre brought together a diverse range of Australian experts to develop an agenda to improve the promotion and protection of human rights at the domestic, regional and international levels.

The panel sought to do this by identifying significant or emerging human rights issues, challenges or opportunities for civil society and governmental action over the next 15 years, and developing an action plan for progress in the following areas:

- the rights of Indigenous Australians;
- human rights, governance and policy development;
- international and regional institution building, engagement and normative development;
- poverty, aid, trade, business, human rights and development;
- equality and non-discrimination;
- the recognition, promotion and protection of economic, social and cultural rights; and
- building a culture of human rights through education and engagement.

The outcomes of the panel's discussions are available at [www.hrlrc.org.au](http://www.hrlrc.org.au).

## 9. Membership, Governance and Staff

### 9.1 Introduction

PILCH and Liberty Victoria were the founding members of the Centre and remain its only members.

The Centre is governed by a Board of Directors. The Board is responsible for the governance and management of the Centre for the purpose of carrying out the Centre's objects and purposes.

Pursuant to cl 17 of the Constitution, the Board has established an Advisory Committee to provide strategic assistance and advice.

### 9.2 Board

The Board comprises three Directors appointed by PILCH, two Directors appointed by Liberty Victoria and one Director and Alternate appointed by the Advisory Committee.

While Directors are appointed on the basis of their expertise and in their capacity as representatives of the Centre's initial members, cl 21 of the Centre's Constitution provides and confirms that Directors have an obligation to act in the interests of the Centre rather than their appointing member.

Name	Position	Term of Office	Meetings Attended 2008/09
Robert Jamieson Partner, Blake Dawson * Appointed at 2007/08 AGM	Chairperson	10.10.08 –	6/7
David Manne Executive Director, Refugee and Immigration Legal Centre	Director	11.12.06 –	5/11
Anne O'Rourke Senior Lecturer, Monash University Committee Member, Liberty Victoria	Director	05.10.07 –	7/11
Alexandra Richards QC Queen's Counsel Founding President, Australian Women's Lawyers Chair, Victorian Bar Pro Bono Assistance Committee	Director	25.01.06 –	9/11
Melanie Schleiger Lawyer, Lander & Rogers * Appointed at 2007/08 AGM	Director	10.10.08 –	6/7
Diane Sisely Committee Member, Liberty Victoria Director, Australian Centre for Human Rights Education	Director	03.01.06 –	8/11
Philip Lynch Executive Director, Human Rights Law Resource Centre	Company Secretary	03.01.06 –	11/11

Fiona McLeay Head of Product, Worldvision Australia * Appointed at 2007/08 AGM	Advisory Committee Alternate	10.10.08 –	4/7
David Krasnostein Chief General Counsel, National Australia Bank Chairperson, PILCH * Resigned at 2007/08 AGM	Chairperson (ret.)	03.01.06 – 10.10.08	1/4
Emily Howie Senior Associate, Allens Arthur Robison Corporate Responsibility Group * Resigned at 2007/08 AGM	Director (ret.)	05.10.07 – 10.10.08	2/4
Lee Ann Basser Associate Professor, La Trobe Law School * Resigned at 2007/08 AGM	Advisory Committee Alternate (ret.)	25.01.06 – 10.10.08	1/4

### 9.3 Advisory Committee

The Advisory Committee's function is to provide strategic guidance and advice to the Centre's Board and staff.

The Advisory Committee comprises 30 members, including representatives from community legal centres and legal aid, human rights organisations, community organisations, law firms, legal professional associations and university law schools.

The Advisory Committee is appointed by the Board. The term of appointment is two years and may be extended or renewed.

