



***Human Rights and Equal
Opportunity Commission***

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**Submission of the
HUMAN RIGHTS AND EQUAL OPPORTUNITY
COMMISSION (HREOC)
to the
Australia 2020 Summit
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Human Rights and Equal Opportunity Commission

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Future Directions for the Australian Economy – Education, skills, training, innovation and productivity

The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to the *Australia 2020* Summit in its inquiry into ‘Future Directions for the Australian Economy - Education, skills, training, innovation and productivity’.

Strengthening Australia’s education system

1. HREOC supports the government’s intention to provide universal early childhood education and to develop a rigorous national school curriculum.
2. In addition, state and federal governments should cooperate to provide for an increased focus on human rights, civics and citizenship throughout all levels of Australia’s education system. Educating all Australians about fundamental rights and responsibilities is essential for ensuring a strong civil society and a vibrant participatory democracy, and for promoting social equality, tolerance and diversity.
3. HREOC recommends:
 - That any national curriculum should include specific reference to human rights, in line with the United Nations World Program for Human Rights Education.
 - That professional development, particularly focused on human rights, civics and citizenship, should be provided for teachers and instructors.
 - That HREOC should be consulted as a technical advisor on the national curriculum, to ensure that comprehensive and consistent human rights education is provided in Australian educational institutions. This should include information about mechanisms for human rights protections in Australia.
 - That greater provision should be made for students with disabilities or special learning needs, to ensure that education is accessible by all Australians.
 - That children and young people should be encouraged to actively participate in civil society as a way of promoting human rights and citizenship.

- That anti-discrimination policies and programs which encourage equity, accessibility, tolerance and diversity should be further promoted in Australian educational institutions.

Workforce participation

4. HREOC urges the government to introduce a first class scheme of paid parental leave, including paid maternity leave for birthing mothers, consistent with international human rights and labour standards. Minimum paid leave entitlements should be government-funded to ensure that parents, particularly mothers, are not discriminated against in recruitment and retention practices, and that small businesses do not carry a disproportionate cost.
5. HREOC recommends the introduction of a legally-protected right to request flexible work arrangements. This should apply to all persons with family and caring responsibilities and to persons with disabilities. The right should be underpinned by an accessible dispute resolution system. That system should foster a workplace culture that takes flexible work requests seriously, appropriately balancing the needs of employers with the social and economic importance of enabling workers to meet their family and caring responsibilities and enabling workers with disabilities to engage in the paid workforce.
6. HREOC recommends the introduction of federal protection against discrimination on the grounds of family and caring responsibilities. In *It's About Time: Women, Men, Work and Family* (2007), HREOC recommended the introduction of a *Family Responsibilities and Carers Rights Act*, which would establish comprehensive federal discrimination protection in order to support workforce participation by people with family and caring responsibilities across the lifecycle.
7. HREOC recommends that comprehensive gender equality benchmarks be established in these and other areas of social and economic policy. The benchmarks should be independently monitored in order to track progress on key indicators of equality between men and women.

8. HREOC recommends that the *Age Discrimination Act 2004* be amended in order to enhance federal protection against age-based discrimination. This should include removing the ‘dominant reason’ test, and removing or modifying exemptions including the exemption relating to voluntary bodies.¹

¹ For full details of HREOC’s recommendations in this regard, see its 2007 submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs ‘Older People and the Law Inquiry’, HREOC Submission No. 92, available at http://www.humanrights.gov.au/legal/submissions/2007/older_people_and_the%20law_dec06.html.

Population, sustainability, climate change and water

The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to the *Australia 2020* Summit in its inquiry into 'Population, sustainability, climate change and water'.

Climate change and human rights

1. To date, climate change has generally been approached as an environmental or economic issue. The social implications also require attention, given that the impacts of climate change will threaten fundamental human rights including the right to life, the right to adequate food, the right to water, the right to health and a range of cultural rights.
2. The rights of many Indigenous Australians will be significantly affected due to their close relationship with the environment. Changes in climate will harm traditional lands and waters, and many plants and animals upon which Indigenous communities depend for survival will be threatened.
3. Climate change has the potential to exacerbate social inequality and existing threats to human rights, as the impacts of climate change increase people's vulnerability to poverty and social deprivation.
4. As a party to the major international human rights treaties, Australia has an obligation to protect individuals against threats posed to human rights by climate change. The following measures will be required:
 - Adaptation measures – the government should provide financial and logistical support to affected communities, within Australia and overseas, to adjust to changing conditions.
 - Disaster relief – the government should plan for the evacuation and protection of large numbers of people, with climate-change induced disasters expected on a Hurricane Katrina scale.

