The Hon Mark Dreyfus QC MP
Attorney-General of Australia
By email: attorney@ag.gov.au

8 June 2022

Dear Attorney-General,

Congratulations on Behalf of the Civil Liberties Community in Australia

We write on behalf of peak civil liberties organisations across Australia.

We congratulate you on your election victory in the seat of Isaacs, forming part of the Labor majority government in the House of Representatives and your re-appointment as Attorney-General of Australia. We note your longstanding commitment to the rule of law.

Prior to the federal election the civil liberties community advocated on a wide range of issues, many of which accorded with Labor's policy platform. We hope that, in what will no doubt be a very busy time for the Government, you prioritise the following matters.[1]

A federal Independent Commission Against Corruption (ICAC): We support creation of a federal ICAC 'with teeth'. We do not take this position lightly given the extraordinary powers that such a body would hold, and there would need to be important safeguards to prevent abuse of its powers. There have been examples of anti-corruption bodies in Australia acting beyond power, including when using their powers of compulsion which abrogate the privilege against self-incrimination.[2] However, events across the political divide, at both the State and Federal level, demonstrate the need for a properly resourced federal ICAC. We have condemned the politicised attacks on anti-corruption commissions, which undermine the institutional integrity of those bodies.

Uluru Statement from the Heart: We support the Uluru Statement from the Heart (the Uluru Statement). As the oldest living civilisation, First Nations people should have recognition in the Australian Constitution and have a voice to parliament. We do not accept that it would create a 'third chamber' in parliament or undermine parliamentary sovereignty. It remains a source of great shame and sadness that, over 31 years after the Royal Commission into Aboriginal Deaths in Custody, over 500 First Nations people have died in custody, and many of the Royal Commission's recommendations have not been implemented.

[1] Some of the following is based on a letter sent by Liberty Victoria to its members and supporters prior to the election.

[2] See, eg, *Strickland (A Pseudonym) v Commonwealth Director of Public Prosecutions* (2018) 266 CLR 325; *Independent Commission Against Corruption v Cunneen* (2015) 256 CLR 1.

Treatment of refugees and people seeking asylum: Last year marked the 20th anniversary of the Tampa Affair. Our treatment of refugees and people seeking asylum has been a source of great cruelty. We have breached the fundamental rule, shared across diverse ethical and religious systems, against treating vulnerable people as the means to the end of general deterrence. Our approach breaches international law and has significantly damaged our global reputation. While some people have recently been released from detention after intense campaigning, indefinite onshore and offshore detention in appalling conditions (including a lack of access to appropriate medical treatment) has become normalised. The impact on people's lives is immeasurable.

We remain deeply concerned about the Minister's 'god-powers', most recently demonstrated to the international community by the Djokovic case, and the failure to provide avenues of merits review in what can be life and death decisions. We oppose the use of temporary protection visas (TPVs), which leave vulnerable people in a state of limbo, and we note the Labor Party's longstanding opposition to TPVs.

Privacy: We are concerned about the continuing deference of politicians to security agencies, and the ever-expanding surveillance powers of those organisations. This includes a recent suite of new powers giving agencies the power to interrupt, modify, copy, add to or remove data on electronic devices. In our view such surveillance powers are extraordinary and always should require independent oversight and the granting of warrants by the judiciary (and not merely internal approval within organisations or by tribunal members on short-term appointments). Such powers should be part of a federal human rights framework grounded in transparency and accountability. To this end, we ask that you withdraw the Data Availability and Transparency Bill, and reconsider its contents in totality.

LGBTIQ+ rights: The lead-up to the federal election saw increased attacks on LGBTIQ+ rights. We opposed the Religious Discrimination Bill 2021 (Cth) because it prioritised some human rights over others (and in particular the freedoms of religion and expression over non-discrimination and privacy). As you are aware, the political debate appallingly treated some vulnerable members of the LGBTIQ+ community, in particular young transgender people, as political footballs. More recently, some politicians have sought to politicise the participation of transgender people in sport, and this has been condemned by prominent voices from across the political spectrum. The freedom of LGBTIQ+ people to equally participate in the community is a marker of a democratic and human rights-respecting society and must be defended and protected.

