

MULTICULTURALISM

A position paper by the
Acting Race Discrimination
Commissioner*



*Human Rights and Equal
Opportunity Commission*
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Note: *The Race Discrimination Commissioner position is currently appointed annually on an acting basis.

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MULTICULTURALISM

A Position Paper by the Acting Race Discrimination Commissioner

This is my fourth year as the Acting Race Discrimination Commissioner at the Human Rights and Equal Opportunity Commission (HREOC), a position I occupy in addition to that of the Aboriginal and Torres Strait Islander Social Justice Commissioner. Over these past three or so years I have become concerned by what I observe to be an increasing ambivalence and at times, antagonism towards multiculturalism, both as a set of principles and as a government policy that frames social relations in Australia.

What is of particular concern is that the debate on multiculturalism tends to be framed by, either international incidents involving terrorist attacks or, at the local level, incidents of racial tension or conflict. For instance, following the London attacks in 2005 and the Cronulla riots in 2006, some politicians and media commentators asserted that such incidents were the result of the freedom that multiculturalism gives people to practice particular cultures and religions: those cultures and religions that were considered incompatible with the core values of Australian Society. Multiculturalism, it was claimed, eroded social stability and national cohesion.

I have actively participated in these debates, mainly through press releases and speeches as well as submissions to government and the Australian Parliament,¹ in order to reiterate HREOC's support for multiculturalism as both a principled and practical response to the reality of cultural diversity in Australia.

Combating extremism should not mean yielding to the anxieties and fear that fuel racism and racial violence. Rather it requires a strategy in which the positive effect of multiculturalism plays a central role in providing a rational, democratic antidote against all forms of extremist action.

Despite the importance and success of the government's multiculturalism policy,² and following the policy review that took place in 2005, there is still no affirmation by the government of their commitment to this policy and its principles.

1 See for example Submission from Acting Race Discrimination Commissioner on the Review of the Federal Government's Policy on Multiculturalism, August 2005 and HREOC's submission to the Department of Immigration and Multicultural Affairs on the discussion paper: 'Australian citizenship: much more than just a ceremony', September, 2006, available online at: http://www.humanrights.gov.au/racial_discrimination/reports/citizenship_paper_2006.html.

2 Commonwealth of Australia, *New Agenda for Multicultural Australia*, Australian Government Publishing Service, Canberra, 1999, p6.

This paper brings together within the context of human rights, my position on multiculturalism. It seeks not only to reiterate the support that HREOC has given to multiculturalism over the past two decades³ but also to reinvigorate multiculturalism as an important foundation for the growing cultural, linguistic and religious diversity of Australian society.

Summary of My Position

1. As Race Discrimination Commissioner I see multiculturalism as a **sound policy framework** consistent with HREOC's legislative mandate to promote understanding, respect and friendship among racial and ethnic groups in Australia and to combat prejudices that lead to racial discrimination.⁴
2. Multiculturalism is also a **set of norms** or principles compatible with HREOC's vision for an Australian society in which the human rights of all are respected, protected and promoted.⁵ In particular it resonates with a notion of equality which enables all Australians to participate fully in the social, cultural, economic and political life in Australia irrespective of race, religion, colour, descent or national or ethnic origin.
3. Finally, multiculturalism, both as policy and as principles, **supports the ideals of a democratic society** in which every person is free and equal in dignity and rights.

This paper will develop these three aspects of my position and provide examples of how multiculturalism operates to achieve these goals. As a starting point it is necessary to understand the global context within which multiculturalism operates.



Tom Calma
Acting Race Discrimination Commissioner

August 2007

3 See for example former Race Discrimination Commissioner Zita Antonios' speech, Human Rights and Multiculturalism, 2 March 1998, available online at: http://www.humanrights.gov.au/speeches/race/1998/hr_and_multiculturalism.html.

4 See s20, The Racial Discrimination Act 1975, available online at: <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/frameodgmentattachments/1284C7A8D65D4CDECA256F71004E4068>.

5 See HREOC's corporate plan 2006-2008, available online at: http://www.humanrights.gov.au/about_the_commission/corp_plan/HREOC_CorpPlan2006_2008.doc.

Multiculturalism in a Global Context

I have argued elsewhere that the attacks on multiculturalism fail to understand it as a response to significant global trends.⁶

- The first trend is the rapid increase in the movement of peoples, commodities and ideas at the global level and the consequent increase in cultural, ethnic and religious diversity within contemporary societies.
- The second is the defining role that culture has been accorded in identifying social groups and individuals within these societies.

This second trend has meant that an individual's sense of self worth is often intertwined with the value the broader community gives to their cultural and ethnic origins.

It has also meant that social and political conflict tend to be seen simply as a product of cultural differences, rather than other differences, such as those based on economic or social status.

From the 1970's onwards, multiculturalism emerged in many countries, including Australia, as a policy tool to cope with and manage the increasing cultural diversity of society. It was premised on the assumption that diverse cultural groups should be permitted to express, enjoy and celebrate their cultural identity. These assumptions replaced those underlying assimilationist policies that envisioned the inevitable demise and melting away of migrants and minority cultures and their absorption by the dominant culture.

For many people multiculturalism was a welcome development for the recognition of minority cultures in the public sphere and allowed minorities more equitable social arrangements. Indeed, the United Nations Development Program's 2004 report *Cultural Liberty in Today's Diverse World* argues that, while imperfect, multicultural democracies represent the best that has been achieved in terms of both decent and practical governance.⁷

For others, however, multiculturalism was less welcome. The new global realities activated old suspicions in which difference and diversity were seen as obstacles to social cohesion and political stability. The interface between the new realities and the old suspicions triggers the question: *has multiculturalism in Australia led to a harmonious integrated society or to a fractious divided society?* This is a question I seek to address in this paper⁸. However, before proceeding to this question it is necessary to come to an agreement on what is meant by the term multiculturalism.

6 See Commissioner Tom Calma speech Responding to Cronulla: Rethinking Multiculturalism, 21 February 2006, available online at: <http://www.humanrights.gov.au/speeches/race/index.html#2006>.

7 United Nations Development Program, Human Development Report 2004: Cultural Liberty in Today's Diverse World, New York, 2004.

8 See the section on *Multiculturalism: Integration and Segregation* below.

Multiculturalism: Clarification of the Concept

Many commentators collapse the different meanings of multiculturalism into each other creating a situation in which the term loses its clarity and coherence.

To maintain and restore clarity this paper, following the work of Christine Inglis, recognises three different usages of the term multiculturalism: multiculturalism as a demographic descriptor; multiculturalism as a set of norms; and multiculturalism as government policy.⁹

- **Multiculturalism as a description of the demographic make up of modern societies**

Demographic facts are usually the driver behind responsive policies concerning multiculturalism. *Annexure One* sets out a range of facts which reveal the full dimension of Australia's diverse society. Indeed the policy document outlining the elements of multiculturalism in Australia, *A New Agenda for Multicultural Australia*, clearly asserts 'We are in reality as well as by definition, a multicultural society'.¹⁰

- **Multiculturalism as a set of norms**

In addition to being a demographic fact, multiculturalism can be seen as a set of norms or principles that uphold the right of the individual to retain, express and enjoy their culture. It also upholds the right of all individuals to have access to and participate in the social, cultural, economic and political life of the country to which they belong.

I will show in this paper how these norms are consistent with the human rights principles of equality and non-discrimination, as well as the democratic ideals that every person is free and equal in dignity and rights.