- Relocation – the government should facilitate the relocation of communities, including from Australia’s territorial islands, if the impacts of climate change make this necessary.
 - Climate change refugees – the government should advocate for a new international agreement and, in the interim, formulate domestic laws to address climate-induced migration.
5. Decision-makers should ensure that measures taken in response to climate change do not disproportionately impact low-income, disadvantaged or marginalised groups.
6. A human rights-based approach should be adopted in the development of climate change responses, to provide a standard against which policy and resource allocation is evaluated. Under a human rights-based approach:
- Individuals are seen as rights-holders, and the government should provide for their meaningful participation in policy development.
 - There should be an emphasis on local knowledge of the environment, including traditional cultural practices of Indigenous communities.
 - The principles of non-discrimination and substantive equality are integral. Decision-makers should consider likely impacts on disadvantaged or vulnerable groups when forming policy.
 - Core minimum human rights standards should guide decision-makers when weighing competing demands on limited resources.
7. In addition, any long-term plan to adapt to the impacts of climate change should:
- Recognise the spiritual, economic, social and cultural significance that land plays in the lives of indigenous people.
 - Recognise the contribution that traditional owners can make to custody and management of land and seas.
 - Provide for the equal participation of Indigenous Australians in developing future strategies.

8. Australia's response to climate change must also consider the need to protect cultural diversity and heritage, in line with the principles contained in the *Universal Declaration on Cultural Diversity*.

9. For further information, please see HREOC's *Background Paper on Climate Change and Human Rights*, at http://www.humanrights.gov.au/about/media/papers/hrandclimate_change.html.

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

The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to the *Australia 2020* Summit in its inquiry into ‘a long-term national health strategy’.

Access to healthcare for all Australians

1. The right of everyone to the enjoyment of the highest attainable standard of physical and mental health is recognised in the *International Convention on Economic, Social and Cultural Rights*.
2. A fundamental basis of Australia’s long term health strategy should be that *all* Australians are provided with access to quality healthcare services. Groups in society which might currently be disadvantaged should be ensured full access in future. This includes responding to the particular needs of Indigenous Australians, Australians with a disability, members of gay, lesbian and transgender communities, immigrant and refugee populations and others.

Cultural dimensions of health

3. A long-term national health strategy should incorporate cultural considerations across all relevant areas including training, recruitment, service design and delivery, research and policy development. The particular needs of culturally, religiously, ethnically and racially diverse communities should be addressed. In particular, these include Indigenous, immigrant and refugee populations.

Health services for Indigenous Australians

4. For Indigenous Australians, the accessibility, quality, acceptability and availability of health services continue to be of major concern.

5. In light of Australia's international obligations and the deplorable state of Australian Indigenous health, HREOC, in the *Aboriginal and Torres Strait Islander Social Justice Report 2005*, launched the National Indigenous Health Equality campaign. Chapter 2 of that report contained an analysis of Indigenous health inequality in Australia.
6. This research culminated in the 'Close the Gap' campaign, dealing with key issues including:
 - Primary Health Care: Indigenous peoples in remote and urban centres do not enjoy equal access to primary health care. Major priorities include providing an immediate response to acute illness and injury, and protecting health through screening, early intervention, and programs to promote wellbeing and prevent substance abuse.
 - Health infrastructure: Indigenous Australians do not enjoy the same standard of infrastructure necessary for health, including safe drinking water, healthy food sources, effective sewerage systems, rubbish collection services, and safe and adequate housing. Infrastructure development and maintenance should be a priority in order to achieve health equality.
 - Adequate funding: In the past, Australian governments have proved unwilling to fund Indigenous health programs based on need. As a result, plans have failed. Programs and service delivery should be adequately resourced and supported so they are capable of achieving their stated goals.
 - Time frames, targets and benchmarks: The goal of health equality should be supported by clear targets over the short and medium term. In many cases, the *Overcoming Indigenous Disadvantage Framework*, and the *Aboriginal and Torres Strait Islander Health Performance Framework* provide an appropriate basis for establishing targets and benchmarks.
7. On 20 March 2008, the Prime Minister, Minister for Health and Ageing, Minister for Indigenous Affairs, Opposition Leader, and peak Indigenous and non-Indigenous health organisations signed an historic statement of intent for a new partnership to close the gap on Indigenous life expectancy. The Statement of

Intent can be found at

http://www.humanrights.gov.au/social_justice/health/statement_intent.html.

