



Australia Day letter

26 January 2008

from the CLA Australia Day series

Inequality of Territorians

The Prime Minister
Mr Kevin Rudd
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

Civil Liberties Australia (CLA) asks that you take action, starting in 2008, to remedy the fact that about 500,000 Australians are discriminated against in a systemic manner of long standing, and in way that is ongoing, by the Australian Government. The people affected are the citizens of the Northern Territory and the Australian Capital Territory, comprising roughly 2.5% of the nation.

We ask that you move urgently to ensure that the liberties and rights of Australians are as equal as possible. Equality of Territorian citizenship would befit a democratic country which has endorsed United Nations' treaties regarding the equal rights of its citizens.

We ask that you introduce remedying legislation this year to the Australian Parliament, and/or institute a referendum to correct anomalies in the relative rights of different Australians.

Apart from electoral inequalities contrary to international treaties (see below), there are clear indications of a pattern of Australian Government legislation and action discriminating against the concept of equal rights of Territorian Australians, such as:

- The overturning by the Australian Parliament of euthanasia legislation passed by the NT Government;
- The refusal by the Governor-General, on advice from the Executive, of ACT Parliament legislation to permit civil unions; and
- The intervention by the Australian Government in the Northern Territory (alone, and not in northern Queensland or northern Western Australia) in relation to Indigenous issues in 2007.

In the light of that pattern of disregard for the notion of equal rights of Territorians, a review of the Constitution indicates that the Territories are further at risk. As equal rights for Territories and citizens of Territories are not contained in the following Constitutional clauses, they do not exist, and the citizens of Territories therefore have unequal rights relative to the citizens of the States of Australia:

- Lesser rights to water, relative to the rights of residents of Australian States, of residents of the ACT and NT, as spelled out in Clause 100 of the Australian Constitution:

(Extract from the Australian Constitution):

Nor abridge right to use water.

100. The Commonwealth shall not, by any law or regulation of trade or commerce, abridge the right of a State or of the residents therein to the reasonable use of the waters of rivers for conservation or irrigation.

- The absence of a right to equality of treatment in relation to disabling and/or discriminatory legislation by the Commonwealth – or by States – to residents of the ACT and the NT:

Rights of residents in States.

117. A subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

- The absence of giving – in relation to the citizens of the NT and ACT – full faith and credit to the laws, public Acts/records and judicial proceedings of the legislature and judiciaries of the ACT and the NT, by comparison with the laws, public Acts/records and judicial proceedings of the Australian States:

Recognition of laws, &c. of States.

118. Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.

- the inequity of citizens of the ACT/NT being ‘double ruled’ – by comparison with residents of Australian States – by being subject to the laws of the ACT/NT and, in addition, to any special laws or executive decisions imposed solely on the ACT and/or NT, and not on the States, by the Australian Government:

Government of territories.

122. The Parliament may make laws for the government of any territory surrendered by any State to and accepted by the Commonwealth, or of any territory placed by the Queen under the authority of and accepted by the Commonwealth, or otherwise acquired by the Commonwealth, and may allow the representation of such territory in either House of the Parliament to the extent and on the terms which it thinks fit.

- The electoral rights of citizens of the two Territories are at variance with each other, and with those of citizens of the States, by a degree not permissible in the States and to a degree not permitted by international treaty.

Please see the information in the accompanying article by political analyst Malcolm Mackerras, CLA member, analysing and highlighting how the suffrage – the voting rights/power – of residents of the ACT is so significantly different to that of residents of other States and the NT in federal elections. This inequity is a direct result of Australian Government legislation, contrary to the Australian Government’s international treaty obligations.

CLA draws the attention of the Australian Government to the fact that these inequalities of treatment of Australians resident in one part of the country – by comparison with Australians resident in other parts of the country – on face value breach the United Nations Declaration of Human Rights, under at least these provisions:

Article I (UNDHR)

All human beings are born free and equal in dignity and rights.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Article 7

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

Article 12

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 13

1. Everyone has the right to freedom of movement and residence within the borders of each State. ...

(note that this suggests equality within the borders of the 'State' – that is, Australia – regardless of residence).

Article 21

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.

2. Everyone has the right to equal access to public service in his country.

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

Article 29

1. Everyone has duties to the community in which alone the free and full development of his personality is possible.

2. In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.