- **Multiculturalism as government policy**

In many countries, including Australia, the norms of multiculturalism have been incorporated into a policy approach which seeks to recognise, manage, and maximise the benefits of diversity. As one commentator put it, 'multiculturalism is a set of practical policies aimed variously at improving the absorption of migrants and harmoniously integrating a culturally diverse society around liberal democratic values.'¹¹ As such, multiculturalism is a conscious political and social choice made by the state and society in response to diversity.

9 Inglis, Christine, Policy Paper No 4-Multiculturalism: New Policy Responses to Diversity, UNESCO, available online at: <http://www.unesco.org/most/pp4.htm>.

10 Commonwealth of Australia, *A New Agenda for Multicultural Australia*, Australian Government Publishing Service, Canberra, 1999, p4, available online at: http://www.dimia.gov.au/media/publications/multicultural/pdf_doc/agenda/agenda.pdf.

11 Brahm Levey, Geoffrey 'The Antidote of Multiculturalism' Griffith Review, Autumn 2007, p199.

• **Australian Multiculturalism: Policy Principles**

The *National Agenda for a Multicultural Australia*,¹² the *New Agenda for Multicultural Australia*¹³ and the 2003 update to the *New Agenda*,¹⁴ articulate Australia's multicultural policy. From these and State and Territory policy documents on multiculturalism, (see *Annexure Two*), one can discern the following key principles underlying Australian multiculturalism:

1. The freedom for all Australians to practice their culture and religion

As indicated previously, over the past thirty years, culture has come to play a defining role in identifying social groups and individuals. An individual's sense of self worth is often affected by the value that the broader community gives to the cultural group to which he/she belongs.

Multiculturalism reflects the importance that culture plays in structuring our society and the relationships between its members. It also reflects an assumption of equality between cultures. Multiculturalism stands as a symbolic and practical measure to assure individuals they are equal in public life, no matter what cultural group they belong to.

It does not follow from this that multiculturalism seeks to reinforce or cement collective identities at the expense of a broader national identity. Nor does it seek to provide a platform for culturally diverse communities to demand legal recognition of, or resource allocation to promote, specific cultural values or norms.

Rather, multiculturalism recognises that respect for each other's culture is the pre-condition of reciprocity and social interaction between cultural groups. Cultural background in such a policy context is not a sign of superiority or inferiority. It is the starting point for a wider social engagement and conversation.

2. Equal access and opportunity for all Australians to participate fully in economic, social, cultural and political life within Australia

Multiculturalism is a practical and principled response to the rapid increase in the global movement of people, commodities and ideas. People migrating to Australia often face problems associated with economic, social and cultural dislocation. These problems are exacerbated for people from non-English speaking backgrounds. While settlement services aim to reduce these problems in the short term, Australian multiculturalism is a vital, long term social investment that aims, simultaneously, to address issues of social disadvantage and community relations.

12 Commonwealth of Australia, *National Agenda for a Multicultural Australia*, Australian Government Publishing Service, Canberra, 1989, pvii.

13 Commonwealth of Australia, *New Agenda for Multicultural Australia*, Australian Government Publishing Service, Canberra, 1999, p6.

14 Commonwealth of Australia, '*Multicultural Australia United in Diversity*', Australian Government Publishing Service, Canberra, 2003, p6.

As stated in *Multicultural Australia: United in Diversity*, multicultural policies are about 'developing greater... levels of government investment in vulnerable individuals. Otherwise, the cost of remedying the problems that stem from social dislocation and lost opportunities for personal advancement will be greater in the years ahead'.¹⁵

By acknowledging the rights of individuals and ensuring their equitable access to society, multiculturalism 'benefits both individuals and the larger society by reducing pressures for social conflict based on disadvantage and inequality'.¹⁶ This is what the former Prime Minister, Malcolm Fraser, had in mind when he stated:

If particular groups feel that they or their children are condemned, whether through legal or other arrangements, to occupy the worst jobs, the worst housing and to suffer the poorest health and education, then the society in which they live will pay a high price for that division.¹⁷

3. Responsibility of all Australians to commit to the democratic system and institutions in Australia and to respect the rights of all individuals

As the National Multicultural Advisory Council notes, Australia's multicultural policy "has been built on our free democratic system" which guarantees our freedoms, rights and equalities.¹⁸ The freedom to enjoy one's culture and religion are rights that Australia supports.¹⁹ Multiculturalism's support for equal access and opportunity is built on the strong foundation of Australia's civic values of justice and egalitarianism²⁰ ensuring that every person has a 'fair go' regardless of their cultural or ethnic background.

In turn, Australia's multicultural policies support and strengthen these civic values, requiring all Australians to commit to Australia, its democratic process and institutions and to respect the rights of all individuals. In this way Australia's multicultural policy serves to unify Australia on a common civic platform, while allowing diversity through its freedoms.

4. Maximisation of the economic benefits derived from multiculturalism

The case for multiculturalism based on the freedom to enjoy one's culture and equal participation in all aspects of Australian life, focuses primarily on the benefits it bestows on people from culturally diverse backgrounds. Of course, flowing from this are significant gains for the broader Australian society. The economic case for

15 *ibid.*, p8.

16 Inglis, Christine, Policy Paper No 4-Multiculturalism: New Policy Responses to Diversity, UNESCO, available online at: <http://www.unesco.org/most/pp4.htm>.

17 Former Prime Minister Malcolm Fraser 'On Migrant Centres, Reconciliation and Multiculturalism' 21 March 2001, available online at: http://wwwcomm.murdoch.edu.au/lectures/harmony_fraser.html.

18 National Multicultural Advisory Council, *Australian Multiculturalism for a New Century: Towards Inclusiveness*, Australian Government Publishing Service, Canberra, April 1999, p38.

19 *ibid.*, p39.

20 *ibid.*

multiculturalism however, considers all Australians to be its primary beneficiaries. This argument focuses on the advantages that can be gained from a range of skills that multiculturalism promotes. These skills provide Australia with a competitive edge in an increasingly globalised market for the exchange of goods, services and labour.

The economic arguments for multiculturalism are supported by statistical and empirical studies that suggest that ethnic diversity increases the productivity of private capital. For example, studies have shown that multiculturalism is useful in:

- preserving economically useful links with global diaspora.²¹
- assisting companies in their pursuit of export markets. As Aguirre notes,²² companies in a culturally diverse society gain experience in dealing with different cultural behaviours, which is useful when expanding globally;
- promoting creativity and innovation, because a broader range of cultural and geographical experiences facilitates better thinking and decision-making.²³ This argument focuses on the additional skills that migrants bring to the existing skills of local employees and business owners.²⁴ A multicultural workforce, it is argued, 'introduces flexibility into production since it facilitates a more rapid adjustment of structures', brought about by the 'diversity of talents, access to other languages, diverse thinking processes and cognitive flexibility';²⁵
- introducing new goods and services to the marketplace. Diversity of backgrounds in the product market, it is argued, leads to the provision of new goods and services in the marketplace, thereby facilitating a more diverse production base of the economy; and
- boosting economic growth. The argument that the combined effect of multiculturalism is to boost economic growth has been empirically tested by Spolaore and Wacziarg using economic modelling.²⁶ Their work suggests that a greater diversity of individual skills can be introduced by an open policy of immigration and multiculturalism leading to a greater total output.²⁷

21 A point empirically tested in A Casella and J Rauch, 'Overcoming Informational Barriers to International Resource Allocation: Prices and Ties' (2003) *Economic Journal* 113, 21-42.