Health services for people with a disability

8. People with a disability, particularly women with a disability and those with an intellectual or psychiatric disability, do not receive the same level of health care as the rest of the population. This may be because of physical access to health care service providers, attitudinal barriers, inaccessible information or diagnostic overshadowing. HREOC would support government action to identify:
 - The nature of barriers to equal access to health services for people with disabilities.
 - Initiatives which may already be occurring.
 - Options for addressing those barriers.

Strengthening communities, supporting families and social inclusion

The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to the *Australia 2020* Summit in its inquiry into ‘Strengthening communities, supporting families and social inclusion’.

Supporting families

1. The development of accessible, high quality, and affordable child care should be prioritised, in particular to address the needs of low income families and families in regional and remote areas.
2. The government should review current superannuation and aged pension arrangements to ensure that people with family and caring responsibilities are able to maintain an adequate standard of living in retirement. HREOC recommends that the government extend the Superannuation Co-contribution Scheme to individuals who are not in the paid workforce due to caring responsibilities. HREOC also recommends that the Productivity Commission inquire into establishing a superannuation-like framework to recognise the unpaid work of carers.
3. HREOC recommends that the government take a leadership role in preventing and providing adequate protection from gender-based violence. This should be undertaken through a comprehensive national strategy, in conjunction with the states and the non-government sector.
4. Practical support should be extended to *all* Australian families, including those built on same-sex relationships. Australian laws and policies should ensure that same-sex families are not discriminated against.

Strengthening communities and social inclusion

5. Within Australia a number of communities face social, cultural, economic, political or racial exclusion. For example, many Indigenous, Muslim, black African or Asian Australians feel excluded, isolated or denied full equality by

‘mainstream’ societal norms, particular laws, and lack of employment opportunities.

6. Racial prejudice, in particular, can have significant detrimental impacts on the lives of individuals and communities. Initiatives aimed at strengthening Australian communities should be based on recognition of a culturally diverse modern Australia. They should aim to promote the fundamental principles of racial equality and non-discrimination.

7. The government should invest in social inclusion programs aimed at ‘demystifying’ diversity and promoting cross-cultural understanding and respect. Such programs should:
 - Build bridges between members of the Australian community – both individuals and groups.
 - Be built on a rights-based framework.
 - Include community education on diversity and human rights.
 - Provide for community members to engage in local policy-making processes.

8. HREOC encourages a focus on barriers to social inclusion faced by people with disabilities, including:
 - Physical access, including inaccessibility of public transport and other community infrastructure, housing and accommodation, education, and provision of services.
 - Communications access, including education in particular.
 - Additional costs experienced due to disability, and the chronic under-resourcing of services and supports required by some people with a disability and their families.
 - Continuing negative and stereotypical views of people with disabilities in the general community.

Homelessness

9. Homelessness is not just about housing. Homelessness impacts on a person's ability to enjoy a wide range of human rights, including the rights to health, education, privacy, freedom of movement, non-discrimination and liberty and security of person.

10. Homelessness should be addressed through a human rights framework. The government should:
 - Involve people experiencing homelessness in the development of policy strategies.
 - Take targeted legislative, policy and budgetary steps towards the full realisation of the human rights of Australians experiencing homelessness.

11. Homelessness is a particular concern for many Indigenous Australians. Physical surroundings can often exacerbate social exclusion. This is particularly so in low income households with high levels of housing stress, poor quality housing, above average unemployment and high incidence of poor health. Indigenous Australians are much more likely than other Australians to fall into these categories. Government programs should prioritise housing relief by supporting Indigenous housing projects as well as the IBA's Indigenous housing program, Indigenous housing associations and state and territory Indigenous housing agreements, which assist Indigenous Australians to access housing and own their own homes.

Options for the future of Indigenous Australia

The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to the *Australia 2020* Summit in its inquiry into 'Options for the future of Indigenous Australia'.

Participation in policy-making processes

1. In order to assist Indigenous Australians in overcoming disadvantage, the primary commitments of government should be to engage appropriately with Indigenous people, and to build the capacity of Indigenous individuals and communities.
2. The government should immediately convene a series of meetings with elected and representative Indigenous peak bodies including land councils, health organisations, Aboriginal child care agencies, educational bodies and other peak bodies operating at the state, territory and national level to begin this process of engagement.
3. The government should work with these groups to facilitate the creation of a new Indigenous representative and consultative body. The government should support this body over time to ensure that it remains functional and adaptable.

