

Federal ALA policy update

By Emily Price

The ALA has recently stepped up its federal policy and lobbying activities across a wide range of issues affecting individual rights.

Since June, we have made submissions on topics including asylum seekers and criminal justice issues. We have also undertaken research on issues such as the National Disability Insurance Scheme.

ASYLUM SEEKERS

In August, we made a submission on Australia's immigration detention network, arguing that the current treatment of asylum seekers in immigration detention breaches human rights norms. Our submission addressed the current arbitrary nature of immigration detention, and the obligation to act in the best interests of the child. We argued that mandatory detention increases psychological trauma, and noted that there had been a number of compensation payouts to asylum seekers, including 22 cases between July 2009 and May 2010, involving a total of \$2.1 million.

In our September submission, we argued that the proposed Malaysia Agreement breached international human rights laws, including the well-known principle of non-refoulement.

We also strongly opposed the proposed changes to the *Immigration (Guardianship of Children) Act 1946* (Cth), which would sanction denial of guardianship to any asylum seeker who was an unaccompanied minor arriving in Australia by boat. The current treatment of unaccompanied asylum seeker children may constitute a breach of the guardianship duty.

CRIMINAL JUSTICE

In June, we made a submission to the House of Representatives Standing

Committee on Social Policy and Legal Affairs on the *Extradition and Mutual Assistance in Criminal Matters Legislation Amendment Bill 2011* (Cth). While supporting some changes in line with human rights law, we opposed the proposed abolition of the principle of double jeopardy, and the non-enforceability of a country's undertakings that the death penalty would not be used on individuals who have been extradited from Australia. We also opposed increases in ministerial discretion on issues normally attracting mandatory refusal.

At the subsequent public hearing, Angus Bucknell, ACT president, appeared before the Committee with the ALA's Legal & Policy Officer, Emily Price. Mandy Wyer, Public Affairs Manager, briefed the *Sydney Morning Herald* on the issue.

The ALA was invited to provide submissions to the South Australian Review of s71A of the *Evidence Act 1929* (SA), on whether provisions relating to privacy of those charged with a sex offence should be repealed.

We argued that current protections are adequate and necessary: repealing sections to allow increased media access to a person's details would actually undermine the presumption of innocence; undermine the role of the courts by reducing access to a fair trial; and cause extensive delays that would provide the opportunity for individuals to re-offend and encourage vigilantism.

In our September submission to the Queensland Parliament's inquiry into the *Police Powers and Responsibilities and Other Amendments Bill 2011* (QLD), we argued against the proposed increase in police powers to pat down minors who are reasonably suspected of possessing alcohol: this would only increase the vulnerability of young people and, in any event, a guardian should be present.

The ALA was invited to appear at the public hearing. Peter Russo, renowned criminal lawyer, appeared on behalf of the ALA and persuasively argued against the proposed increase in police powers.

We also made a submission to the Department of Immigration and Citizenship on Stephen Howell's report that reviewed the inefficacy of employer sanctions in the *Migration Act* – which impose penalties on employers that unlawfully hire migrant workers in breach of their visa conditions. The scales are unfairly weighted: for unlawfully hiring a worker in breach of visa conditions, an employer receives a warning notice, but the migrant worker gets mandatorily deported. International students can blatantly be exploited, unable to report their employers without risking deportation. Our submission also referred to the provisions' application to human trafficking, and the need to maintain a suite of offences in both civil and criminal law.

NATIONAL DISABILITY INSURANCE SCHEME (NDIS)

The ALA's national NDIS committee comprises representatives from every state and the ACT. It has started assessing the legal issues posed by the development of such a scheme, together with a national injury insurance scheme (NIIS), including the need to enshrine legal representation and consideration of the *Convention on the Rights of People with Disabilities*. The state committees are currently working alongside head office in considering legal issues relating to the development of these schemes. ■

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