22 Maria Sophia Aguirre, 'Multiculturalism in a labour market with integrated economies', *Management Decision* 35/7, 1997, p490.

23 *ibid.*, p491.

24 See George Borjas, 'The Economic Benefits from Immigration', *Journal of Economic Perspectives*, Vol. 9, No. 2, 1995, p16.

25 Maria Sophia Aguirre, 'Multiculturalism in a labour market with integrated economies', *Management Decision*, 35/7, 1997, p491.

26 E Spolaore and R Wacziarg, 'Borders and Growth', unpublished, Stanford University, cited and discussed by Alesina and La Ferrara in *Ethnic Diversity and Economic Performance*, Harvard Institute of Economic Research, Discussion Paper 2028, December 2003, p7.

27 E Spolaore and R Wacziarg, 'Borders and Growth', unpublished, Stanford University, cited and discussed by Alesina and La Ferrara, *Ethnic Diversity and Economic Performance*, Harvard Institute of Economic Research, Discussion Paper 2028, December 2003, p7.

The economic benefits of cultural diversity in production is likely to be more pronounced in high-income economies like Australia. A combination of democracy and stable institutions reduces the effect of ethnic conflict and is conducive to the innovation and entrepreneurship that a multicultural workforce can foster.²⁸

Multiculturalism also has the potential to promote a more effective formation of social and economic capital. By preserving links to their ethno-religious communities, entrepreneurs have an additional network of social and financial capital in addition to the institutions and networks in broader society.²⁹ This has the potential to accelerate innovation, entrepreneurship and business development.

The costs that are commonly associated with ethnic diversity, including lack of literacy skills and potential for cultural conflicts, are unlikely to be found in the contemporary Australian context. This is due to the strength of Australian democracy and the prevalence of institutions which reduce these types of problems sometimes associated with multiculturalism (including the rule of law, and contractual frameworks).

Given the mitigation of these potential economic problems of multiculturalism, it is my view that a policy which encourages ethnic diversity and retention of cultural links, while still promoting acceptance of core institutional values, will be economically beneficial for Australia.

I have argued above that the four policy principles that underpin Australian multiculturalism extend rather than limit the normative ideals of Australia. At the same time they chart a utilitarian path by maximising the opportunities that benefit all Australians. This paper will now discuss how this policy is supported by universal human rights, and in particular, a notion of equality which enables all Australians to participate fully in the social, cultural, economic and political life of Australia irrespective of race, religion, colour, descent or national or ethnic origin.

Multiculturalism within a human rights framework

It is clear from the above that multiculturalism, as a policy of recognition and equity, complements the ethos, standards and obligations contained in the various international instruments on cultural, linguistic and religious diversity. These instruments and the obligations they create are set out at *Annexure Three*.

It can be seen from *Annexure Three* that there are a variety of international human rights documents and treaties that deal with issues relevant to multiculturalism: documents relating to racial and religious discrimination, the right to cultural, linguistic and religious freedom, cultural diversity, minority rights and sometimes explicitly multiculturalism. As Inglis points out, international human rights jurisprudence on cultural diversity has increasingly become more detailed, clear and strong in articulating the reality of contemporary diversity and endorsing multi-

28 Discussed in A Alesina and Eliana La Ferrara, *Ethnic Diversity and Economic Performance*, Harvard Institute of Economic Research, Discussion Paper 2028, December 2003, p7.

29 See, for discussion, R Fisman, 'Ethnic Ties and the Provision of Credit: Relationship-Level Evidence from African Firms', *Advances in Economic Analysis and Policy*, 3(1), Article 4, (2003).

culturalism 'as a systematic and comprehensive response to cultural and ethnic diversity, with educational, linguistic, economic and social components and specific institutional mechanisms'.³⁰

The starting point for this development is the notion of equality and non-discrimination contained in the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD).³¹ Article 1(1) of the ICERD defines racial discrimination in a way that ensures that the prohibition on discrimination extends beyond a limited biological notion of race to include discrimination on the basis of one's ethnic and national origin. Racial discrimination is defined as:

*Any distinction, exclusion, restriction or preference based on **race, colour, descent or national or ethnic origin** which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

Article 2(1) of the ICERD extends the prohibition on discrimination by creating a positive duty on States to develop a policy which seeks to eliminate racism and promote understanding among all races. It clearly sets out the aims of such a policy and how it should be implemented. Australia's multiculturalism policy can be seen as a response to the positive duty imposed in Article 2(1) of the ICERD.

There is also a recognition within the ICERD (Article 1(4)) that a State may not only need to prohibit discrimination but also may need to take positive steps to ensure that groups who are disadvantaged because of their race (including ethnicity) will be put into a position where they can enjoy their rights to the same extent that other groups do.

The *Racial Discrimination Act 1975* (Cth) (RDA) responds directly to Australia's obligations under ICERD. It confers on HREOC specific responsibilities, one of which is to promote understanding, tolerance and friendship among racial and ethnic groups³² and makes racial discrimination and racial vilification unlawful.³³ It also makes provision, under s8, for special measures as envisaged by Article 1(4) of the ICERD.

For a government policy initiative to qualify as a 'special measure' under the RDA it must be taken for the sole purpose of securing adequate advancement of a racial group or individuals within that group requiring protection so as to ensure they enjoy their human rights equally with others. Importantly s8 provides that special measures should not lead to 'the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which

30 Inglis, Christine, Policy Paper No 4-Multiculturalism: New Policy Responses to Diversity, UNESCO, available online at: <http://www.unesco.org/most/pp4.htm>.

31 In 30 September 1975 Australia ratified ICERD, agreeing to be bound by it under international law. However, Australia submitted a reservation which meant that it was not bound to criminalise racial hatred and incitement to racial discrimination (Since that part of the RDA had failed to gain the support of the Federal Parliament).

32 See s20, The Racial Discrimination Act 1975, available online at: <http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/framelodgmentattachments/1284C7A8D65D4CDECA256F71004E4068>.

33 See s18C, *ibid*.

they were taken have been achieved'. This is an important qualifier and reflects the fact that the human rights framework does not seek to segregate racial and ethnic groups, through the maintenance of specific collective identities, but rather seeks to integrate them through the equal enjoyment of rights.

In addition to the notion of equality, states' policies on promoting understanding and tolerance between diverse cultural groups are guided by human rights principles that ensure that individuals have the freedom to enjoy their culture, their language and their religion. A foundation stone in this regard is Article 27 of the *International Covenant on Civil and Political Rights* (ICCPR)³⁴ which ensures that members of ethnic, religious or linguistic minorities 'shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language'. Other relevant articles in the ICCPR include Articles 2 and 26 which provide a right to equality on the basis of, among other things, race, ethnicity and religion or belief; Article 18 which provides a right to freedom of religion or belief; Article 19 which provides a right to freedom of opinion and expression; and Article 20 which provides a right to freedom from religious hatred.

These freedoms to express and enjoy one's culture, language and religion, as guaranteed by the ICCPR, are enhanced by a range of other declarations and resolutions as set out in *Annexure Three*. An issue that arises in relation to all of these rights is the relationship between them, particularly when they are seen to conflict with each other. For instance, in certain situations, the exercise of the right to freedom of religion is sometimes seen to conflict with the exercise of the right to freedom of expression. This is not simply a technical issue about conflicting rights and how these are reconciled at international law. The conflicting claims to these two rights shape the public debate in Australia over multiculturalism. This was illustrated by the debates following the 'Danish cartoon' incident in February 2006 and following the call by some parliamentarians to ban the wearing of headscarves in August 2005.