The need for a Federal Charter of Human Rights: As civil liberties organisations we remain committed to freedom of expression and preventing the danger of Government overreach and censorship. In our view, the best way to protect the human rights of all Australians, including religious rights, is to enact a Federal Charter of Human Rights that would enable the careful balancing of rights when they inevitably come into conflict. Such legislation is now part of the landscape in the ACT, Victoria and Queensland, and, contrary to some of the warnings of those opposed to such models, the sky has not fallen in. Indeed such legislation has been vital in protecting and promoting civil liberties and human rights in some cases, and it seems extraordinary that Australia remains without a national human rights instrument, unlike England, New Zealand, Canada and South Africa.

We note that the Human Rights Law Centre has recently produced a helpful publication 'Charters of Human Rights Make Our Lives Better: Here are 101 Cases Showing How', which details practical examples of how human rights instruments in the ACT, Victoria and Queensland have improved access to justice and helped develop jurisprudence that protects and extends human rights.

The Australian Human Rights Commission: Linked to the need for robust human rights protections at a federal level, it is a matter of great concern to all of us that the Australian Human Rights Commission (AHRC) has not been reaccredited by the Global Alliance of National Human Rights Institutions (GANHRI) as an A-status institution because of concerns about the appointment process for Commissioners. Australia has a long and proud history of leading the international community on human rights, with Doc Evatt pivotal in Australia, and the international community, adopting the Universal Declaration of Human Rights. For us now to have a peak human rights body that cannot meet A-status accreditation is a sad sign of how far we have lapsed. Further, this undermines any criticisms that we may make of other countries for not meeting human rights standards. We are also concerned by the cuts to the AHRC's budget which limits its capacity to protect and advance the human rights of all Australians.

Politicisation of Tribunals: We are deeply concerned by what appear to be politicised appointments to tribunals, most notably the Administrative Appeals Tribunal. It is vital, in order to not go down the American path of a hyper-politicised judiciary, that judicial officers and tribunal members are only appointed on merit. To do otherwise undermines the community's faith in the neutrality of judicial decision-making and accordingly the rule of law.

Ending political prosecutions: We understand that the prosecution of Bernard Collaery is to be reviewed. In our view this is to be commended. But what of the prosecutions against other whistle-blowers like Witness K and Richard Boyle? These prosecutions against individuals who were ostensibly acting in the public interest, have used vast resources in a manner which is disproportionate to any punishment that would be given even if they succeed. In the case of Mr Collaery in particular, the case has been brought against a person who has been a dedicated public servant and is now elderly. Each of these prosecutions has been designed to have, and indeed has had, a significant chilling effect on whistle-blowers who need to be protected in order for misconduct that might otherwise be left in the shadows to come to light. To this end, we ask that you review the recommendations of the 2016 independent review of the *Public Interest Disclosure Act 2013* (Cth) by Mr Philip Moss AM, and implement those recommendations.

Though he is not convicted of any offence under British law, Julian Assange continues to be held as a prisoner in the same conditions as convicted murderers for engaging in conduct that was in the public interest. His mental and physical health have been seriously compromised. We urge you and the government to take all necessary steps to bring home Mr Assange and end his unjust prosecution.

Mandatory sentencing: We are strongly opposed to mandatory sentencing. The pitfalls of mandatory sentencing regimes are systemic in nature; they necessarily result in individual instances of injustice. As observed by the Law Council of Australia, such regimes undermine the independence of the judiciary and undermine community confidence, increase costs through higher incarceration rates, disproportionally affect vulnerable groups including First Nations peoples, fail to deter crime, and increase the likelihood of reoffending because of the criminogenic impact of imprisonment. Notwithstanding that mandatory sentencing is contrary to Labor's national platform,[3] both major parties have supported the introduction, and then expansion, of mandatory sentencing provisions in the Commonwealth sentencing regime, most recently on the eve of the election with the passing of the *Criminal Code Amendment (Firearms Trafficking) Act 2022* (Cth). We hope that such measures are at the very least halted and preferably reversed.

