



Australian Education Union
Submission
to the
National Human Rights Consultation

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The Australian Education Union represents 180,000 teachers and educators in the primary, secondary, TAFE and early childhood sectors throughout Australia. As such, it is uniquely placed to represent the views of teachers and educators to the National Human Rights Consultation.

Key Question One: Which human rights (including corresponding responsibilities) should be protected and promoted?

1. Respect for human rights is fundamental to any free society and to any democratic nation that values human freedom and dignity. Australia is a nation with a strong democratic culture and a tradition of upholding the concepts of human rights, human dignity, freedom, equality, fairness and a “fair go” for all.
2. The AEU believes that measures to protect and promote human rights are essential. These should include measures in the following areas:
 - 2.1 The right to life, specifically the need to oppose capital punishment. The Federal Government must actively oppose capital punishment at both the national and international level.
 - 2.2 The right to equality under the law without distinction of any kind, such as race, colour, sex, language, sexual orientation or religion. This must include measures to support freedom from discrimination that cannot be overridden by national, state or territory legislation, particularly concerning the rights of Indigenous Australians. Exemptions should not be made for religious groups. Measures and mechanisms should exist to end such discrimination wherever it takes place.
 - 2.3 The rights of gay, lesbian, bi-sexual, transgender and intersex individuals to full participation in the life of the community. This must include marriage and civil unions which contain the same legal rights and obligations as those covering heterosexual relationships.
 - 2.4 The rights of disabled individuals to full participation in the life of the community, including work, education, politics and other areas. This must include proactive measures to assist in the fulfilment of such participation.
 - 2.5 The right to liberty of the person. No-one should be subject to arbitrary arrest or detention. Anyone arrested should have the right to be informed of the charges against them, to contact family or friends and to legal representation of their choice. The right of liberty of the person should include the right of asylum seekers to live in the community while their cases are proceeding.
 - 2.6 The rights of all persons deprived of liberty to be treated with humanity and respect.

- 2.7 The right of asylum seekers to swift and effective determination of their claims.
- 2.8 The right of privacy, including from searches, seizures or surveillance that has not been authorised by a properly constituted court after a fair, competent and independent hearing.
- 2.9 The right of freedom of thought, conscience and religion.
- 2.10 The right of freedom of expression and opinion, insofar that it does not constitute incitement to hate or vilification of groups or individuals.
- 2.11 The right of freedom of association, including the right to form and join trade unions. Such rights must be protected with measures that prohibit discrimination on the grounds of membership of any organisation and provide for realistic conditions which allow unions to organise within a workplace.
- 2.12 The right to freedom from forced or compulsory labour, whether in the context of work for social security benefits, penal servitude or any other context.
- 2.13 The right to strike and for trade unions to function freely. This should include the right to strike on matters other than those pertaining to employment and to strike action across an industry seeking common outcomes.
- 2.14 The right to work and to receive fair and adequate wages and conditions. This should include measures against unfair dismissal in all workplaces.
- 2.15 Where unemployment does exist individuals should have access to adequate and fair unemployment benefits under conditions that respect their dignity as a person.
- 2.16 The right to access to adequate and fair social security, including but not limited to unemployment and disability benefits and aged pensions.
- 2.17 The right to health care and medical attention. This should include measures to promote wellbeing and to combat ill-health in the community.
- 2.18 The rights of all children to protection.
- 2.19 The rights of ethnic, Indigenous, religious and linguistic minorities to enjoy their own cultures and practice them freely.
- 2.20 The right of Indigenous children to educational programs that respect and value Indigenous cultures and languages. This should include measures to encourage the use of Indigenous languages.
- 2.21 The right to education. This should include free, compulsory, secular and high quality public primary and secondary education and free, accessible, secular and

high quality public tertiary and vocational education. As stated in Article 26 of the Universal Declaration of Human Rights, education should be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms.

- 2.22 The rights to education for migrants, refugees and asylum seekers should specifically be protected, including access to language and literacy programs.
- 2.23 The right of individuals in prison and other forms of detention to access education, including literacy, numeracy and vocational education skills leading to real opportunities for re-integration into the community upon release.
- 2.24 The rights of women. There is an ongoing need for governments to address the systemic disadvantage women face. Such issues include the continuing gap between women's and men's weekly and indeed lifetime earnings, the undervaluing of paid and unpaid work women undertake, the prevalence of violence towards women by men, the sexualisation/exploitation of women (and increasingly children) and women's restricted career prospects due to caring responsibilities. The right of women to control of their own bodies and fertility should also be protected.
- 2.25 The right to a clean environment. This should include measures to ensure access by individuals and communities to mechanisms to ensure their rights to a clean environment are not violated and to accessible remedies when they believe they have been.