It is clear from Article 19(3) of the ICCPR that freedom of expression is not an absolute and unqualified right, but carries special duties and responsibilities. The freedom is limited, where necessary, by a duty to respect the rights and reputations of others. Moreover, Article 5 of the ICCPR imposes a further limitation on the exercise of all Covenant rights and freedoms by reference to the rights and freedoms of others.

In this way the ICCPR provides a framework by which the exercise of particular rights and freedoms need to be cross referenced and balanced with the rights and freedoms of others. This requirement on States to balance competing rights and freedoms is reflected in the limits that s18C of the RDA places on racially vilifying speech. Balancing this protection to those affected by racial vilification, s18D provides a series of exemptions to ensure that genuine public debate and artistic expression is not hampered by the right to be free from racial hatred.

34 Australia ratified ICCPR on 13 August 1980.

It can be seen from the discussion above that multiculturalism is a policy that seeks to ensure equal enjoyment of rights. It provides a policy framework to uphold the standards imposed by the RDA and the rights conferred through the international human rights framework.

Multiculturalism and Indigenous Australians

The relationship of Indigenous Australians to multiculturalism warrants special consideration. As both Aboriginal and Torres Strait Islander Social Justice Commissioner and the Acting Race Discrimination Commissioner I have had to think about the relationship between these roles; how the rights of Indigenous peoples and other minority groups in Australia relate and how they are differentiated.

Aboriginal and Torres Strait Islander communities, like other minority groups, risk being excluded from sharing the economic, social and cultural benefits of being a citizen of Australia. Multiculturalism, as a policy of recognition and equity, can assist Aboriginal and Torres Strait Islander peoples in gaining access to these benefits.

The 1989 *National Agenda for a Multicultural Australia* clearly states that multiculturalism is 'applicable not just to immigrants but to all Australians, including the Indigenous Aboriginal and Torres Strait Islander population.'

Also, the *National Agenda for a Multicultural Australia* assumes that both groups share the quest for the recognition of their right to cultural identity, the right to social justice and the need for economic efficiency.

Despite these parallels, multiculturalism is an inadequate response to the history of dispossession and exclusion that Indigenous people have faced in Australia. Firstly, the devastation caused by policies aimed at colonising Australia, including the policy of assimilation to 'breed out' Aboriginal Australians, were far worse in their severity and scale than the systemic and individual discriminatory practices used against migrants and their families seeking to settle in Australia.

Secondly, the claims for social justice and human rights by Indigenous peoples originate from a different source, both historically and in international law, than claims by other minority groups in Australia.

Indigenous peoples claim not only recognition of their rights as citizens of Australia but also as Australia's first peoples. This claim has a specific history and relationship to land and territory which in turn gives rise to distinct cultural, social, economic and political rights. These rights are best articulated through the articles contained in the *Declaration on the Rights of Indigenous Peoples*, especially Article 3 which asserts the right of Indigenous people to self determination. While this Declaration remains to be adopted by the General Assembly of the United Nations, the Human Rights Committee and the Committee on the Elimination of Racial Discrimination (CERD) have sought to give their respective instruments relevance to the unique struggle of Indigenous peoples.

For example in relation to the right to enjoy one's culture under Article 27 of the ICCPR, the Human Rights Committee has made it clear that for Indigenous people, the right to enjoy culture *may consist in a way of life which is closely associated with territory and the use of resources*.³⁵

The CERD has also highlighted the connection between ensuring compliance with non-discrimination principles and ensuring the survival of the cultural identity of Indigenous peoples. The Committee, in General Recommendation 23 has called on State Parties to take all appropriate means to combat and eliminate discrimination against Indigenous peoples, including by recognising and respecting their *distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation*.³⁶

It can be seen from international human rights jurisprudence that while the recognition of culture is a measure of equality in the case of ethnic communities, the claim of culture in the case of Indigenous peoples is more fundamental. For Aboriginal Australians the claim is for recognition as a people, with all the concomitant political and economic rights. For Aboriginal Australians social justice implies restorative justice through a proper reconciliation treaty that acknowledges the historical wrongs done to Aboriginal peoples. For Aboriginal Australians the question of economic and political justice is about ensuring that future Aboriginal generations have control over their land, their lives and their destiny with sufficient resources to actualize their potentials as the first people of this country.

Multiculturalism: Integration or Segregation?

At the beginning of this paper I posed the question: *has multiculturalism in Australia led to a harmonious integrated society or to a fractious divided society?* Throughout my term as the Acting Race Discrimination Commissioner I have observed how the debate over this question is ignited and given urgency by events of apparent antagonism and division in our social fabric: international and local events like the London and Bali attacks, and the Cronulla riot.

In this debate, as it has manifested over the past thirty years, two major ethnic groups have been singled out as potentially incompatible with the make up of Australian society. In the 1980's and 1990's the increase in the number of Asian migrants created a false perception of immanent 'Asian immigration crisis' that culminated in the ascendancy of Pauline Hanson and her One Nation party. Some people called for measures to stem the tide of Asian migrants, claiming that the cultural difference between Asian cultures and the Australian tradition was irreconcilable and could lead to social disintegration. With much talk of 'invasion', 'inundation', 'swamping', and 'overwhelming', and repetition of the belief that Chinese would not assimilate.³⁷ As

35 Human Rights Committee, *General Comment 23, Article 27 (1994)* para 1, in *Compilation of General Comments and General Recommendations adopted by the Human Rights Treaty Bodies* (UN Doc HR/GEN/1/Rev.1, p40).

36 Committee on the Elimination of Racial Discrimination, *General Recommendation XXIII Concerning Indigenous Peoples*, CERD/C/51/Misc.13/Rev.4, 1997, para 5.

37 Curthoys, Ann, 'An Uneasy Conversation: multicultural and indigenous discourses' in Hage, Ghassan & Couch, Rowanne, ed, *The Future of Australian Multiculturalism*, University of Sydney, 1999, p279.

we know, this apocalyptic view never materialised. To the contrary, the Lord Mayor of Melbourne, Mr John So, was voted the most popular Mayor in the World in 2006.

Currently, against a background of increased security measures after *September 11* and the London attacks, we hear voices that the cultures of people of Muslim faith are not just incompatible with Australian culture but are also a security risk. In this process a whole community is being paired with criminality and terrorism without firm evidence to justify this generalisation. Even though Muslim communities, time and again, express their affiliation with Australia as a multicultural society, nevertheless they continue to be demonised, by some politicians, media and commentators as unable to integrate into mainstream Australian society.³⁸

In the recent projects I have undertaken with Muslim communities, especially in New South Wales and Victoria, I have been repeatedly told about the devastating effect of these generalisations and prejudice on Muslim families, communities and individuals.³⁹ Regularly experiencing racial attacks, both physical and verbal, many in the community are reluctant to go into public places for fear of the abuse they might receive.

Fear and prejudice are a potent mix that lead to mistrust and social conflicts. If racial prejudice is not addressed at an early stage, fuelled by fear it can quickly erupt into racial hatred, which in turn sets off a further cycle of violence, more fear and more racism⁴⁰ as the riot in Cronulla demonstrated.

I argue in the following section that the principles and policies of multiculturalism can assist in breaking this cycle of fear and prejudice. Multiculturalism is about building bridges between communities. It is an expression of a notion of equality which facilitates access to social benefits and enhances participation creating the conditions for integration not segregation. As such multiculturalism is a recognition of diversity that demands the involvement of all institutions of government and civil society in the ongoing creation of a just and equitable policy.

