Introduction[1]

As always in the *Australian Journal of Human Rights* we have a mix of substantive articles and recent developments. The substantive articles section is especially rich in articles canvassing a variety of topics including reproductive rights, the NATO action in Kosovo, indirect discrimination and extradition law. In this Olympics year when much of the world will be focused on sport for most of September it is timely and fitting that two articles on sport and human rights also appear. Recent developments on non-refoulement and the Convention Against Torture and the development of an Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women are also examined.

Lawrence McNamara explores the impact of rules introduced in 1995 by the Australian Football League (AFL) prohibiting racial vilification. His analysis draws some critical connections between the League's approach and the various legislative regimes, which prohibit racial vilification in the community. Although there has been a dramatic decrease in on-field racist abuse and conciliation has generally been a successful method of resolving AFL complaints, these positive outcomes are characterised by circumstances which are not necessarily typical of racial hatred complaints generally. McNamara argues that there is a need for scepticism, optimism and caution when considering the football experience. His article is both problematic and instructive in considering the limits and possibilities of conciliation and reconciliation.

Christine Bateup asks whether reproductive rights can be 'human' rights and by doing so attempts to provide a theoretical analysis of the inclusion of women's rights into the mainstream of human rights discourse. She argues that in recent times, feminist critiques of international law have clearly established the gendered nature of international law in general, and international human rights law in particular. In this article, in the course of examining the specific issue of reproductive rights, the author questions whether the project of incorporating women's rights into human rights more generally can be successful. In so doing, she argues that not only is international law gendered but that it is also sexed, as the subject of international human rights law has been implicitly constructed with a male body. The author concludes that feminists

1 This introduction relies on abstracts provided by the author's published in this issue. The abstracts will soon be available on the Australian Human Rights Centre website which contains information about material published in the *AJHR*.

must also challenge this sexually specific male subject in order for women to be recognised as complete subjects in human rights law in the future.

Stephen Bouwhuis' article sets out the major arguments regarding the legality of NATO's intervention into Kosovo. He argues that NATO's intervention gave new voice to those in the international community calling for the recognition of a right of humanitarian intervention in international law. The ensuing debate has seen references made to the principle of non-intervention in domestic affairs and to the contrasting right of humanitarian intervention, a right to intervene in the domestic affairs of States in support of human rights.

Titia Loenen's contribution explores the possibilities and limits of the concept of indirect discrimination, and the conditions under which it can reach more structural forms of discrimination and help achieve not just formal, but substantive equality. To what extent is it a vehicle for real change? In doing so a comparative analysis of the United States, South Africa, Canada, members of the European Union and Australia in dealing with the concept of indirect discrimination is undertaken. In addition special attention is paid to the jurisprudence of the Dutch Equal Treatment Commission, a semi-judicial body that is developing quite an impressive body of case law on this subject, covering indirect discrimination on the basis of sex, race, nationality, sexual orientation and religion. The comparative analysis hopes to contribute to a better understanding of the way the concept works (or fails to work) in different legal settings and how to improve its potential for reaching more subtle, systemic forms of discrimination.

Charles Colquhoun considers the potential impact that human rights could have on extradition law, with a particular focus on the Australian extradition regime. Some foreign jurisdictions have already considered the question whether the potential infringement of a person's human rights in the requesting State can justify a refusal to extradite the person to that State. Not only have legislation and treaties been drafted to recognise the human rights of the person to be extradited, but courts have invoked external human rights norms to justify refusing extradition. This trend has not yet been followed in Australia. This article addresses the possibility that human rights could be raised in Australian extradition proceedings. Its central thesis is that while human rights could have a legitimate and positive influence on Australian extradition law, curial recognition of human rights should be limited to those cases where there is a real chance that a serious violation of the person's fundamental human rights will occur in the requesting State.

In this Olympic year Braham Dabscheck's article on sport human rights and industrial relations is especially timely. Professional team sports, he argues, have

developed a series of employment rules, which have severely limited the economic freedom, and human rights of players. The major abuse of such rights have been rules which have denied players the ability to seek employment with alternative clubs, once their contract with their 'original' club has expired. Players have sought to restore such rights through the formation of player associations and actions before the courts. This article examines the industrial relations dimensions of human rights in sport by mainly focusing on developments in North America, the United Kingdom and Australia. Decisions of the courts concerning forced labour/slavery and freedom of movement/choice of employment are analysed. This article argues that the courts, in finding against such rules on the basis of individualistic (or natural rights) interpretations of human rights have, paradoxically, enhanced the collective determination of employment conditions and provided a fillip to player associations.

In the recent developments section Joanne Kinslor writes on the nature and content of Australia's non-refoulement obligations under art 3 of the Convention Against Torture and considers whether Australia has adequately provided for these obligations within its refugee program. Reference is made to the communication of the UN Committee Against Torture (UNCAT) in *Sadiq Shek Elmi v Australia* in which Australia was found by UNCAT to be acting in breach of its art 3 obligations and the author explores how such an outcome may be prevented in the future. The author agrees with the Senate Legal and Constitutional References Committee that Australian law should be reformed so that it unequivocally features Australia's Convention Against Torture non-refoulement obligations, especially given the absolute nature of these obligations and the grave subject matter with which they deal. The author suggests that an appropriate means of incorporating these obligations would be to create an alternate ground for qualification of a protection visa, which is based upon art 3 of the Convention Against Torture.

The second article in the recent developments section by Emilia Della Torre looks critically at the latest development in the international law of human rights affecting women. The Optional Protocol to the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was opened for signature, ratification and accession in January 2000. This Optional Protocol contains two complaints procedures. The first is a communication procedure allowing individual women, or groups of women, to submit claims of violations of rights under the CEDAW to the United Nations Committee on the Elimination of Discrimination against Women. The second is an inquiry procedure enabling the Committee to initiate inquiries into situations of grave or systematic violations of women's rights under the CEDAW. This Optional Protocol procedure will bring the violation of the rights of women under the CEDAW before the world. It will put the rights of women on a similar footing to the enjoyment of civil and political rights; the protection of the

right to freedom from racial discrimination; and sanctions for violations to the right to freedom from torture and other cruel, inhuman or degrading forms of treatment or punishment. This Optional Protocol has yet to enter into force. It remains to be seen whether the operation of this Optional Protocol will become too narrowly focused on questions of gender to the exclusion of questions of class and culture that also impact on women's lives. ●

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