Prisoner voting rights: In the wake of the federal election it should be remembered that prisoners in Australia serving sentences of three years' imprisonment and longer are prohibited from voting in federal elections. We are strongly opposed to this systemic disenfranchisement. Rehabilitation of people who are incarcerated has long been recognised as one of the great objectives of the criminal law, and the stigmatic exclusion from participation in the democratic process does nothing to assist in that process.

Raising the age: Currently, in all Australian jurisdictions, the age of criminal responsibility sits at 10 years. Whilst the ACT and Northern Territory governments has committed to increasing the minimum age to 14 and 12 respectively, legislative change is yet to occur. Placing the minimum age of criminal responsibility at 10 years old is not only inconsistent with international human rights standards (and a violation of Australia's obligations as a party to the Convention on the Rights of the Child)[4] but also runs against neuroscientific understanding of children's brain (and social) development.[5] Exposing primary school children to arrest, strip-search and detention not only severely hampers their social-emotional learning,[6] but also increases the likelihood of further interactions with the criminal justice system. We ask that you please use your influence through the Council of Attorneys-General to seek stronger commitments from all jurisdictions to raise the age of criminal responsibility to at least 14.

---

[3] 'Labor opposes mandatory sentencing. In substituting the decisions of politicians for those of judges, mandatory sentencing undermines the independence of the judiciary. It leads to unjust outcomes and is often discriminatory in practice. Mandatory sentencing does not reduce crime, and leads to perverse consequences that undermine community safety, such as by making it more difficult to successfully prosecute criminals': 'ALP National Platform' (Web Page, 2021) <https://alp.org.au/media/2594/2021-alp-national-platform-final-endorsed-platform.pdf> at 74 [48]

[4] United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") Rule 4; Convention on the Rights of the Child Article 40(3); Committee on The Rights of the Child, 2007. GENERAL COMMENT No. 10 (2007) Children's rights in juvenile justice <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf> at [32].

[5] Joint Council of Social Service Network. Review on Raising the Age of Criminal Responsibility: Joint Council of Social Service Network statement to the Council of Attorneys-General. <https://vcoss.org.au/wp-content/uploads/2020/03/SUB_Joint-COSS_Age-of-Criminal-Responsibility-FINAL.pdf> at p 2.

[6] McArthur, M., Suomi, A. and Kendall, B., 2021. Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory. <https://justice.act.gov.au/sites/default/files/2021-10/Raising%20the%20Age%20-%20Final%20Report.PDF> at p 9.

Increasing the rights of the crossbench: Much has been made in the media of the diminishing number of votes that have been received by the major parties and the expansion of the crossbench. The crossbench exercises an important democratic function in holding the government to account and should be given the opportunity to do so in the House of Representatives, Senate and all parliamentary committees. Zali Steggall MP and Andrew Wilkie MP have called for an increase in the number of questions allocated to crossbenchers in Question Time and for greater respect towards crossbenchers who seek to move amendments to legislation. We support these calls and any consequent amendments which may need to be made to the Standing Orders in order to give effect to them. We also support an expanded role for crossbenchers on parliamentary committees, particularly the powerful Parliamentary Joint Committee on Intelligence and Security.

Thank you for taking the time to read the above, and congratulations again on becoming Australian's First Law Officer. We would be happy to provide any further information or meet with you to discuss the contents of this letter at a time convenient for you.

We will be making the contents of this letter public on our respective websites.

Yours sincerely,

Michael Stanton
President, Liberty Victoria

Emeritus Professor Rick Sarre
President, South Australian Council for Civil Liberties

Michael Cope
President, Queensland Council for Civil Liberties

Josh Pallas
President, New South Wales Council for Civil Liberties