Name	Organisation
John Tobin (Chair)	Melbourne Law School
Alexandra Richards QC	Victorian Bar
Amanda Jones	Clayton Utz
Andrew George	Andrew George Solicitors
Caroline Adler	PILCH Homeless Persons' Legal Clinic
Cecilia Riebl	Environment Defenders Office
Dan Creasey	DLA Phillips Fox
Dan Nicholson	Centre on Housing Rights and Evictions
Professor Dianne Otto	Melbourne Law School
Elizabeth Bennett	Amnesty International
Eve Lester	Australian Lawyers for Human Rights
Fiona McLeay	World Vision Australia
Joanne Kummrow	Victorian Government Solicitor's Office
Joumanah El Matrah	Islamic Women's Welfare Council of Victoria
Jude Di Manno	Loddon Mallee Accommodation Network
Associate Professor Julie Debeljak	Castan Centre for Human Rights
Associate Professor Lee Ann Basser	La Trobe University

Lucy McKernan	PILCH
Matthew Carroll	Victorian Equal Opportunity and Human Rights Commission
Nicolas Patrick	DLA Phillips Fox
Peter Henley	Mallesons Stephen Jaques
Robyn Mills	Victoria Legal Aid
Sophie Delaney	Federation of Community Legal Centres
Stephanie Cauchi	Victorian Council of Social Service
Tiffany Overall	Youthlaw
Timothy Moore	Victorian Aboriginal Community Controlled Health Organisation
Vanessa Lesnie	Australian Human Rights Commission

#### 9.4 Staff

The Centre is privileged to be comprised of dynamic, innovative and committed staff.

Name and Position	Organisation
Philip Lynch Director and Principal Solicitor	Phil was previously the founding Coordinator of the PILCH Homeless Persons' Legal Clinic in Melbourne which, in 2005, was conferred with the Australian Human Rights Law Award. Phil has also worked as a commercial litigator with Allens Arthur Robinson.
Ben Schokman Senior Human Rights Lawyer	Ben is a full-time secondee from DLA Phillips Fox. He previously worked as a commercial litigator with Allens Arthur Robinson. Ben has experience with a range of national and international NGOs and human rights institutions, including the UN High Commissioner for Refugees and the Starlight Foundation.
Emily Howie Senior Human Rights Lawyer	Emily has worked as a Senior Associate with Allens Arthur Robinson, a legal adviser to the House of Representatives Legal and Constitutional Affairs Committee, and in the Trial Chambers of the International Criminal Tribunal for the Former Yugoslavia. Emily's position is funded by a generous Grant from the Victorian Legal Services Board.
Rachel Ball Human Rights Lawyer	Rachel has a Master of Laws from Columbia University in New York and previously worked as a lawyer at Mallesons Stephen Jaques. She also has experience working and volunteering with the Asylum Seeker Resource Centre, the Castan Centre for Human Rights Law, Human Rights First in New York and the World Bank in Washington. Rachel's position is jointly funded by the Helen Macpherson Smith Trust and the R E Ross Trust.
Secondees Lawyers	During 2008/09, the Centre has benefited from the substantial contributions of a number of secondees lawyers: <ul style="list-style-type: none"> <li>• Phoebe Knowles (Minter Ellison)</li> </ul>

	<ul style="list-style-type: none"><li>• Melanie Schleiger (Lander &amp; Rogers)</li><li>• Jessica Zikman (Lander &amp; Rogers)</li><li>• Maryam Minai (Mallesons Stephen Jaques)</li><li>• Helen Conrad (Mallesons Stephen Jaques)</li><li>• Victoria Edwards (Freehills)</li><li>• Melissa Gundrill (Clayton Utz)</li></ul>
Administration and Finances	The Centre is provided with administrative support by PILCH. The Centre is provided with bookkeeping and accountancy services by Jacque Lancaster and Bruce Timbs.

## 10. Audited Financial Statements

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# **Human Rights Law Resource Centre Ltd**

ACN 117 719 267

## **Financial Report**

For the Year Ended 30 June 2009

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

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# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Directors' Report

As at 30 June 2009

Your directors present their report on the company for the financial year ended 30 June 2009.

### Directors

The names, qualification and the number of board meetings attended and eligible to attend by each director in office at any time during, or since the end of, the year are shown below:

