



about Australia

democratic rights and freedoms

- Australia's approach to human rights and freedoms reflects its liberal democratic ideals and a belief in the inherent dignity and the equal and inalienable rights of all people, as set out in the Universal Declaration of Human Rights. Australia played a leading role in the development of international human rights standards, and is party to six major UN human rights treaties. Australia also engages actively in UN human rights mechanisms and supports developing countries in improving human rights standards, particularly through providing significant support for the promotion of democratic institutions.

Promoting a strong, free democracy

Australia's federal structure, independent judiciary, robust representative parliamentary institutions and independent national human rights institution (the Human Rights and Equal Opportunity Commission) play an integral role in protecting human rights. They also provide a bulwark against abuses of power and denials of fundamental freedoms.

The Australian Government encourages people to learn about and participate in Australia's democratic institutions. Key democratic principles and practices include responsible government; the separation of legislative, executive and judicial powers; the observance of constitutional safeguards; the rule of law; a transparent criminal justice system; equitably resourced and respected opposition parties; and a free media. Australia's strong democratic institutions are complemented by a number of specific legal protections for human rights.

key facts

- Australia played a leading role in the development of the international human rights system and is a party to six major UN human rights treaties. Australia is currently proceeding with ratification of the UN Convention on the Rights of Persons with Disabilities.
- Australia's international human rights obligations are implemented in state, territory and federal legislation.
- Australia's Constitution protects certain democratic rights and freedoms.
- Australia has formal and informal mechanisms to address alleged human rights breaches. For example, the Human Rights and Equal Opportunity Commission administers a statutory system for dealing with discrimination and human rights complaints from individuals.

Commitment to fair treatment

Human rights are inherent, inalienable, indivisible and universal. They are the birthright of all people and cannot be lost or taken away. They are all of equal importance and apply to all people whatever their race, gender, disability, language, religion, political or other opinion, national or social origin, age, property or other status. Observance of human rights, in Australia and abroad, benefits the security and prosperity of all nations and individuals. Successive Australian governments have supported these principles and systems.

Responsible government

The central features of Australia's constitutional system are the doctrines of **responsible government** and **separation of powers**. Under **responsible government**, the executive is accountable to the parliament and the parliament to the people. The doctrine of **separation of powers** ensures the separation and independence of the executive and legislative branches of government from the judiciary. The independence of the courts, and their separation from the legislative and executive arms of government, is of great importance in Australia. Judges, in interpreting and applying the law, act independently of the government.

Laws are developed by the executive and must be approved by both houses of parliament. Once a law is passed, the separation of powers doctrine means parliament and the executive are bound to accept a decision of the courts about what a particular law means and how it is to be applied.

Legal review

In Australia, anyone, including the government, can have the lawfulness of their actions scrutinised in a court of law and be held accountable for any activity determined to be inconsistent with the law.

Government policies are implemented by a professional and apolitical public service. Citizens have the right to be given reasons for administrative decisions made about them by government officials, and to have those decisions independently reviewed through the administrative tribunal system and/or the courts. There are also ombudsmen and commissions that can inquire into government decisions and allegations of misconduct. In addition, a network of parliamentary committees have mandates to review various spheres of government activity and legislation.

Constitutional protection

As the highest law in Australia, the Constitution specifically protects certain rights and freedoms, including trial by jury in specified circumstances, the free exercise of any religion, and just terms for acquisition of property. The Constitution also gives jurisdiction to the High Court of Australia to hear challenges to the lawfulness of government decisions.

Australia's rights and freedoms: legislative framework

Commonwealth

- *Commonwealth of Australia Constitution Act 1900 (UK)*
- *Freedom of Information Act 1982*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*
- *Disability Discrimination Act 1992*
- *Age Discrimination Act 2004*
- *Human Rights and Equal Opportunity Act 1986*
- *Human Rights (Sexual Conduct) Act 1994*
- *Privacy Act 1988*
- *Workplace Relations Act 1996*

States and territories

- Australian Capital Territory: *Discrimination Act 1991, Disability Services Act 1991 and Human Rights Act 2004*
- New South Wales: *Anti-Discrimination Act 1977 and Disability Services Act 1993 No. 3*
- Northern Territory: *Northern Territory Anti-Discrimination Act 1994*
- Queensland: *Anti-Discrimination Act 1991*
- South Australia: *Equal Opportunity Act 1984 and Racial Vilification Act 1996*
- Tasmania: *Tasmanian Anti-Discrimination Act 1998*
- Victoria: *Equal Opportunity Act 1995 and Racial and Religious Intolerance Act 2001*
- Western Australia: *Equal Opportunity Act 1984*

A transparent criminal justice system

It is fundamental to the administration of justice in Australia that a person accused of a criminal offence is presumed innocent until proven guilty beyond all reasonable doubt.

A person can only be detained by police for a limited period before being either released or charged with an offence and presented to an independent judicial officer (judge or magistrate) who decides whether the person may be detained in custody pending trial. In some cases an initial assessment may be made by police, with provision for judicial review. The question of whether to initiate criminal proceedings on serious charges is determined by an independent office, for example the Commonwealth Director of Public Prosecutions in the case of federal offences.

An accused person has the right to a fair trial, including the right to be informed of the charges laid against them. A trial must take place before a judicial officer who is independent of the executive government and legislature. Generally, a person who is placed on trial for a serious offence that is punishable by a significant term of imprisonment has the right to be tried before a jury drawn from the community. With some exceptions, an individual also cannot be compelled to provide self-incriminating testimony in court.