38 For example, the Australian Communications and Media Authority came to a conclusion that the 'Harbour Radio Pty Ltd, breached the Commercial Radio Codes of Practice 2004 by broadcasting material that was likely to encourage violence or brutality...material that was likely to vilify people of Lebanese background and of Middle-Eastern background on the basis of their ethnicity. See ACMA media release 35/2007 - 10 April, available online at: http://www.acma.gov.au/WEB/STANDARD/pc=PC_310133.

39 Unlocking Doors in NSW and VIC, Living Spirit and, under the previous Race Discrimination Commissioner, Isma Report and Consultations. In addition I am embarking on a number of new projects that are outlined on the HREOC website at http://www.humanrights.gov.au/racial_discrimination/partnerships/index.html.

40 Submission from Acting Race Discrimination Commissioner on the Review of the Federal Government's Policy on Multiculturalism, 22 August 2005.

Cronulla: the Problem and the Solutions

Cronulla, a suburb of Sydney in the Sutherland Shire Council, is a predominantly middle-class, Anglo-Australian community with a total population of almost 17,000. Half a percent of this population is Indigenous and around 17% born overseas, mostly from English speaking countries such as New Zealand and the UK. Cronulla can be described as a relatively homogenous community compared to other suburbs in Sydney.

In our discussions with local councillors and social planners within and beyond the Sutherland Shire Council, it became clear that within the Cronulla area, there has been extensive investment by the community and the council in what is referred to as bonding capital. Bonding capital, along with a related concept of 'bridging capital' are terms developed by Harvard University scholar Robert Putnam to describe mechanisms that bring together homogeneous group of people.⁴¹

In contrast to this investment in bonding there has been relatively little investment in bridging capital: a process that involves civil and social interaction in which members of different communities come together on the basis of the common good of the general community rather than their local affiliations. Government investment in bridging communities enables culture to be seen as diverse attributes of a national identity rather than sources of social conflict which detract from the development of a national identity.

The plethora of multicultural projects that were initiated following the riot on 12 December 2005, particularly those directed at youth, are aimed at bridging communities in Cronulla with those in the south-western Sydney communities around Auburn and Bankstown. These projects are examples of multiculturalism in operation. They are the only guarantee that these communities can bridge the rift that led to the conflagration that hit world headlines two summers ago.

41 See for example Putnam, Robert D, '*E Pluribus Unum: Diversity and Community in the Twenty-first Century: the 2006 Johan Skytte Prize Lecture*' *Scandinavian Political Studies*, Vol. 30-No. 2, 2007.

Multiculturalism in Canada

Canada, along with Australia, is often cited as a leader and pioneer when it comes to creating and sustaining a tolerant and well-functioning culturally diverse society. Indeed the CERD noted in its 2002 Concluding Observations on Canada, its strong commitment to human rights, cultural diversity and multicultural policy.⁴² Since Canada and Australia, to a large degree, share historical roots, this case study is useful as an example of how a nation similar to Australia manages cultural diversity.

A large variety of people from cultural, religious and linguistic backgrounds are living in Canada. Statistics predict that by 2017, 20% of Canadians will belong to a 'visible minority' with half the populations of Vancouver and Toronto belonging to a 'visible minority'.⁴³ The proportion of foreign born Canadians is currently at a 70-year peak as immigration accounts for 53% of population growth (expected to be 100% by 2026).⁴⁴

Canada officially adopted a multicultural policy in 1971. It was the first country in the world to do so. This policy had a direct effect on Canadian law and its way of life, as demonstrated by the following indicators:

- It includes an express policy of bilingualism.
- In 1982 Canada introduced a Charter of Rights and Freedoms which instructs Canadian courts to interpret the rights enshrined in the Charter 'in a manner consistent with the preservation of the multicultural heritage of Canada'. Canada's multiculturalism thus became Constitutional law. The Charter also enshrines the treaty rights of Canada's Aboriginal peoples.
- In 1988 the Canadian Multiculturalism Act was proclaimed. This legislation is administered by several federal governmental institutions, most importantly the Department of Canadian Heritage which runs the Multiculturalism Program.
- In 2004-2005 the Canadian Government released its first Action Plan Against Racism.

42 Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada 1/11/2002, paragraph 319-320. A/57/18.

43 This description 'visible minority' is a Canadian concept and has been criticised by CERD, as essentially describing 'non-white people' in Concluding Observations of the Committee on the Elimination of Racial Discrimination: Canada 1/11/2002, paragraph 328. A/57/18.

44 For Statistics see, *Annual Report on the Canadian Multiculturalism Act, 2004/5*, Department of Canadian Heritage, 2006.

A comprehensive survey undertaken in the early 1990's found that nearly 95% of Canadians agreed that it was possible to be proud of one's Canadian heritage and one's original ancestry at the same time: 78% of respondents agreed that Canadians shared common values; and 91% believed that these common values were important in binding Canadians together as a nation. Further it found that 73% of Canadians believed that the multicultural policy ensured that people from different background felt a sense of belonging to Canada: and that 89% of those interviewed identified themselves as Canadian.⁴⁵

Although Canada has progressed towards achieving a harmonious multicultural society, Canada's cultural diversity has not been problem-free. Although polls taken at the beginning of this century show that 77% of Canadians are proud of Canada's multicultural character, the 2002 Ethnic Diversity Survey (undertaken by the Multiculturalism Program and Statistics Canada) showed that 36% of visible minorities in Canada report experiencing discrimination and unfair treatment in the previous five years as a result of their ethno-cultural characteristics. Analysis of this survey by the University of Toronto showed that the children of recently arrived immigrants from visible minority groups will suffer or expect to suffer an increase (to 42%) of discrimination.⁴⁶

Future Directions

Multiculturalism in Australia provides a policy and a guiding ethos for a dignified, equitable and just process of integration. Many agree that cultural diversity is also an asset which needs to be fostered and accommodated. I have shown in this paper how a strong commitment to human rights and a government policy based on the principles of multiculturalism go hand in hand.

Given its importance and success, I call on the Australian government to issue a statement of commitment to the current policy of multiculturalism, affirming the primacy of Australia's Indigenous heritage and upholding the policy principles of multiculturalism as set out in this paper.

As part of this commitment the government should review the recommendations made by the National Multicultural Advisory Council in 1999 with a view to reinvigorating the policy so that it can meet the new challenges that a culturally diverse society continues to present.

45 Angus Reid Group: *Canadians and Multiculturalism: National Survey of the Attitude of Canadians*, report presented to Multiculturalism and Citizenship Canada, August 1991. This survey was carried out between June 29 and July 17, 1991.

46 Jiménez, M., 'How Canadian are you?', *Globe and Mail*, 12 January 2007.

Australia's Diverse Society: A Statistical Overview¹

Overseas-born

- In the 2001 Census about one-fifth of Australia's population stated that they were born overseas. At June 2002, overseas born residents in Australia comprised of 4.6 million people, remaining at approximately 23% of the total population.
- Within the western world, Australia has a high proportion of overseas-born persons (23%). This is higher than New Zealand (18.7%) and Canada (18.4%), and much higher than the United States (11.4%).
- At the 2001 Census, of the overseas-born population, most came from the United Kingdom (25.4%), New Zealand (8.7%) and Italy (5.4%).
- Western Australia has the highest proportion of residents born overseas (28.5%). New South Wales and Victoria have almost equal proportions of overseas-born people (24.8% and 24.6% respectively) followed by the ACT (22.6 %) and South Australia (21.2 %), Queensland (18.0 %), NT (15.5 %) and Tasmania (10.5%).