Human rights as the basis of policy-making

4. The human rights of Indigenous Australians should be the basis on which Indigenous policy is built. The principle of non-discrimination based on race should prevail, with the only exception being that an action meets the criteria of a 'special measure'. This should apply to the formulation of all programs, including those such as the Northern Territory Intervention and the Cape York Welfare Reform Trials.
5. In particular, the government should recognise the paramount importance of the rights of Indigenous peoples to:

- A distinct status and culture, which helps maintain and strengthen the identity and spiritual and cultural practices of Indigenous communities.
- Self-determination, which is a process whereby Indigenous communities take control of their future and decide how they will address issues facing them.
- Land, which provides the spiritual and cultural basis of Indigenous communities.

Targets for progress

6. Benchmarks for progress over set time frames should be set across all sectors of Indigenous policy. Targets should be formulated by business leaders, academics, community workers and other specialists, and agreed upon by the Joint Commission on Indigenous Policy in order to ensure long-term changes are not beset by party politics.
7. Targets and commitments should also be applied across governments to ensure a consistency of approach. The COAG Working Group on Indigenous Reform, and other COAG working groups, provide the platform for this to occur.
8. HREOC notes the importance of improving access for Indigenous peoples to mainstream services, and the responsibilities of state, territory and local governments in delivering adequate and appropriate services. Monitoring processes should particularly focus on whether these obligations are being met.

Funding Indigenous services

9. Access to appropriate specialist and mainstream programs and services by Indigenous Australians can only occur if the government commits to long term funding arrangements, especially for community initiatives. Policy initiatives should not be undermined by problems created by pilot funding or short term funding arrangements. Funding should be based on need.

10. Consolidated agreements should be forged between the states and the Commonwealth for Indigenous affairs in areas of housing, health, education and other services, with compliance and accountability mechanisms affecting the distribution of Special and General Purpose Payments by the Commonwealth.

Implementation of the recommendations in 'Bringing them home'

11. The federal government should take a leadership role in developing a comprehensive response to all recommendations made in the *Bringing them home* report. This should include the establishment of an accessible, fair and just national reparations scheme for the Stolen Generations, to be co-funded by the states and territories.

Native Title reform

12. The federal government should review the *Native Title Act* on the basis that the native title system, introduced 15 years ago, has not adequately protected the rights and interests of native title holders. The native title system has become too complex, too legalistic and effectively gridlocked. For further information see the *Native Title Report 2007*.

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

The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to the *Australia 2020* Summit in its inquiry into ‘the future of Australian governance: renewed democracy, a more open government (including the role of the media), the structure of the Federation and the rights and responsibilities of citizens’.

Federal Charter of Rights

1. Australia’s system of governance should be reformed to provide greater protection for the human rights of all Australians. HREOC believes that the best way to provide comprehensive human rights protection is through the adoption of a federal Charter of Rights.
2. Australia’s current governance system does not adequately protect human rights. Many of the international human rights standards agreed to by the Australian government have not been incorporated into Australian law. Victims of human rights violations are often left without legal remedies.
3. The need for reform is highlighted by numerous examples. The wrongful detention of Cornelia Rau and wrongful removal of Vivian Alveraz illustrate that human rights can be the casualty of poor governance. Some recent counter-terrorism laws have been enacted without adequate scrutiny or necessary human rights safeguards. Indigenous Australians continue to die 17 years younger than non-Indigenous Australians. And increasing numbers of homeless Australians suffer human rights violations on a daily basis.
4. The federal government has stated its intention to initiate a public inquiry about the best way to protect human rights and freedoms in Australia.
5. A national inquiry would offer a valuable opportunity for Australians to engage with each other and with their government, to have their say about:

- Which human rights should be protected by Australian law.
 - What remedies should be available for human rights breaches.
 - What role human rights should play in governmental processes.
6. The national inquiry should be provided with sufficient time and funding to include a community-level public consultation process accessible by all Australians. Special effort should be made to include those who are isolated or disadvantaged.
7. A federal Charter of Rights created in consultation with the Australian community could foster a human rights culture in government and Australian society, by:
- Making human rights an integral part of law-making and policy-setting processes.
 - Requiring Parliament to consider whether laws comply with human rights.
 - Enabling courts to interpret laws consistently with human rights where possible, and to identify laws which do not comply with human rights.
 - Providing accessible and appropriate remedies for human rights breaches.
8. A federal Charter of Rights should be based on the needs and concerns of all Australians, and should fill the gaps in Australia's current system of human rights protection.