Legal aid services provide assistance and representation to accused people, subject to a financial means test and other conditions. A further fundamental principle of the Australian common law system is the availability of legal professional privilege.

A right of appeal is available against conviction and sentence on specified grounds, including that there has been a miscarriage of justice.

Independent human rights institutions

Human Rights and Equal Opportunity Commission (the Commission)

The Commission is Australia's most important independent national human rights institution. It handles discrimination and human rights complaints from individuals. The Commission educates the public on human rights and has the power to investigate and resolve individual complaints.

As an independent statutory body, the Commission controls the expenditure of its own budget. It can investigate complaints against the federal government and its agencies where there is an alleged breach of federal human rights legislation or international human rights obligations.

The Commission also investigates and resolves complaints of unlawful discrimination. Where a complaint cannot be resolved, the Commission may terminate the complaint and the complainant may institute proceedings alleging unlawful discrimination in the Federal Court or the Federal Magistrates Court.

Other institutions

Other institutions that promote and protect human rights in Australia include anti-discrimination or equal opportunity commissions in each state and territory and the Office of the Federal Privacy Commissioner, which investigates complaints about interference with an individual's privacy under the Privacy Act and related legislation. Some states and territories also have privacy commissioners. The federal, state and territory ombudsmen investigate complaints about the actions and decisions of government departments and authorities in their jurisdiction.

There are many non-government organisations (NGOs) in Australia that help promote and protect human rights standards in public life. The Australian Government pursues positive and constructive relationships with human rights NGOs, and consults with them on a regular basis.

Discrimination on grounds of race, gender, disability or age

Race

Federal, state and territory anti-discrimination laws provide legal recourse to the victims of racial hatred. The relevant federal legislation is the *Racial Discrimination Act 1975*. Under this legislation, it is unlawful to discriminate against any person by reason of that person's race, colour, descent, or national or ethnic origin. Such discrimination is prohibited in a number of areas including access to places and facilities, the provision of goods and services, employment and advertising.

The Racial Discrimination Act also prohibits racial vilification on the basis of race, colour, or national or ethnic origin. 'Racial vilification' covers acts that offend, insult, humiliate or intimidate a person or group of people. The prohibition is subject to a number of exemptions that are intended to permit free debate on matters of legitimate public interest. This helps ensure an appropriate balance between freedom of expression and protection from racially offensive behaviour.

Gender

Australia's *Sex Discrimination Act 1984* aims to eliminate discrimination and sexual harassment on the basis of gender and aims to promote greater equality in all aspects of the Australian community.

Disability

The *Disability Discrimination Act 1992* makes disability discrimination unlawful and promotes equal opportunity for people with disabilities in many aspects of public life such as employment, education and access to premises. The Act also protects relatives, friends and others from discrimination because of their connection to someone with a disability.

Age

Australia's *Age Discrimination Act 2004* protects individuals from discrimination on the basis of age in many parts of public life including employment, education, accommodation and the provision of goods and services.

Freedom of expression, association, assembly, communication and religion

The rights to freedom of expression, association and assembly are enshrined in the International Covenant on Civil and Political Rights, to which Australia is a party. These rights are subject to limitations that are reasonable and necessary in a free and democratic society to achieve an appropriate balance between freedom of expression and protection of groups and individuals from offensive behaviour.

The Australian Constitution contains an implied guarantee of freedom of communication in relation to political matters, which the High Court has determined is essential to the proper functioning of Australia's system of democratic and representative government. The *Freedom of*

Information Act 1982 gives every person the right to access information in the possession of the federal government and its authorities, with exemptions such as Cabinet papers.

Australia's Constitution prohibits the Australian Parliament from making any law for establishing any religion, imposing any religious observance, or prohibiting the free exercise of any religion. From the earliest days of European settlement, religious diversity has been a fact, and religious freedom has been a part, of Australian life. While Australia is predominantly a Christian country, there are large communities that practise Islam, Buddhism, Judaism and Hinduism. Australia also has a rich history of Indigenous traditions and beliefs, as well as a diversity of other faiths. Australia is a liberal, multicultural society, and the Australian Government practises constant vigilance, through the rigorous investigation of complaints by statutory bodies, to ensure the human right to free religious expression is protected for all community members.

Pursuing Australia's human rights objectives internationally

Australia is fully committed to promoting international human rights standards. The Australian Government considers human rights to be a subject of legitimate international concern and rejects attempts to portray this concern as interference in the internal affairs of other nations. Australia's formal bilateral Human Rights Dialogues with countries such as China, Vietnam and Laos enable it to raise human rights issues with their senior government officials. Associated technical cooperation initiatives, which are also pursued in other countries (especially

Indonesia and numerous countries in the South Pacific), allow Australia to provide practical human rights training to judges, lawyers and prison and government officials. Australia supports developing country NGOs, as well as national and regional human rights institutions, such as the Asia–Pacific Forum of National Human Rights Institutions, that promote and protect human rights in developing countries.

Australia actively engages in human rights issues within the United Nations system, including at the Human Rights Council and the UN General Assembly Third Committee. As a party to six of the major multilateral human rights instruments, Australia regularly reports to the United Nations on its compliance with international human rights obligations (see fact sheet *Australia and the United Nations*).

Further information

Attorney-General's Department
www.ag.gov.au/humanrights

Australian values and law
www.immi.gov.au

Centre for Democratic Institutions
www.cdi.anu.edu.au

Department of Foreign Affairs and Trade
www.dfat.gov.au/hr

Human Rights and Equal Opportunity Commission
www.hreoc.gov.au

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