Ancestry

- In 2001, there were 3,477,189 Australians with one or both parents born overseas (25% of population).
- In the 2001 Census, the three most common ancestries that people identified with were Australian (35.9%), English (33.9%) and Irish (10.2%).
- Other common ancestries included Italian (4.3%), German (4.0%), Chinese (3.0%), Scottish (2.9%), Greek (2.0%), Dutch (1.4%), Lebanese (0.9%) and Vietnamese (0.8%).

1 Taken from HREOC Publication *Face the Facts 2005*, 2005, P21

Language

- In 2001, 16% of Australians spoke a language other than English in their homes. This represents an increase of 8% since 1996.
- Collectively, Australians speak over 200 languages. In 2001, Italian (with 353,605 speakers) was the most popular language other than English spoken at home followed by Greek (263,718), Cantonese (225,307), Arabic (209,372) and Vietnamese (174,236).

Religion

- Christians make up 68% of the population. Two major Christian denominations (Anglicans and Catholics) account for almost half (47.3%) of the population. Buddhism is the largest non-Christian religion and accounts for 1.9% of the population. Islam is the second largest non-Christian religion at 1.5% of the population. 15% of Australians said they had no religion.

Federal, State and Territory Legislation and Policy

Racial Discrimination Act 1975 (Cth)

The protections outlined in Racial Discrimination Act 1975 are in accordance with the International Convention of International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1969.

Section 9

"It is unlawful for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life."

Section 9(1A)

"Where:

(a) a person requires another person to comply with a term, condition or requirement which is not reasonable having regard to the circumstances of the case; and

(b) the other person does not or cannot comply with the term, condition or requirement; and

(c) the requirement to comply has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, by persons of the same race, colour, descent or national or ethnic origin as the other person, of any human right or fundamental freedom in the political, economic, social, cultural or any other field of public life".

Section 20 sets out the following functions for the Human Rights and Equal Opportunity Commission:

(b) “to promote an understanding and acceptance of, and compliance with, this Act;

(c) to develop, conduct and foster research and educational programs and other programs for the purpose of: (i) combating racial discrimination and prejudices that lead to racial discrimination; (ii) promoting understanding, tolerance and friendship among racial and ethnic groups; and (iii) propagating the purposes and principles of the Convention;

(d) to prepare, and to publish in such manner as the Commission considers appropriate, guidelines for the avoidance of infringements of Part II or Part IIA; (e) where the Commission considers it appropriate to do so, with the leave of the court hearing the proceedings and subject to any conditions imposed by the court, to intervene in proceedings that involve racial discrimination issues; and

(f) to inquire into, and make determinations on, matters referred to it by the Minister or the Commissioner”.

http://www.austlii.edu.au/au/legis/cth/consol_act/rda1975202/

Multicultural Australia: United in Diversity

Updating the 1999 New Agenda for Multicultural Australia:
Strategic directions for 2003-2006

“The Commonwealth Government is committed to ensuring that all Australians have the opportunity to be active and equal participants in Australian society, free to live their lives and maintain their cultural traditions. This social equity is enshrined in Commonwealth, State and Territory legislation.

Australian multiculturalism recognises, accepts, respects and celebrates cultural diversity. It embraces the heritage of Indigenous Australians, early European settlement, our Australian-grown customs and those of the diverse range of migrants now coming to this country.

The freedom of all Australians to express and share their cultural values is dependent on their abiding by mutual civic obligations. All Australians are expected to have an overriding loyalty to Australia and its people, and to respect the basic structures and principles underwriting our democratic society. These are the Constitution, Parliamentary democracy, freedom of speech and religion, English as the national language, the rule of law, acceptance and equality.

These civic obligations reflect the unifying values of Australian Citizenship. Australian Citizenship involves reciprocal responsibilities and privileges and enables individuals to become fully contributing members of the Australian community. Citizenship is

a strong unifying force in our diverse multicultural community. Our commitment to and defence of Australian values of equality, democracy and freedom unite us in our diverse origins, and enhance the ability of us all to participate fully in all spheres of Australian society.

In summary, the Government's aim is to build on our success as a culturally diverse, accepting and open society, united through a shared future, and a commitment to our nation, its democratic institutions and values, and the rule of law. This vision is reflected in the four principles that underpin multicultural policy:

Responsibilities of all – all Australians have a civic duty to support those basic structures and principles of Australian society which guarantee us our freedom and equality and enable diversity in our society to flourish;

Respect for each person – subject to the law, all Australians have the right to express their own culture and beliefs and have a reciprocal obligation to respect the right of others to do the same;

Fairness for each person – all Australians are entitled to equality of treatment and opportunity. Social equity allows us all to contribute to the social, political and economic life of Australia, free from discrimination, including on the grounds of race, culture, religion, language, location, gender or place of birth; and

Benefits for all – all Australians benefit from productive diversity, that is, the significant cultural, social and economic dividends arising from the diversity of our population. Diversity works for all Australians.

This multicultural policy provides a framework for maximising the social, cultural and economic benefits that cultural diversity brings to all Australians. But more than that, it actively promotes good community relations and social harmony among us all”.

http://www.dimia.gov.au/media/publications/settle/_pdf/united_diversity.pdf

South Australian Multicultural and Ethnic Affairs Commission Act 1980

Multiculturalism is defined in this Act as policies and practices that recognise and respond to the ethnic diversity of the South Australian community and have as their primary objects the creation of conditions under which all groups and members of the community may:

- live and work together harmoniously;
- fully and effectively participate in, and employ their skills and talents for the benefit of, the economic, social and cultural life of the community; and
- maintain and give expression to their distinctive cultural heritages.

“It identifies the three dimensions of multicultural policy as:

- cultural identity: the right of all Australians to express and share their cultural heritage, including language and religion;
- social justice: the right of all Australians to equality of treatment and opportunity, and the removal of barriers of race, ethnicity, culture, religion, language, gender or place of birth;
- productive diversity: the need to maintain, develop and utilise effectively the skills and talents of all Australians”.

<http://www.multicultural.sa.gov.au/about/multiculturalism.htm>

Multicultural Victoria Act 2004

The Act recognizes the diversity of the people of Victoria and classifies it as a “united community with shared laws, values, aspirations and responsibilities” in which people have the freedom to “preserve and express their cultural heritage”. “Article 4(3) defines the core principles of multiculturalism:

- an entitlement to mutual respect and understanding regardless of background;
- a duty on all Victorians to promote and preserve diversity [...] within the context of shared laws, values, aspirations and responsibilities;
- a demonstrated ability of all Victorians to work together to build a positive and progressive future
- a responsibility for all Victorians to abide by the State’s laws and respect democratic processes”.

Article 5 stresses that article 4 does not intend to provide any person with any legal right or “give rise to any civil cause of action” nor affects in any way the interpretation of any law in Victoria.

http://www.legislation.vic.gov.au/Domino/Web_Notes/LDMS/PubLawToday.nsf/a12f6f60fbd56800ca256de500201e54/299c99be8f6f1b4dca2572030005a72f?OpenDocument

West Australian (WA) Charter of Multiculturalism 2004

The background to the Charter explains that the Western Australian Government has sought to clarify the principles of multiculturalism, amidst varying definitions and beliefs such as –among others- “the perception that multiculturalism refers to a policy perspective that relates specifically and only to people who are perceived to be a of a particular cultural [...] background” and “the belief by some sections of the population that cultural uniformity is a necessary prerequisite for societal unity”.

