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ADVANCING HUMAN RIGHTS IN OUR REGION

APF Members ACJ Implementation Reports

APF Annual Conference Paper

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

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**REPORT ON THE ACTION TAKEN ON THE ADVISORY COUNCIL OF
JURISTS REFERENCES**

**THE AUSTRALIAN HUMAN RIGHTS AND EQUAL OPPORTUNITY
COMMISSION**

13th Annual Meeting

Monday 28 July - Thursday 31 July 2008

Kuala Lumpur, Malaysia

SUMMARY OF HREOC ACTIVITIES IN RELATION TO PAST AND PRESENT ACJ REFERENCES (July 2007 - August 2008)

Trafficking (6th Annual Meeting)

The Advisory Council of Jurists (ACJ) report on Trafficking urges member States to ratify the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*. It also recommends that States enact national laws to combat trafficking, provide adequate resources to enforce those laws and, along with national human rights institutions and NGOs, provide support and protection for victims, undertake research, develop education and training programs and establish national and regional networks to share information and expertise.

HREOC has acted on this report by taking part in the government organised National Roundtable on People Trafficking in June 2008. This Roundtable established a Working Group, which HREOC is to chair, to develop guidelines for community and welfare groups working with trafficked persons. Other outcomes from the Roundtable were the identification of priority areas, including *inter alia*:

- training legal practitioners on trafficking issues;
- recognising the cross cultural issues affecting victims of trafficking;
- developing culturally appropriate information for victims of trafficking in their own languages, through appropriate consultation; and
- applying people trafficking visa and victim support regimes to civil penalties, particularly in the workplace relations regime.

The Sex and Age Discrimination Unit and Legal Section of HREOC met with the Director of the People Trafficking and Criminal Justice Visas Section, and a Senior Policy Officer from the People Trafficking and Criminal Justice Visas Section from the Department of Immigration and Citizenship, for a consultation on trafficking issues in relation to current visa arrangements in June 2008.

HREOC has also made two submissions to parliamentary inquiries dealing with trafficking. The first was in February 2005 to inquiry into the Criminal Code Amendment (Trafficking in Persons Offences) Bill 2004. It is available at:

http://www.hreoc.gov.au/legal/submissions/criminal_code_trafficking_bill.html.

More recently, HREOC made a submission to the inquiry into the future impact of serious and organised crime on Australian society in February 2007. This is available at:

http://www.hreoc.gov.au/legal/submissions/2007/jcacc_impact_organised_crime07.html.

Terrorism and the Rule of Law (7th Annual Meeting)

In its Final Report on Terrorism and the Rule of Law, the ACJ said that terrorism is a violation of victims' human rights that cannot be justified and States have a duty to protect potential victims from those human rights violations. However it expressed concern about the widening gap between stated commitments to international human rights standards and the implementation of those standards in national anti-terrorism laws and administrative practices.

In the wake of the September 11 terrorist attacks, the Australian Government has introduced many new counter-terrorism laws. These laws have created:

- new criminal offences,
- new detention and questioning powers for the Australian Security and Intelligence Office and the Australian Federal police,
- new powers for the Attorney-General to proscribe terrorist organisations;
- new ways to control people's movement and activities without criminal convictions (control orders); and
- new investigative powers for police and security agencies.

HREOC has consistently advocated the importance of making sure these counter-terrorism laws are compatible with human rights principles in its submissions to parliamentary inquiries into proposed counter-terrorism legislation.

HREOC's most recent submission on anti-terrorism legislation is available at:

http://www.hreoc.gov.au/legal/submissions/2007/proscription_powers_to_terrorist_org_feb2007.html

The President of HREOC has also made a speech on this issue at the Beijing Forum on Human Rights in April 2008. This is available at: http://www.humanrights.gov.au/about/media/speeches/speeches_president/2008/20080321_security.html

Torture (10th Annual Meeting)

The ACJ report on torture makes a series of recommendations, including the vital importance of APF member countries ratifying all relevant treaties regarding torture, enacting or amending relevant domestic laws, ensuring allegations of torture are independently investigated, allowing detention facilities to be regularly inspected, and providing education and training for all relevant sectors. The ACJ also developed Minimum Interrogation Standards.

HREOC has acted upon this report by:

- developing a paper on the implementation of Australia's obligations under the Optional Protocol to the Convention against Torture (in process);

- making comments on Australia's compliance with the *Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment* in April 2008, available at: http://www.hreoc.gov.au/legal/submissions/2008/080415_torture.html.; and
- making a submission to the Joint Standing Committee on Treaties' Inquiry into the *Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* in April 2003, available at: <http://www.hreoc.gov.au/legal/submissions/jscot.html>

Right to an education (10th Annual Meeting)

The ACJ report on the right to an education argued that education should meet four key criteria: availability, accessibility, acceptability and adaptability. The report said that States have immediate and progressive obligations in realising the right to education and they must set and achieve specific and appropriate targets. One immediate obligation is to ensure that education is inclusive and non-discriminatory.

The ACJ also recommended that, in accordance with international standards, primary education should be compulsory and available free to all; secondary and vocational training should be generally available and accessible to all; and higher education should be equally accessible to all.

HREOC's main work in this area consists of the *National Inquiry into Rural and Remote Education*, initiated by HREOC in February 1999. The 1998 *Bush Talks* consultations on the human rights concerns of regional, rural and remote Australians revealed that access to education of an appropriate standard and quality was a significant concern in rural and remote areas. The inquiry resulted in 73 recommendations. The findings and recommendations are organised by reference to the five necessary features of school education: namely that it must be available, accessible, affordable, acceptable and adaptable.

Details of this inquiry are available at:

http://www.hreoc.gov.au/human_rights/rural_education/index.html

Right to the Environment (11th Annual Meeting)

HREOC has acted upon the ACJ report on the Right to the Environment by developing a background paper on the Right to the Environment. This background paper highlights the fact that to date, climate change has generally been approached as an environmental or economic issue, with little focus on its social implications. The paper proceeds to highlight the value of a human rights approach to climate change in three key areas:

- 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; and
- climate change refugees: the government should advocate for a new international agreement and, in the interim, formulate domestic laws to address climate-induced migration.

The Background Paper emphasises that any long-term plan to adapt to the impacts of climate change should also:

- 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; and
- provide for their equal participation in developing future strategies.

A copy of the background paper is available at http://www.humanrights.gov.au/about/media/papers/hrandclimate_change.html. It has also been submitted to the federal Department of Climate Change and to the Office of the High Commissioner of Human Rights for as part of their study on Climate Change and Human Rights.