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Home (/) / Opinion (/opinion)

Human rights in Australia: what to expect in 2016

30 December 2015 **Duncan McConnel**
0 (/opinion/17732-human-rights-in-australia-what-to-expect-in-2016#disqus_thread)

The coming year will see further

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developments in six key areas of human rights, writes Duncan McConnel.

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The year 2015 has seen significant movement in Australia within the human rights sphere, and 2016 promises to be even more dynamic and transformative.

Here are six key areas worth keeping an eye on:

Indigenous imprisonment

The problem of indigenous imprisonment was acknowledged as a national crisis in 1991 following the Aboriginal Deaths in Custody Royal Commission. At that time indigenous people were being imprisoned at seven times the rate of the rest of the population. Fast

forward to today — that rate is now 14 times.

The urgent need for action was highlighted by a number of key national events in 2015, including the the Law Council’s Indigenous Imprisonment Symposium in November.

Recommendations from the symposium’s communique included abolishing mandatory sentencing, the implementation of justice targets, and the urgent prioritisation of indigenous-led justice reinvestment measures.

The launch of the Australian Medical Association’s *Indigenous Health Report Card*

(<https://ama.com.au/advocacy/indigenous-health>) — demonstrating the destructive impact of imprisonment on indigenous health outcomes — and the release of the *Change the Record Blueprint for Change* (<https://changetherecord.org.au/blueprint-for-change>) has added further impetus for reform. Both of these reports have called for the implementation of justice targets to be added to the Council of Australian Government's Closing the Gap agenda.

The year 2016 will mark 25 years since the Aboriginal Deaths in Custody Royal Commission — a striking reminder of the need for urgent action.

Business and human rights

Business and human rights is emerging as a critical new legal policy area, underscored by the increasing international relevance of the United Nation's Guiding Principles on Business and Human Rights.

The Guiding Principles recognise that while it is government that has the primary duty to protect and promote human rights, businesses have a separate and distinct responsibility in that area.

In November, the Law Council of Australia and the Australian Human Rights Commission co-hosted a symposium on how to best assist business and the legal profession adapt to the UNGPs and support the advancement of human rights principles.

In 2016, these bodies will work alongside organisations like the UN Global Compact Network, Association of Corporate Counsel, government agencies, industry associations and business to help build awareness and responsiveness to the shift in this global field.

Immigration detention

Australia's policy of mandatory detention for asylum seekers was once again a point of controversy in 2015.

The *Australian Border Force Act*, introduced this year made it a crime, punishable by two years' imprisonment, for anyone working for (or contracting to) the Department of Immigration in immigration detention facilities to disclose any information obtained while performing that work.

In September, a Senate select committee set up to inquire into Nauruan detention conditions found the Australian-funded facility had conditions that were "not adequate, appropriate or safe for the asylum seekers detained there".

In October, a group of children's hospital doctors publicly raised concerns about breaching their duty of care by returning their patients back into detention. A call to release children from detention was then issued by the Australian Medical Association and backed by the Law Council of Australia.

The Senate voted in favour of an amendment in November requiring the release of all children from detention. However, the amendment was rejected by the government and did not pass the lower house. A total of 96 children remain locked up in Australian operation immigration detention centres.

With Australia under increasing international scrutiny in 2016 (see below), the nation's immigration detention policies will likely be a major issue.

UN Universal Periodic Review

In 2015 Australia's human rights record was under the spotlight as part of its second cycle under the Universal Periodic Review (UPR). The UPR is a mechanism of the United Nations Human Rights Council (UNHRC) which reviews the human rights records of all member states.

In March, the Law Council made a submission to the United Nations Office of the High Commissioner for Human Rights. The Law Council's submission focused on what it considers are the most pertinent rule of law issues in Australia: equality, freedom from arbitrary detention, fair hearing rights and democratic freedoms.

In November, the Australian government's human rights record was reviewed under the auspices of the UNHRC. Issues attracting particular scrutiny included; the treatment of asylum seekers, the use of offshore detention centres, the failure to ratify the Optional Protocol to the Convention against Torture, the rights of indigenous peoples and more.

In 2016 Australia will continue its push to be on the UN Human Rights Council. The nation's response to the recommendations of the UPR will likely be significant to both the integrity and the outcome of that push.

Death penalty

In April, the executions of high-profile Australian prisoners Myuran Sukumaran and Andrew Chan in Indonesia precipitated a national discussion on abolition of the death penalty.

In July, foreign affairs minister Julie Bishop asked the Parliament's Human Rights Sub-Committee to review how Australia currently engages internationally to promote the abolition of the death penalty and further steps the nation could take in that space.

In a speech to the UN's General Assembly in September, Ms Bishop said Australia would use its potential seat on the UN's Human Rights Council in 2018 to wage a global campaign against the death penalty.

In 2016 Australia's commitment to this cause will be tested. Through a submission to the Parliamentary Committee, the Law Council has called on the federal government to develop a strategy for the abolition of the death penalty and to strengthen domestic legal arrangements to ensure Australian authorities do not expose a person to the real risk of execution in countries which still practice the death penalty. The Law Council will also host a symposium in 2016 to identify measures by which Australia can contribute effectively to the abolition of the death penalty internationally.

Marriage equality

The introduction of same-sex marriage in Ireland following a national referendum in 2015 stimulated fresh debate in Australia over the potential introduction of marriage equality.

In mid-2015 the government proposed a plebiscite on marriage equality, to be conducted at some stage after the next federal election. The plebiscite policy was introduced despite the High Court of Australia finding that 'marriage' in section 51 of the Constitution includes a marriage between persons of the same sex, meaning that marriage equality can be legislated through the Parliament in the ordinary way.

The Law Council has a long-standing policy in support of marriage equality and has continued to advocate in favour of its introduction.

In September, the Law Council made a submission to a Senate and Legal Constitutional Affairs Committee inquiry into the issue of a plebiscite or referendum on same-sex marriage. The Law Council noted that it was not necessary to hold a popular vote as a matter of law, in the form of plebiscite or referendum, on the matter of marriage in Australia. Federal Parliament has the power under the Constitution to legislate with respect to same-sex marriage.


Whatever the outcome of the 2016 federal election it is highly likely that there will be widespread calls to introduce marriage equality immediately afterwards.



Duncan McConnel is the outgoing president of the Law Council of Australia

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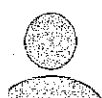
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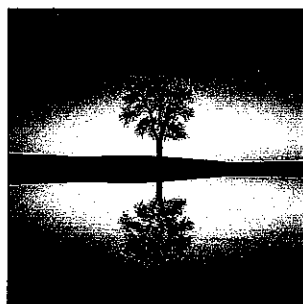


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