Name	Position	Term of Office	Meetings Attended 2008-2009
<b>Robert Jamieson</b> Partner, Blake Dawson * Appointed at 2007/08 AGM	Chairperson	Appointed 10.10.08	6/7
<b>David Manne</b> Executive Director, Refugee and Immigration Legal Centre	Director	Appointed 11.12.06	5/11
<b>Anne O'Rourke</b> Senior Lecturer, Monash University Committee Member, Liberty Victoria	Director	Appointed 05.10.07	7/11
<b>Alexandra Richards QC</b> Queen's Counsel Founding President, Australian Women's Lawyers Chair, Victorian Bar Equality Before the Law Committee	Director	Appointed 25.01.06	9/11
<b>Melanie Schleiger</b> Lawyer, Lander & Rogers * Appointed at 2007/08 AGM	Director	Appointed 10.10.08	6/7
<b>Diane Sisely</b> Committee Member, Liberty Victoria Director, Australian Centre for Human Rights Education	Director	Appointed 03.01.06	8/11
<b>Philip Lynch</b> Executive Director, Human Rights Law Resource Centre	Company Secretary	Appointed 03.01.06	11/11
<b>Fiona McLeay</b> Head of Product, Worldvision Australia * Appointed at 2007/08 AGM	Advisory Committee Observer	Appointed 10.10.08	4/7
<b>David Krasnostein</b> Chief General Counsel, National Australia Bank Chairperson, PILCH * Resigned at 2007/08 AGM	Chairperson (ret.)	Appointed 03.01.06 - Retired 10.10.08	1/4

The directors have been in office since the start of the financial year to the date of this report unless otherwise stated.

### Principal Activities

The principal activities of the company during the financial year were providing pro bono legal advice in human rights law.

No significant change in the nature of these activities occurred during the year.

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Directors' Report (Cont'd)

As at 30 June 2009

### Operating Results

The loss of the company for the financial year amounted to \$16,065 (2008: \$23,612).

### Significant Changes in State of Affairs

No significant changes in the company's state of affairs occurred during the financial year.

### Events Subsequent to Balance Date

No matters or circumstances have arisen since the end of the financial year which significantly affected or may significantly affect the operations of the company, the results of those operations or the state of affairs of the company in future financial years.

### Dividends Paid or Recommended

The Company is limited by guarantee and accordingly no dividends have been paid or declared during or since the end of the financial year. No options have been issued of shares or interest in the Company.

### Environmental Issues

The company's operations are not regulated by any significant environmental regulation under a law of the Commonwealth or of a state or territory.

### Indemnifying Officers or Auditors

Insurance premiums have been paid for directors and officers liability during the financial year. No indemnities have been given or insurance premiums paid for any person who is or has been an auditor of Human Rights Law Resource Centre Ltd. No person has applied for leave of Court to bring proceedings on behalf of the company or intervene in any proceedings to which the company is a party for the purpose of taking responsibility on behalf of the company for all or part of those proceedings.

The company was not a party to any such proceedings during the year.

### Auditors' Independence Declaration

A copy of the auditors' independence declaration as required under section 307C of the Corporations Act 2001 is set out at page 3.

Signed in accordance with a resolution of the Board of Directors:



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Director  
R Jamieson, Chairperson



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Executive Director  
P Lynch, Company Secretary

Signed in Melbourne, this 9<sup>th</sup> day of September 2009.

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Auditors' Independence Declaration under Section 307C of the Corporations Act 2001

I declare that, to the best of my knowledge and belief, during the year ended 30 June 2009 there have been:

- i) no contraventions of the auditor independence requirements as set out in the Corporations Act 2001 in relation to the audit; and
- ii) no contraventions of any applicable code of professional conduct in relation to the audit.



Ian Duff  
Registered Company Auditor



MDHC Audit Assurance Pty Ltd

Signed in Hawthorn, this 10<sup>th</sup> day of September 2009

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Income Statement

For the Year Ended 30 June 2009

	<b>Note</b>	<b>2009</b> \$	<b>2008</b> \$
Revenue	7	357,936	201,944
<b>Expenses</b>			
Occupancy expenses		(55,887)	(18,783)
Administrative expenses, including staff		(318,114)	(206,773)
Total Expenses		(374,001)	(225,556)
<b>Net loss for the year</b>		<b>(16,065)</b>	<b>(23,612)</b>