Key Question Two: Are these human rights currently sufficiently protected and promoted?

1. As previously mentioned, Australia is a nation with a strong democratic culture and a tradition of upholding the concepts of human rights, human dignity, freedom, equality, fairness and a "fair go" for all.
2. However, there have been areas in which the human rights of individuals and communities have not been adequately respected or protected. Injustices and violations of human rights have taken place and been allowed to continue to an extent not acceptable in a free society. In some cases Federal, State and Territory governments have perpetuated such violations. A number of these areas are outlined below.
3. Australia is a nation that claims to value human rights and dignity. It is a signatory to the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN Convention on the Rights of the Child (CROC). It is incumbent on all Australian governments at all levels, but on the

Federal Government in particular, to recognise violations of human rights, to take measures to stop them and to act to protect and promote human rights. In particular the government should act in the following areas:

- 3.1 **The Rights of Women.** Women in Australia continue to suffer from inequality and discrimination in areas of public and private life. This includes areas of workforce participation and promotion, pay equity, leadership, sexual harassment and other forms of gender-based violence.
- 3.2 **The exemptions from federal, state and territory anti-discrimination acts granted to religious institutions, including non-government schools.** These exemptions allow such institutions to discriminate in the employment of teachers and other individuals on the grounds of their religion, personally held beliefs and other factors. This constitutes a clear and unacceptable violation of the rights to freedom of religion and belief for those concerned and a violation of their rights to freedom from discrimination. As such it constitutes a violation of Article 18 of the Universal Declaration of Human rights and Article 18 of the ICCPR concerning the right to freedom of thought, conscience and religion, Article 26 of the ICCPR which requires the laws of state parties to prohibit discrimination on the grounds of religion and other factors, and a violation of Article 23 of the Universal Declaration of Human Rights and Article 6 of the ICESCR concerning the right to work.
- 3.3 **Anti-terrorism legislation and ASIO powers.** The AEU considers the powers granted to ASIO under the ASIO Legislation Amendment Act 2003 to constitute potentially an unacceptable violation of the rights of Australians to due process under the law. Under the act people, including those who are non-suspects, can be detained without charge for up to seven days, denied the lawyer of their choice, strip searched and interrogated without the reach of legal assistance and without recourse to the normal checks and balances of the justice system of our country. This is in clear violation of Australia's obligations under Article 9 of the ICCPR, which guarantees liberty and security of the person and states that no-one should be subject to arbitrary arrest or detention or deprived of their liberty without due process. The act is also in violation of Article 17 of the ICCPR, which states that no-one shall be subjected to arbitrary interference with their privacy or attacks upon their honour or reputation.
- 3.4 **The long term detention of asylum seekers.** Throughout the last decade Australia has detained asylum seekers for periods of time ranging up to six years. This has included the detention of children in contravention of the UN Convention on the Rights of the Child (CROC).The AEU considers the long term detention of asylum seekers to be a grave and unacceptable violation of basic human rights. It violates the provisions of Article 9 of the ICCPR against arbitrary arrest or detention. While some relevant laws and regulations have since changed, we cannot as a nation tolerate a return to such a regime. The poor conditions under which detainees have

been held in immigration detention is in violation of Article 10 of the ICCPR which provides that all persons deprived of their liberty should be treated with respect for the inherent dignity of the human person. Concerns about process mean that it is arguable that Australia has been in violation of Article 13 of the ICCPR, which provides that in refugee and immigration cases individuals must have the opportunity to present their case to a competent authority.

