



ATTORNEY-GENERAL  
THE HON ROBERT McCLELLAND MP

**NSW Young Lawyers Forum**  
**NSW Law Society,**  
**Level 2, 170 Phillip Street, Sydney**  
**Wednesday 29 October 2008, 6:00 pm**

CHECK AGAINST DELIVERY

**[Acknowledgements]**

- **First, may I acknowledge the traditional owners of the land we meet on – and pay my respects to their elders, both past and present.**

**[Other Acknowledgements]**

- **Mr Joshua Knackstredt – President of NSW Young Lawyers**
- **Mr Daniel Petrushnko - Chair of the Criminal Law Committee of NSW Young Lawyers (introducing you)**

- **Dr Ben Saul - Director of the Sydney Centre for International and Global Law at Sydney University (speaking after you).**
- **Ladies and gentlemen**

## **[Introduction]**

- 1. Thank you all for your welcome this evening. It's great to be amongst so many enthusiastic young lawyers.**
- 2. I have been invited to talk about the Rudd Government's human rights agenda.**
- 3. Unlike the former Government we consider human rights and the rule of law to be cornerstones of Australia's system of government and of society more broadly.**
- 4. Australia is fortunate to have a long tradition of respecting the rule of law. Not in the sense of mere inheritance, but fortunate because successive generations have worked at bolstering it – not taking the rule of law for granted.**
- 5. And thankfully because of that we live as a largely trouble-free, peaceful society.**

**[International human rights action]**

- 6. Australia also has a proud history of international engagement on human rights. Indeed in 1948, Australia's then Minister for External Affairs and Member for Barton, Dr H V Evatt, was President of the United Nations General Assembly when the Universal Declaration of Human Rights was adopted.**
- 7. As a global citizen in 21<sup>st</sup> century, Australia has a clear choice to make. We can either sit in the grand stand and criticize international institutions from the sidelines, disengaged, while other nations take the lead. Or we can enter the playing field and engage those institutions in a spirit of cooperation.**
- 8. The previous Government chose the former, and largely spent its time catcalling from the cheap seats.**
- 9. By contrast, the Rudd Government has in the past year worked to re-engage with the UN by**

**taking action on important international human rights instruments.**

**[Human Rights Instruments]**

- 10. We fast-tracked the ratification of the *United Nations Convention on the Rights of Persons with Disabilities*, becoming in July one of the first Western nations to do so.**
- 11. And because of our early ratification, we were invited to nominate for the UN Committee monitoring implementation of the Convention, and to participate in the election.**
- 12. I am pleased to tell you that Professor Ron McCallum AO is our nominee.  
Professor McCallum, of the University of Sydney, is an outstanding Australian and humanitarian.**
- 13. And while we work to campaign for Professor McCallum for the elections early next month, we have also kick-started the consultation process with the States and Territories on the *Optional Protocol to the Disabilities Convention*.**

14. **We are also committed to action on the UN *Optional Protocol to the Convention Against Torture.***
15. **By doing so we will send a categorical message that Australia believes torture has no place in a humane, civilised society.  
It is barbaric and repugnant.**
16. **We are actively talking to the States and Territories and other key stakeholders on this now.**
17. **At the same time, we've taken action in tabling a National Interest Analysis in Parliament on Australia becoming a party to the *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.***
18. **And in response to that National Interest Analysis, the Joint Standing Committee on Treaties recently recommended that Australia accede to the Optional Protocol.**
19. **Regrettably, the Government has not been supported in this initiative by the Opposition.**

**They have submitted a dissenting report to the Committee recommendation to sign up to the Protocol.**

**They appear to cling to their historical opposition to international human rights like a child to a comfort blanket – for some reason cringing rather than being proud of our institutions. Afraid to subject Australia to international scrutiny.**

**20. I believe that Australia is better than that.**

**And more importantly, if we are going to contribute to the international human rights debate this is the space we must occupy.**

**21. We can't expect others to lift their standards if we are not prepared to set an example.**

**These initiatives - whether about discrimination against women, persons with a disability or making clear our position on torture - underpin our determination that Australia be at the forefront of upholding human rights on the international stage.**

**22. This is also why we have extended a standing invitation to international rapporteurs.**

**We should have a human rights framework that we are proud of and happy to display to the rest of the world.**

**[Domestic human rights action]**

**23. And as we work to be on the forefront on the international stage, we must also ensure we are acting on our human rights agenda at home.**

**24. This year we have moved swiftly to remove discrimination against same-sex couples and their children.**

**25. I have introduced two Bills into the Parliament. The first removes discrimination from the Commonwealth Government (defined benefit) superannuation schemes and related taxation legislation and Acts that regulate the superannuation industry.**

**The second removes discrimination from other Commonwealth laws in areas such as social**

**security, taxation, Medicare, veteran's affairs, workers' compensation, educational assistance.**

**26. The combined effect of these two Bills is to amend 81 laws to eliminate such discrimination. A further 20 laws are also affected by these changes.**