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Balance Sheet

As at 30 June 2009

	Note	2009 \$	2008 \$
<b>Current assets</b>			
Cash and cash equivalents	2	268,560	218,786
Trade and other receivables	3	-	5,050
Goods and service tax receivable		252	1,098
Other current assets		924	-
Total Current assets		269,736	224,934
<b>Total Assets</b>		<b>269,736</b>	<b>224,934</b>
<b>Current Liabilities</b>			
Trade and other payables	4	52,994	74,812
Provisions	5	20,500	30,500
Grants received in advance		136,571	53,586
<b>Total current liabilities</b>		<b>222,465</b>	<b>158,898</b>
<b>Non-Current Liabilities</b>			
Provisions	5	12,400	2,700
<b>Total Non-Current liabilities</b>		<b>12,400</b>	<b>2,700</b>
<b>TOTAL LIABILITIES</b>		<b>222,465</b>	<b>161,598</b>
<b>NET ASSETS</b>		<b>47,271</b>	<b>63,336</b>
<b>Equity</b>			
Retained earnings		47,271	63,336
<b>TOTAL EQUITY</b>		<b>47,271</b>	<b>63,336</b>

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Statement of Changes in Equity

For the Year Ended 30 June 2009

	<b>Retained Earnings \$</b>
Balance as at 1 July 2007	86,948
Loss for the year	<u>(23,612)</u>
<b>Balance as at 30 June 2008</b>	<b>63,336</b>
Loss for the year	<u>(16,065)</u>
<b>Balance as at 30 June 2009</b>	<b><u>47,271</u></b>



# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Cash Flow Statement

For the Year Ended 30 June 2009

	<b>Note</b>	<b>2009</b> \$	<b>2008</b> \$
<b>Cash flows from operating activities</b>			
Receipts from grants, donations and other		434,657	236,484
Payments to suppliers and employees		(396,197)	(158,648)
Interest received		11,314	8,819
		<hr/>	<hr/>
Net cash provided by operating activities	9	49,774	86,655
		<hr/>	<hr/>
<b>Net increase in cash held</b>		<b>49,774</b>	<b>86,655</b>
Cash at the beginning of the financial year		218,786	132,131
		<hr/>	<hr/>
<b>Cash at the end of the financial year</b>	2	<b>268,560</b>	<b>218,786</b>
		<hr/> <hr/>	<hr/> <hr/>

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Notes To The Financial Statements

For the Year Ended 30 June 2009

### 1 Statement of Significant Accounting Policies

Human Rights Law Resource Centre Ltd is a company limited by guarantee incorporated and domiciled in Australia.

The directors have prepared the financial statements on the basis that the company is a non-reporting entity because there are no users dependent on general purpose financial reports. This financial report is therefore a special purpose financial report that has been prepared in order to meet the requirements of the Corporations Act 2001.

The financial report has been prepared in accordance with the mandatory Australian Accounting Standards applicable to entities reporting under the Corporations Act 2001 and the significant accounting policies disclosed below which the directors have determined are appropriate to meet the needs of members. Such accounting policies are consistent with the previous period unless stated otherwise.

The financial statements have been prepared on an accruals basis and are based on historical costs unless otherwise stated in the notes. The accounting policies that have been adopted in the preparation of this report are as follows:

#### (a) Cash and cash equivalents

Cash and cash equivalents include cash on hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less and bank overdrafts.

#### (b) Grants

The Company receives grant monies to fund projects. The Company treats grant monies as unexpended grants in the balance sheet where there are conditions attached to grant revenue relating to the use of these grants for specific purposes. It is recognised in the balance sheet as a liability until such conditions are met or services provided.

#### (c) Revenue

Donations are recognised as revenue when received unless they are designated for a specific purpose, where they are carried forward as income in advance in the balance sheet until such time as that purpose is fulfilled.

Grant revenue is recognised in the income statement when it is controlled. When there are conditions attached to grant revenue relating to the use of these grants for specific purposes it is recognised in the balance sheet as a liability until such conditions are met or services provided.

Revenue from the rendering of services is recognised upon the delivery of the service to the customers.

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

All revenue is stated net of the amount of goods and services tax (GST).

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Notes To The Financial Statements

For the Year Ended 30 June 2009

### 1 Statement of Significant Accounting Policies (cont'd)

#### (d) Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Australian Taxation Office. In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense.

Receivables and payables in the balance sheet are shown inclusive of GST.

#### (e) Provisions

Provisions are recognised when the Company has a legal or constructive obligation, as a result of past events, for which it is probable that an outflow of economic benefits will result and that outflow can be reliably measured.