Indigenous Australians - reconciliation and constitutional recognition

9. The government should make a commitment to formal reconciliation processes. This should include committing to formal benchmarks that build on the terms recommended by the Council for Aboriginal Reconciliation in their *Roadmap to Reconciliation* (2000), and by the Social Justice Commissioner (in particular in the *Social Justice Reports* for 1999, 2000, 2001, 2002 and 2003). Benchmarks should include both practical and symbolic steps, which should be taken in consultation with Indigenous Australians.

10. The government should, in consultation with Indigenous Australians, develop a proposal for a constitutional referendum. This should:

- Include a new preamble to the Australian Constitution, recognising the position of Indigenous peoples in Australian society and providing a sense of inclusion for all Indigenous Australians.
- Amend section 51(xxvi), clarifying that the government has no power to discriminate on the basis of race when making laws for Aboriginal and Torres Strait Islander peoples.

Australia's future security and prosperity in a rapidly changing region and world

The Human Rights and Equal Opportunity Commission (HREOC) makes this submission to the *Australia 2020* Summit in its inquiry into 'Australia's future security and prosperity in a rapidly changing region and world'.

Counter-terrorism

1. Some recent Australian counter-terrorism laws have been enacted in haste, without adequate assessment of the impact on fundamental rights and freedoms.
2. All efforts to protect Australia's security should comply with Australia's international human rights obligations.
3. One comprehensive means of achieving this would be through adopting a federal Charter of Rights, which could ensure that:
 - Non-negotiable human rights are identified and protected.
 - Legitimate restrictions on human rights are publicly justified by government.
 - Government agencies consider the impacts of counter-terrorism measures on human rights.
 - Courts act as a safeguard against executive overreach in individual cases.
4. Problems with existing counter-terrorism laws have been identified by the Security Review Legislation Committee (SRLC), the Parliamentary Joint Committee on Intelligence and Security (PJCIS) and the Australian Law Reform Commission (ALRC).
5. The government should implement the SRLC and PJCIS recommendations to clarify the scope of certain terrorism offences, and to create an independent reviewer of counter-terrorism laws.
6. The pathway towards violence and terrorism can be aggravated by experiences of alienation and a sense of injustice. Anti-discrimination and social inclusion

policies aimed at individuals and groups at risk, as well as wider society, are critical for interrupting potential trajectories towards terrorist activities.

7. The PJICIS found that anti-terrorism laws impact most on Arab and Muslim Australians who feel under greater surveillance and suspicion. Australia's long term security would be enhanced by active promotion of programs which increase engagement with excluded groups. HREOC's work with Muslim and Arab communities continues to build the evidence-base for the efficacy of these approaches.

Immigration

8. While Australia has a legitimate need to protect its borders, Australia's treatment of 'unauthorised arrivals' has led to significant human rights violations.
9. The current mandatory detention policy and lack of judicial review powers have led to prolonged and indefinite detention of many asylum seekers, with severe impacts on their physical and mental health.
10. A policy framework that values and promotes ethnic diversity increases Australia's competitive edge in the globalised market for the exchange of goods, services and labour.²
11. HREOC recommends that the government:
 - End the policy of mandatory detention.
 - Ensure that conditions in immigration detention meet international human rights standards.
 - Abolish the Temporary Protection Visa system.
 - Introduce a system of complementary protection.
 - Grant work rights and health care to asylum seekers on bridging visas.

² See *Multiculturalism: A Position Paper by the Race Discrimination Commissioner*, pp 8 – 10, at http://www.humanrights.gov.au/racial_discrimination/publications.html.

Regional engagement

12. Several countries in our region face possible civil unrest due to governing structures that are relatively unresponsive to people's aspirations.
13. HREOC has developed an approach to engagement that has proven effective with even the most authoritarian governments. For example, Australia, through HREOC, is the only country that has sustained an official program focusing directly on human rights in China. Such programs contribute to practical reforms and in doing so help to ease the potential for dangerous pressures to build.
14. The government should explore the possibility of extending this model to other countries in the region.

Australia on the world stage

15. The government should take active steps to develop Australia's international role as a strong supporter of human rights.
16. The government should:
 - Elevate the importance it attaches to human rights in bilateral discussions.
 - Commit to positive re-engagement with the United Nations system, in particular the human rights treaty bodies.
 - Formally indicate its support for the *Declaration on the Rights of Indigenous Peoples*.
 - Ratify the *Convention on the Rights of Persons with Disabilities*, the *Optional Protocol to CEDAW* and the *Optional Protocol to the Convention against Torture*.