The purpose of the Charter is to recognise Western Australia’s cultural diversity and “difference as a hallmark of democracy” as well as to retain respect for this diversity whilst conferring rights and duties on all West Australians. There is an explicit provision which states that by adopting this Charter Western Australia is implementing its duties under several international (human rights) instruments, including the ICERD.

The principles of the Charter are identified as:

- civic values;
- fairness;
- equality; and
- participation

Various objectives for the Western Australian Government are listed pursuant to these values, among others, to “encourage a sense of Australian identity and belonging as citizens, within a multicultural society” and to “enable the recognition and appreciation of the diverse cultures and backgrounds from which members of the Western Australian community are drawn.”

http://www.equalopportunity.wa.gov.au/pdf/wa_charter_multiculturalism.pdf

Community Relations Commission and Principles of Multiculturalism Act (NSW) 2000

The preamble of the Act recognises and values the different linguistic, religious, racial and ethnic backgrounds of the people of NSW. It promotes the notion of rights and responsibilities within a “cohesive and harmonious multicultural society in which diversity is regarded as a “strength and an asset” and “individuals share a commitment to Australia.”

Article 3(1) states that the NSW parliament will promote the principles of multiculturalism within an Australian legal and institutional framework. In addition article 3(2) states that the principles of multiculturalism are based on citizenship. Citizenship is defined not as being limited to formal Australian citizenship but to the rights and responsibilities of all people in a multicultural society who have “shared

values within a democratic framework governed by the rule of law” and who have “a unifying commitment to Australia”.

http://www.austlii.edu.au/au/legis/nsw/consol_act/crcapoma2000722/

Charter of Human Rights and Responsibilities Act (Victoria) 2006

The Charter of Human Rights and Responsibilities was introduced to the Victorian Parliament by the Attorney-General in May 2006. The Charter was passed by Parliament and became law on 25 July 2006. Section 19 relates to cultural rights and states that:

“(1) All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.

(2) Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—

(a) to enjoy their identity and culture; and

(b) to maintain and use their language; and

(c) to maintain their kinship ties; and

(d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs”.

<http://www.humanrightscommission.vic.gov.au/human%20rights/the%20victorian%20charter%20of%20human%20rights%20and%20responsibilities/>

Human Rights Act (ACT) 2004

The Act explicitly provides protections to the cultural and religious rights of minorities. Section 27 of the Act states that:

“Anyone who belongs to an ethnic, religious or linguistic minority must not be denied the right, with other members of the minority to enjoy his or her culture, to declare and practice his or her religion, or use his or her language”

<http://www.legislation.act.gov.au/a/2004-5/current/pdf/2004-5.pdf>

Multicultural Queensland 2004 – Making a world of difference

The *Multicultural Queensland – Making a world of difference* policy upholds the following values:

- “Promoting the economic and cultural benefits of diversity – all Queenslanders share the economic and social benefits of cultural diversity.
- Ensuring access – all Queenslanders have equitable access to programs and services regardless of their cultural, linguistic and religious backgrounds.
- Assisting community development and participation – all Queenslanders enjoy equal rights, responsibilities and opportunities to participate in, contribute to and benefit from all aspects of life in Queensland.
- Promoting community relations and cohesion – all Queenslanders share responsibility for the continuing development of Queensland as a cohesive and fair society”.

The Multicultural Queensland policy aims to foster an inclusive, cohesive and open society so that everyone is:

- “given opportunities to share their knowledge;
- offered a fair go and equitable access to services;
- able to exercise their civil rights and responsibilities; and
- protected from discrimination”.

http://www.multicultural.qld.gov.au/media/maq_making_world_difference_policy.pdf

Northern Territory’s Multicultural Policy – Building on the Territory’s Diversity

“The Northern Territory Multicultural Policy is based on four key principles:

- valuing diversity;
- fair access;
- encouraging participation; and
- mutual respect”.

The Policy is a key aspect of the Government’s broader community engagement strategies and policy development processes.

<http://www.nt.gov.au/dcm/multicultural/pdf/200504factEnglish.pdf>

Tasmania's Multicultural Policy

"The Tasmanian Multicultural Policy is linked to *Tasmania Together* – the Government's 20 year social, environmental and economic plan. It supports the achievement of the Tasmania Together goals and benchmarks, in particular it:

- ensures all Tasmanians have a reasonable standard of living with regard to food, shelter, transport, justice, education, communications, health and community services;
- recognises, encourage and value the many contributions that volunteers and unpaid workers can - and do - make to their community;
- fosters an inclusive society that acknowledges and respects our multicultural heritage, values diversity, and treats everyone with compassion and respect
- increases job and meaningful work opportunities in Tasmania".

"The Multicultural Policy has four interlinked objectives:

- to increase the share of migrants coming to Tasmania;
- to improve the retention rate of migrants once they have arrived in Tasmania; and
- to improve understanding of the value and benefits of multiculturalism throughout the community".

<http://www.stors.tas.gov.au/item/stors/2aa2a783-b93f-9aab-e71a-65c072dbf97c/1/web1/multicultural-policy.pdf>

International Human Rights Instruments

Annexure 3 is a summary of the relevant, key principles outlined in the numerous United Nations Declarations and Conventions that promote respect for cultural diversity and international cultural cooperation and the protection of cultural rights.

The United Nations International Convention on Civil and Political Rights 1979

The intent of this Convention is in accordance with the principles outlined in the *Charter of the United Nations* and the *Universal Declaration of Human Rights*.

Article 2 states that:

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

Article 5 states that:

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

Article 18 states that:

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19 states that:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order, or of public health or morals.

Article 26 states that:

"All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article 27 states:

"In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

http://www.unhchr.ch/html/menu3/b/a_ccpr.htm

Declaration on the Rights of Persons belonging to National or Ethnic, Religious and Linguistic Minorities 1992

The Declaration considers the protection of the rights of ethnic, religious and linguistic minorities as contributing to the political and social stability of the States in which they live. It positions the realization of these rights as an important part of the development of any society.

Article 1(1) states that:

“States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity”.

Article 2 provides that cultural pluralism is a core aspect of a democratic framework. Subsection (1) further states that:

“persons belonging to [...] minorities have the right to enjoy their own culture [...] in private and in public, freely and without interference or any form of discrimination.”

Article 4 (2) explicitly provides that:

“States shall take measures to create favourable conditions to enable persons belonging to minorities to express their characteristics and to develop their culture, language, religion, traditions and customs, except where specific practices are in violation of national law and contrary to international standards.”

http://www.unhchr.ch/html/menu3/b/d_minori.htm

UNESCO Declaration on Cultural Diversity 2001

The UNESCO Declaration sets out common rules and principles for cultural diversity at a global level. The Declaration characterises cultural diversity as necessary for human kind, as a living treasure and a source of exchange, innovation and creativity. The Declaration makes a significant contribution to recognising the role and legitimacy of public policy in its protection and promotion of cultural diversity.

Article 2 states that:

“policies for the inclusion and participation of all citizens are guarantees of social cohesion, the vitality of civil society and peace.”

It then goes on to state:

“Indissociable from a democratic framework, cultural pluralism is conducive to cultural exchange and to the flourishing of creative capacities that sustain public life.”