#### (f) Employee Entitlements

Provision is made for the company's liability for employee benefits arising from services rendered by employees to balance date. Employee benefits that are expected to be settled within one year have been measured at the amounts expected to be paid when the liability is settled. Employee benefits payable later than one year have been measured at the present value of the estimated future cash outflows to be made for those benefits. Those cashflows are discounted using market yields on national government bonds with terms to maturity that match the expected timing of cashflows.

Contributions are made by the company to an employee superannuation fund and are charged as expenses when incurred.

#### (g) Comparative Figures

Where required by Accounting Standards, comparative figures have been adjusted to conform to changes in presentation for the current financial year.

#### (h) Income Tax

No provision for income tax has been raised as the Company is exempt from income tax.

#### (i) New Accounting Standards for Application in Future Periods

The AASB has issued new, revised and amended Standards and Interpretations that have mandatory applicable dates for future reporting periods and which the company has decided not to early adopt. Due to the nature of the company's activities, it does not expect them to have any material effect in the company's financial statements.

#### (j) Critical Accounting Estimates and Judgements

The directors evaluate estimates and judgements incorporated into the financial statement based on historical knowledge and best available current information. Estimates assume a reasonable expectation of future events and are based on current trends and economic data, obtained both externally and from within the Company.

The financial statement was authorised for issue on 9<sup>th</sup> September 2009.

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Notes To The Financial Statements

For the Year Ended 30 June 2009

	2009 \$	2008 \$
<b>2 Cash and Cash Equivalents</b>		
Cash at bank	268,560	218,786
<b>3 Trade and Other Receivables</b>		
Trade receivables	-	5,050
<b>4 Trade and Other Payables</b>		
Trade payables	34,418	8,226
Other payables	17,176	63,686
Accrued audit fees	1,400	2,900
Total trade and other payables	52,994	74,812
<b>5 Provisions</b>		
<b>Current</b>		
Employee benefits	20,500	30,500
<b>Non-current</b>		
Employee benefits	12,400	2,700
<b>6 Members Guarantee</b>		
The company is limited by guarantee. If the company is wound up, the Constitution states that the liability of each member is limited to a maximum of \$100 towards any outstanding obligations of the company.		
As At 30 June 2009 the number of members was 2 (2008: 2)		
<b>7 Revenue</b>		
Operating grants	272,067	119,422
Event registrations	12,127	20,795
Donations	11,820	15,050
Interest	11,314	8,819
Other revenue	50,598	37,858
Total revenue	357,936	201,944

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

## Notes To The Financial Statements

For the Year Ended 30 June 2009

	2009 \$	2008 \$
<b>8 Loss from Ordinary Activities</b>		
Remuneration of the auditor of the entity for:		
- Auditing or reviewing the financial statement	1,400	2,900
- Other services	-	-
Employee benefits	206,400	108,728
	<u>206,400</u>	<u>108,728</u>
<b>9 Cash Flow Information</b>		
<b>(a) Reconciliation of Cash Flow from Operations with Operating Loss</b>		
Net loss for the year	(16,065)	(23,612)
Changes in assets and liabilities		
(Increase)/decrease in trade and other receivables	5,050	5,064
(Increase)/decrease in prepayments	(924)	650
(Decrease) increase in trade and other payables	(21,818)	69,272
Increase/(decrease) in current provisions	(10,000)	9,050
Increase in grants received in advance	82,985	38,295
(Increase)/decrease in GST payable / receivable	846	(2,964)
Increase/(decrease) in non-current provisions	(9,700)	(9,100)
	<u>49,774</u>	<u>86,655</u>
Cash flow from operations	49,774	86,655
<b>(b) Reconciliation of Cash</b>		
Cash at the end of the financial year as shown in the cash flow statement is reconciled to items in the balance sheet as follows:		
Cash at bank	268,560	218,786

## 10 Related Party Transactions

### (a) Included in accounts payable

Included in trade payable and accrued liabilities as at balance date is an amount of \$29,626 (2008: \$8,226) owing to an affiliated entity - Public Interest Law Clearing House (Victoria) Inc., related by membership, co-location and a similar range of activities. This amount is part of the amount noted in 10 (b).