**27. In addition, we have introduced a Bill enabling opposite sex and same-sex de facto couples to access the federal family law courts on property and maintenance matters**

**28. These Bills aim to ensure that in each amended law same-sex couples and their families are recognised.**

**And that for all practical purposes they have the same entitlements as opposite-sex de facto couples.**

**29. Our same-sex reforms will set a new standard for fairness and consistency in Commonwealth laws. By recognising same-sex couples and their families, we're making a powerful step along the road to equality for all Australians.**

- 30. I also hope to introduce a Bill before the year's end to bring forward long overdue amendments to the *Disability Discrimination Act*.**
- 31. This will implement recommendations from the Productivity Commission aimed at improving the operation of the Act.**
- 32. Amendments recommended by the Commission that we will take up will clarify the obligation for employers, service providers and others to remove discriminatory barriers for people with disabilities.**
- 33. Despite the pleas of disability groups, these languished since the Productivity Commission delivered its report in 2004.**
- 34. And as part of this Bill, we also intend to remove the 'dominant reason' test from the *Age Discrimination Act*.**
- This will restore equality for older Australians in federal discrimination law.**
- Our view is that it is unacceptable to give older**

**Australians weaker protection because of their age.**

**[National Consultation]**

- 35. But our agenda does not end with fixing up long overdue reforms.**
- 36. We are also committed to consulting to Australian people on how best to protect and promote human rights and responsibilities into the future.**
- We are currently working through arrangements for the national consultation process.**
- 37. We want to encourage a broad community debate on a range of human rights issues – not only on whether a Charter or Bill of Rights is necessary.**
- 38. From the cities to the bush, any new approach to human rights will be drawn from the views of the Australian people.**
- 39. The consultation program will be widely advertised across Australia, and I encourage you**

**all to contribute to it.**

**And to motivate others to do the same.**

**[Addressing Indigenous Disadvantage]**

- 40. And we are also committed to do all we can to overcome disadvantage for Indigenous Australians.**
- 41. It began, on the first day of Parliament, with the Prime Minister's historic '*Apology to Australia's Indigenous Peoples*'. This speech was far more than symbolic.**  
**Symbols are, of course, important because they define who we are and where we stand.**
- 42. However, the Prime Minister also dealt squarely with the Government's intent to help heal the effects of what he called 'uncomfortable' matters – disturbing stories of Indigenous dislocation and entrenched disadvantage.**
- 43. My colleague, Jenny Macklin, Minister for Indigenous Affairs is currently leading work in this area.**

- 44. But in my own portfolio, I see a real role for native title in helping to close the gap between indigenous and non-indigenous Australians.**
- 45. Unfortunately, the native title system seems to have become strangled in litigation and arguments over technical provisions of a complex Act.**
- 46. We consider that native title negotiations can provide opportunities to facilitate the reconciliation process and to forge new, enduring relationships.**
- 47. However, real change in native title will only come through adjusting the behaviour and attitudes of all participants – claimants, governments, farmers, miners, everyone – and how they engage with the opportunities native title can present.**
- 48. For example, earlier this year we overturned the former Government’s policy of refusing to recognise that native title is capable of existing in the modern territorial sea.**

- 49. Instead, the Commonwealth now recognises that non-exclusive native title rights can exist in territorial waters out to 12 nautical miles from the Australian shoreline.**
- 50. This more flexible approach should help achieve negotiated settlements in a number of native title claims that were deadlocked because of the former Government's position.**
- 51. To facilitate negotiated settlements, in the last fortnight I announced that the Government will next year introduce amendments to give the Federal Court a central role in managing all native title claims.**
- 52. The Court has significant alternative dispute resolution experience and has achieved strong negotiated results in past native title matters by taking an active role in the mediation process.**
- 53. This change will give the Court control over all native title claims brought before it from start to end.**
- Having one body control the direction of each**

**case means that the opportunities for resolution can be more readily identified.**

- 54. Minister Macklin and I have convened a Working Group of experts from the Indigenous community, mining, academia and the legal profession.**
- 55. We have asked them to develop suggestions about how best to maximise the benefits accruing under native title agreements.**
- And how best to use these to address economic and social disadvantage facing the Indigenous community.**

### **[Conclusion]**

- 56. Tonight I have only given you a snapshot of our human rights agenda.**
- 57. All of you here today, as young lawyers, have a great opportunity to help shape our legal system for the future.**
- 58. I'm sure you all would have gone into law for different reasons.**
- It could be academic interest, being in the**

**forefront of the commercial world, helping people plan for the future, being a trusted advisor, bringing justice to those who have committed crimes, or ensuring fairness for those who can't speak for themselves.**

**59. I am sure that many of you share the common aim of using the law to make a difference.**

**I started that way and still believe it to be true.**

**60. Whatever the reason, I hope that one theme registers with you all.**

**That is, to be galvanised into action by what you can contribute to the Australian community.**

**And how you can better the lives of others.**

**61. Whatever your choices, I wish you well.**

**ENDS**