

2 March 2010

The Secretariat
National Human Rights Action Plan
Attorney-General's Department
3-5 National Circuit
BARTON ACT 2600

By Email: nhrap@ag.gov.au

Dear Secretariat,

Submission on the National Human Rights Action Plan

The Arts Law Centre of Australia (**Arts Law**) is pleased to provide its submission to the Secretariat on its Background Paper "A New National Human Rights Action Plan for Australia" (**Background Paper**) and commends the Federal Government's commitment to engage with the broader community, including the arts, in all phases of developing the proposed National Human Rights Action Plan. Our submission is informed through being unique in the service we provide, straddling the worlds of both art and law and representing a large group of Australian artists. We base our submission on the objective of both increasing the rights afforded to artists and promoting their ability to access those rights.

About the Arts Law Centre of Australia

Arts Law was established in 1983 and is the only national community legal centre for the arts. It provides expert legal advice, publications, education and advocacy services each year to more than 6000 Australian artists and arts organisations operating across the arts and entertainment industries.

About our clients

Our clients not only reside in metropolitan centres, but also contact us from regional, rural and remote parts of Australia, and from all Australian states and territories. Arts Law supports the broad interests of artistic creators, the vast majority of whom are emerging or developing artists and the organisations which support them.

The comments that we make in this submission are informed by our clients' profile, which is that they are usually:

- earning low/limited incomes;
- both Indigenous and non indigenous, and rural, remote or urban
- limited in their ability to enforce their rights (and as a result increasingly vulnerable to the abuse of those rights);
- dedicated to the creation of art across all disciplines;
- either new, emerging artists or established arts practitioners or arts organisations;
- operating arts businesses;
- working in both traditional and digital media;
- self-reliant in business;
- eager for accessible legal information, although they typically have limited legal education.

1 The Approach and Process proposed in the Background Paper

Arts Law generally supports the proposed approach to the development of the Action Plan in particular the commitment to ongoing and comprehensive consultation and the timetable which would see a draft action plan and baseline study available in April 2011 detailing Australia's engagement with relevant human rights treaties and an analysis of Australia's existing domestic institutional and legislative architecture for

human rights protection. We believe that such a baseline study should not only identify the existing architecture but also identify the extent to which it currently falls short of meeting the international obligations which Australia has assumed in acceding to the various international treaties and covenants on human rights such as the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. As noted by the United Nations Committee on Economic, Social and Cultural Rights' Concluding Observations on Australia's Implementation of the ICESCR, Australia currently lacks an effective legal framework for the protection of economic, social and cultural rights at the Federal level and in particular, for Indigenous cultural and intellectual property.¹

We endorse the proposal to invite State and Territory governments to provide input on the human rights position in their respective jurisdictions and suggest that such governments be asked specifically to measure their individual performance against the obligations to protect human rights which Australia has assumed internationally such as Article 31 of the *Declaration on the Rights of Indigenous People (DRIP)* to "take effective measures to recognise and protect the exercise of ... rights" to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions, as well as the manifestations of their sciences, technologies and cultures.

2 Potential Actions for Inclusion in the Action Plan - A Charter of Human Rights

Arts Law believes that any credible Action Plan for the protection of human rights in Australia must incorporate a commitment to enact legislation, preferably constitutional, for the protection of human rights in Australia and must address specifically the rights of Aboriginal and Torres Strait Islander people.

Arts Law supports a Charter of Human Rights (**Charter**) for Australia. While we are generally in support of human rights for all, our focus is on those rights relevant to artists including:

- right to freedom of expression generally and artistic expression specifically;
- right to protection of Indigenous Cultural and Intellectual Property; and

¹ United Nations Committee on Economic, Social and Cultural Rights' Concluding Observations on Australia's Implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR) paragraphs 11 and 33.

- rights of access to legal system, information and assistance for artists, including those who are Indigenous, live remotely, are disabled, or are Culturally and Linguistically diverse.

Arts Law wants a change in the rights 'culture' in Australia. This means improving the way Australia deals with human rights, including those listed above. We propose a multi tiered approach, and recognise that while legislation is not a panacea, it would be reflective of our specific intention as a society to maintain and protect human rights for all. The multi tiered approach we propose includes:

- Preferably constitutional, but at least statutory rules which mandate the protection of human rights in Australia (for example a Charter);
- education about human rights and how to access assistance if those rights are infringed (for example information sessions, fact sheets, websites);
- increased access to legal services, i.e. information and advice (for example, government support for extension of current legal services available through funding and policy as below);
- policies and necessary funding to support human rights (for example creating government and council policies on the arts and the rights of artists and providing funding to foster those organisations supporting artists, creation of mandatory codes for those dealing with vulnerable artists).

We support a Charter which mandates that government, government agencies and those funded by the government to perform government roles:

- consider human rights in making decisions and laws; and
- issue a statement declaring whether that decision or law is compatible with human rights, and if not, why government has chosen to make that decision or enact that law; and
- are accountable for failures to comply with the Charter and are legally answerable (i.e. can be sued) for that failure.

We submit that the first step in changing our rights 'culture' and clarifying those duties of government in respect to such rights, is the introduction of specific legislation enshrining human rights protection. The specific issues identified above were addressed in more detail in our submission to the National Consultation on Human Rights in June 2009 and we reiterate and incorporate them by reference here. A further copy of that submission accompanies this one.

Conclusion

Rights for artists are vital if we are to maintain the cultural growth of Australia. Any Australian Action Plan for the protection of fundamental human rights and freedoms should protect and preserve the cultural integrity of Australia by statutory recognition of the rights to freedom of political and artistic expression by all Australians – Indigenous and non-Indigenous, linguistically and culturally diverse and those who are particularly vulnerable whether economically, physically, or intellectually – and the rights of Australia's Indigenous peoples to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions.

Further information

Please contact Robyn Ayres or Delwyn Everard if you would like us to expand on any aspect of this submission, verbally or in writing. We can be contacted at artslaw@artslaw.com.au or on (02) 9356 2566.

Yours faithfully

A handwritten signature in blue ink, consisting of several loops and flourishes, positioned above the typed name of the signatory.

Senior Solicitor

Arts Law Centre of Australia