### (b) Associated Companies/Entities

Public Interest Law Clearing House Inc. paid expenses on behalf of HRLRC during the year, which were reimbursed by HRLRC except as noted in 10 (a), for the year ended 30 June 2009 totalling \$100,262 (2008: \$46,855).

## 11 Company Details

### Registered Office

The registered office and principal place of business, of the company is:  
Human Rights Law Resource Centre Ltd,  
Level 17, 461 Bourke Street  
Melbourne VIC 3000

# Human Rights Law Resource Centre Ltd

ACN 117 719 267

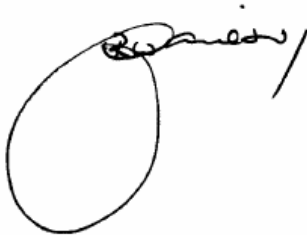
## Directors' Declaration

The directors have determined that the company is not a reporting entity and that this special purpose financial report should be prepared in accordance with the accounting policies described in Note 1 to the financial statements.

The directors of the company declare that in their opinion:

1. The financial statements and notes, as set out on pages 4 to 11, are in accordance with the Corporations Act 2001 and:
  - (a) comply with Accounting Standards as described in Note 1 to the financial statements and the Corporations Act 2001; and
  - (b) give a true and fair view of the financial position as at 30 June 2009 and of its performance for the year ended on that date in accordance with accounting policies described in Note 1 to the financial statements.
2. There are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable.

This declaration is made in accordance with a resolution of the Board of Directors.



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Director  
R Jamieson, Chairperson



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Executive Director  
P Lynch, Company Secretary

Signed in Melbourne, this 9<sup>th</sup> day of September 2009.

## **Independent Auditor's Report to the members of Human Rights Law Resource Centre Ltd**

### **Scope**

We have audited the financial report, being a special purpose financial report, of Human Rights Law Resource Centre Ltd for the financial year ended 30 June 2009 which comprises the balance sheet as at 30 June 2009, and the income statement, the statement of changes in equity, cash flow statement for the year then ended, a summary of significant accounting policies, other explanatory notes and the directors declaration.

### **Directors' Responsibility for the Financial Report**

The directors of the Company are responsible for the preparation and fair presentation of the financial report and have determined that the accounting policies described in Note 1 to the financial statements, which form part of the financial report, are appropriate to meet the requirements of the Corporations Act 2001 and are appropriate to meet the needs of the members. The directors' responsibility also includes designing, implementing and maintaining internal controls relevant to the preparation and fair presentation of the financial report that is free from material misstatement, whether due to fraud or error; selecting and applying appropriate accounting policies; and making accounting estimates that are reasonable in the circumstances.

### **Auditor's Responsibility**

Our responsibility is to express an opinion on the financial report based on our audit. No opinion is expressed as to whether the accounting policies used, as described in Note 1, are appropriate to meet the needs of the members. We conducted our audit in accordance with Australian Auditing Standards. These Auditing Standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the directors, as well as evaluating the overall presentation of the financial report.

The financial report has been prepared for distribution to members for the purpose of fulfilling the directors' financial reporting under the Corporations Act 2001. We disclaim any assumption of responsibility for any reliance on this report or on the financial report to which it relates to any person other than the members, or for any purpose other than that for which it was prepared.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### **Independence**

In conducting our audit, we have complied with the independence requirements of the Corporations Act 2001. We confirm that the independence declaration required by the Corporations Act 2001, provided to the directors of Human Rights Law Resource Centre Ltd, as shown on page 3 of this report, would be in the same terms as provided to the directors as at the date of this audit report.

**Independent Auditor's Report to the members of Human Rights Law Resource Centre Ltd (Cont'd)**

**Auditor's Opinion**

In our opinion the financial report of Human Rights Law Resource Centre Ltd is in accordance with the Corporations Act 2001, including:

- a) giving a true and fair view of the company's financial position as at 30 June 2009 and of its performance for the year ended on that date in accordance with the accounting policies described in Note 1; and
- b) complying with Australian Accounting standards to the extent described in Note 1 to the financial statements and complying with the Corporations Regulations 2001.



Ian Duff  
Registered Company Auditor



MDHC Audit Assurance Pty Ltd

Signed in Hawthorn, this 10<sup>th</sup> day of September 2009.