- 3.5 **Work for the Dole.** The AEU considers that Mutual Obligation and “work for the dole” legislation to be punitive, unproductive and a violation of a citizen’s economic and social rights. It is also in contravention of Article 8 of the ICCPR which states that no-one should be required to perform forced or compulsory labour.
- 3.6 **The Fair Work Act 2009.** The Fair Work Act 2009 (FWA) continues many of the restrictions on freedom of association which were incorporated in the Workchoices provisions and previous industrial legislation, also in violation of Article 8 of the ICESCR. These are found in provisions limiting the right to strike on matters other than those pertaining to employment, prohibition on strike action over issues covered by a collective agreement, striking without following the requirements of the Act regarding ballots and notification to employers and prohibition of strike action across an industry seeking common outcomes.
- 3.7 **The Australian Building and Construction Commissioner (ABCC).** The powers to coerce individuals who have broken no law to divulge information concerning confidential meetings with other union members violates Article 8 of the ICESCR concerning the right of trade unions to function freely. The restrictions on the right to strike also violate the right to strike specified in Article 8. The requirements to divulge details of meetings with other union members violate Article 22 of the ICCPR concerning the right of freedom of association.
- 3.8 **The Secondary Boycott provisions of the Trade Practices Act.** The sections of the Commonwealth Trade Practices which prohibit unions from engaging in secondary boycotts are a violation of Article 8 of the ICESCR concerning the right to strike and for unions to function freely.
- 3.9 **The social, economic and cultural rights of the Australian Indigenous population.** The enormous gap between the health, educational and economic conditions of Indigenous Australians and the rest of the Australian people is unacceptable and it violates Article 12 of the ICESCR concerning the right of everyone to the highest standard of physical health, particularly Article 12 2 (a), which holds state parties responsible for the provision for the reduction of infant mortality and the healthy development of the child.
- 3.10 **The suspension of the Federal anti-discrimination act as part of the federal Intervention in the Northern Territory.** Suspension of the Federal Anti-discrimination Act in the Northern Territory is a violation of the fundamental rights

of Indigenous people. It is also in violation of Article 7 of the Universal Declaration of Human Rights and Article 26 of the ICCPR which state that all people must be entitled without discrimination to equal protection under the law.

- 3.11 **Moves by the commonwealth and some state and territory governments to curtail the use of Indigenous languages in schools.** As well as being pedagogically unsound, such moves are in violation of Australia's obligations under Article 27 of the ICCPR which states that people belonging to ethnic or religious minorities have the right to enjoy their own culture and use their own languages.
- 3.12 **The underfunding of public education.** Properly resourced, free, compulsory, secular and high quality public education is essential for a nation to fulfil its obligations under Article 26 of the Universal Declaration of Human Rights concerning the rights of all to an education directed towards the full development of the human personality. The continued underfunding of public education contravenes Article 13 of the ICESCR concerning the right of everyone to an education to enable all persons to participate equally in a free society, for primary education to be free and compulsory and for high quality secondary education to be made generally available and accessible to all.
- 3.13 **The re-imposition of fees for higher education.** Access to all to education at all levels is a fundamental right and a precondition for equity and fairness in society. The imposition of HECS undermines this right, as does the introduction of full feeing university places and the introduction of fees in TAFE and other VET institutions. This could be seen to contravene of Australia's obligations under section 13 of the ICESCR which calls for higher education to be made accessible to all by all appropriate means and in particular by the progressive introduction of free education. Under Article 26 of the Universal Declaration of Human Rights higher education must be equally accessible to all on the basis of merit. The AEU notes that the Federal Government is moving to abolish full fee university places.

Key Question Three: How could Australia better protect and promote human rights?

1. The AEU believes that mechanisms designed to better protect and promote human rights must be supported by effective and easily accessible remedies that support peoples' rights and allow people to defend them when they are violated, as provided for by Article 10 of the Universal Declaration of Human Rights.

Conclusion

1. While the protection and promotion of human rights is the responsibility of all governments, the AEU believes it is the responsibility of the Federal Government in

particular to use its powers to address the issues outlined above and protect human rights in accordance with its international obligations. Arguments of jurisdictional authority and state or territory powers should not be an excuse for a failure to act on these matters.

2. The AEU also believes that it is the responsibility of the federal, state and territory governments to provide human rights education to the community. This should include information on the responsibilities of organisations, employers and individuals to respect the human rights of their employees and of members of the public. It should also include information to the public on the recourses that are available to individuals and communities who believe their rights have been violated.
3. The Human Rights Commission is one mechanism through which rights can be promoted, but protecting and promoting human rights should be seen as the responsibility of all government instruments and departments.
4. The AEU agrees with the contention in the background paper that human rights education should be a responsibility of schools as part of wider civics and citizenship programs to develop knowledge and understanding of Australian democratic values, heritage, traditions and institutions. Such programs should be fully resourced.
5. The AEU also supports the contention in the background paper that Australia should promote human rights in the international arena through international institutions and agreements, through dialogue and through a focus on poverty reduction and sustainable development.