Article 4 identifies human rights as a guarantee of cultural diversity. It states:

“The defence of cultural diversity is an ethical imperative, inseparable from respect for human dignity. It implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples.”

It further states that:

“No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope.”

Article 5 frames cultural rights as an enabling environment for human rights and is linked to Article 27 of the *Universal Declaration of Human Rights* and Articles 13 and 15 of the *International Covenant on Economic, Social and Cultural Rights*. It states:

“All persons have therefore the right to express themselves and to create and disseminate their work in the language of their choice, a particularly in their mother tongue; all persons are entitled to quality education and training that fully respect their cultural identity; and all persons have the right to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms.”

Article 6 relates to the right for cultures to express themselves and make themselves known. It states:

“Freedom of expression, media pluralism, multilingualism, equal access to art and to scientific and technological knowledge, including in digital form, and the possibility for all cultures to have access to the means of expression and dissemination are the guarantees of cultural diversity.”

<http://unesdoc.unesco.org/images/0012/001271/127160m.pdf>

Promotion of the enjoyment of the cultural rights of everyone and respect for different cultural identities

Human Rights Resolution 2005/20

This resolution characterises cultural diversity as an asset and permanent feature for the advancement, welfare and enrichment of society. It expresses a specific interest in preventing and mitigating cultural homogenization in the context of a globalized world, through increased international cultural interchange and the promotion and protection of cultural diversity.

Article 4 states that:

“each culture has a dignity and value which must be respected and preserved and that every people has the right and the duty to develop its culture.”

Article 5 recognizes that:

“States have the primary responsibility for the promotion of the full enjoyment of cultural rights by everyone and for the enhancement of respect for different cultural identities”.

Article 7 further recognizes that:

“the promotion and protection of the full enjoyment of cultural rights by everyone and the respect for different cultural identities are vital elements for the protection of cultural diversity in the context of the ongoing process of globalization”.

Article 8 states that:

“all peoples have the right of self-determination, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development.”

Article 13 further recognizes that:

“the promotion of the cultural rights of everyone, of respect for the distinct cultural identities of peoples and of protection of the cultural diversity of humanity advances the implementation and enjoyment of human rights by all.”

<http://www.unifr.ch/iiedh/droits-culturels/odc-documentation/odc-doc-synthese/DS6-eng.pdf>

Draft United Nations Declaration on the Rights of Indigenous Peoples

The draft Declaration affirms that all peoples and cultures contribute to the richness and diversity of civilizations and societies and reaffirms that indigenous peoples' should be free from discrimination. The Declaration's key principles are linked to those outlined in the Charter of the United Nations, the Universal Declaration of Human Rights and in international human rights law.

Article 2 states that:

“Indigenous individuals and peoples are free and equal to all other individuals and peoples and dignity and rights, and have the right to be free from any kind of adverse discrimination, in particular that based on their indigenous origin or identity.”

Article 3 States that:

“Indigenous peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”

Article 4 states that:

“Indigenous peoples have the right to maintain their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.”

Article 8 states that:

“Indigenous peoples have the collective and individual right to maintain and develop their distinct identities and characteristics, including the right to identify themselves as indigenous and to be recognized as such.”

Article 16 refers specifically refers to the role of States and stipulates that:

“States shall take effective measures, in consultation with indigenous peoples concerned, to eliminate prejudice and discrimination and to promote tolerance, understanding and good relations among indigenous peoples and all segments of society.”

[http://www.unhcr.ch/huridocda/huridoca.nsf/\(Symbol\)/E.CN.4.SUB.2.RES.1994.45.En](http://www.unhcr.ch/huridocda/huridoca.nsf/(Symbol)/E.CN.4.SUB.2.RES.1994.45.En)

Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief 1981

Article 1 states that:

Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have a religion or belief of his choice.

3. Freedom to manifest one’s religion or belief may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others.

Article 2 states that:

1. No one shall be subject to discrimination by any State, institution, group of persons, or person on the grounds of religion or other belief.
2. For the purposes of the present Declaration, the expression “intolerance and discrimination based on religion or belief” means any distinction, exclusion, restriction or preference based on religion or belief and having as its purpose or as its effect nullification or impairment of the recognition, enjoyment or exercise of human rights and fundamental freedoms on an equal basis.

Article 3 states that:

Discrimination between human being on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations, and shall be condemned as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and enunciated in detail in the International Covenants on Human Rights, and as an obstacle to friendly and peaceful relations between nations.

Article 4 states that:

1. All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life.
2. All States shall make all efforts to enact or rescind legislation where necessary to prohibit any such discrimination, and to take all appropriate measures to combat intolerance on the grounds of religion or other beliefs in this matter.

http://www.unhchr.ch/html/menu3/b/d_intole.htm

International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) 1969

Article 1(1) of the Convention defines racial discrimination as:

“Any distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.”

Article 1(4) of the Convention states that:

“Special measures may be taken for the sole purpose of advancing a particular racial or ethnic group or individuals who require such protections as may be necessary to ensure that such groups/individuals have an equal enjoyment or exercise of their human rights. These special measures do not constitute racial discrimination provided that they do not lead to the maintenance of separate rights for different racial groups and that they are discontinued once their objectives have been achieved”.

Article 2(1) provides that:

“Each States Party should condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

(b) Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

(c) Each State Party shall take effective measures to review governmental, national and local policies and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;

(d) Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization; and

(e) Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division”.

Article 2 (2) of ICERD states that:

“State Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups of individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”.

<http://www.ohchr.org/english/law/pdf/cerd.pdf>

General Recommendation 23 – ICERD 1997

General Recommendation 23 states that:

1. In the practice of the Committee on the Elimination of Racial Discrimination, in particular in the examination of reports of States parties under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination, the situation of indigenous peoples has always been a matter of close attention and concern. In this respect, the Committee has consistently affirmed that discrimination against indigenous peoples falls under the scope of the Convention and that all appropriate means must be taken to combat and eliminate such discrimination.

2. The Committee, noting that the General Assembly proclaimed the International Decade of the World's Indigenous Peoples commencing on 10 December 1994, reaffirms that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination apply to indigenous peoples.

3. The Committee is conscious of the fact that in many regions of the world indigenous peoples have been, and are still being, discriminated against and deprived of their human rights and fundamental freedoms and in particular that they have lost their land and resources to colonists, commercial companies and State enterprises. Consequently, the preservation of their culture and their historical identity has been and still is jeopardized.

4. The Committee calls in particular upon States parties to:

(a) Recognize and respect indigenous distinct culture, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation;

(b) Ensure that members of indigenous peoples are free and equal in dignity and rights and free from any discrimination, in particular that based on indigenous origin or identity;

(c) Provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics;

(d) Ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent;

(e) Ensure that indigenous communities can exercise their rights to practise and revitalize their cultural traditions and customs and to preserve and to practise their languages.

5. The Committee especially calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources and, where they have been deprived of their lands and territories traditionally owned or otherwise inhabited or used without their free and informed consent, to take steps to return those lands and territories. Only when this is for factual reasons not possible, the right to restitution should be substituted by the right to just, fair and prompt compensation. Such compensation should as far as possible take the form of lands and territories.

6. The Committee further calls upon States parties with indigenous peoples in their territories to include in their periodic reports full information on the situation of such peoples, taking into account all relevant provisions of the Convention.

<http://www.unhcr.ch/tbs/doc.nsf/0/73984290dfea022b802565160056fe1c?Opendocument>