

Australia and Human Rights: An Overview (4th Edition)

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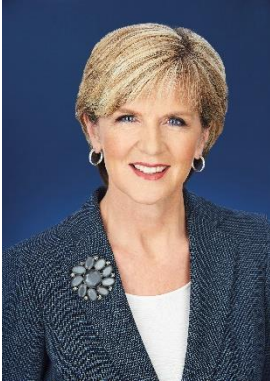
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Foreword by the Minister for Foreign Affairs



Australia will step up its efforts to promote and protect human rights around the world by serving as a member of the United Nations Human Rights Council, the world's peak human rights body, for the 2018-2020 term.

It is in Australia's national interest to protect and promote human rights, uphold the international rules based order and shape the work of the United Nations. As a founding member of the United Nations, and one of only eight nations involved in the drafting of the Universal Declaration on Human Rights, Australia was, and is, of the view that human rights deliver peace, security and prosperity to Australia and the world.

Australia has a long history of working with other countries and supporting civil society participation in the multilateral system in line with our values as a democratic state. Civil society is a critical link between international commitments to uphold human rights and the lived experience of individuals.

Australia will bring a pragmatic, principled approach to its term on the Human Rights Council. By providing an Indo-Pacific perspective we will ensure that the voices of our Pacific neighbours and other small states are heard.

Our term on the Council will be guided by the five pillars which underpinned our campaign for election: gender equality; freedom of expression; good governance and strong democratic institutions; advancing the human rights of indigenous peoples; and strong national human rights institutions.

Australia will also continue to promote the abolition of the death penalty worldwide, freedom of religion and belief, the rights of persons with a disability and the rights of LGBTI peoples.

The *Human Rights Manual* provides information to the public on human rights issues and their contemporary legal framework. It also assists government officials to gain a firm grounding in human rights issues as they seek to protect and advance human rights around the world.

Julie Bishop
December 2017

About this Manual

This fourth edition of the Human Rights Manual has been prepared by the Department of Foreign Affairs and Trade's (DFAT) Human Rights Branch to foster a deeper understanding of human rights among officers of the department, especially those who handle human rights as part of their work responsibilities. It is also intended to provide the public an explanation of how human rights policy is pursued.

The manual is not intended to be an exhaustive examination of the history, principles or current status of human rights issues. There are numerous texts and journals devoted to these issues that can be consulted for more detailed examination of various aspects of human rights. Instead, the manual seeks to provide officials and others interested in these matters with a sound, general introduction and to serve as a basic reference book for officers in the course of their work.

Detailed information on DFAT's advocacy and engagement on human rights can be found through the department's website (www.dfat.gov.au). Details of Australian domestic policies, which ensure the human rights of Australians and non-Australians residing in its territory, can be found in the regular reports of Australia to the United Nations' Universal Periodic Review and to human rights treaty bodies. These are available through the website of the Attorney-General's Department (www.ag.gov.au).

In preparing the manual, we wish to acknowledge the assistance of many officers from within DFAT, the Attorney-General's Department and other Commonwealth agencies who deal with human rights issues on a day-to-day basis.

CHAPTER 1

The Nature of Human Rights

An unjust law is not a law

St Augustine (354–430 AD), *On Free Will*

‘Human rights’ are those rights and freedoms universally accepted as essential for the enjoyment of a life based on human dignity. These rights are considered to be inherent, inalienable and universal: **inherent** as the birthright of all human beings, enjoyed by all simply by reason of their humanity rather than granted or bestowed; **inalienable** in the sense that they cannot be given up or taken away; and **universal** as they apply to all regardless of race, colour, gender, sexual orientation, gender identity, language, political or other opinion, national or social origin, property, birth, age or disability.

Historical context

The concept that human beings are endowed – purely by reason of their humanity – with certain fundamental and inalienable rights has existed to various degrees in all societies. It is implicit in written codes from ancient Babylon that refer to the need to help the poor and dispossessed; in Jewish and Christian scriptures which call for equality, justice and benevolence; in Hindu and Buddhist texts that focus on the human condition; in notions of human virtue and compassion which characterise early Confucianism; and in the natural law tradition of the West.

The modern concept of human rights has its origins in classical Greek philosophy. The examination of the individual and his role in civil society – the *polis* – was a precursor to the debate on the ‘rights of man’. During the time of Plato and Socrates, this issue was linked to the concepts of natural law and idealism. On the basis of these ideas it was later argued that, above and beyond the laws and rules of kings and emperors (the ‘positive law’), there existed immutable and ‘natural’ laws to which all humanity is entitled. These views were further developed by the Stoics and later Christian thinkers such as St Augustine.

In later centuries, the struggle between the prerogatives of the Crown and the rights of subjects led to the recognition of certain fundamental civil rights. In England, for example, these rights were first protected in 1215 by the *Magna Carta* as well as by the

common law principles of due process and the writ of *habeas corpus*¹. Such ideas were eventually given clear expression in the 1689 *Bill of Rights*, with which the English philosopher Locke was closely associated.

It was the second half of the eighteenth century – in particular the Age of Enlightenment – that saw major developments in the commitment of European societies to the concept of human rights. Building on political concepts such as the ‘law of nations’ propounded by the Dutch jurist Grotius to demonstrate the secularisation of natural law, the ‘social contract’ of Rousseau and Montesquieu’s concept of the separation of powers, as well as the writings of Locke, proponents of the theory of the rights of man fought to have these philosophical ideas protected in their societies.

In the late 1700s, this movement had revolutionary consequences for both the French monarchy and the British colonies of North America. The philosophical debates about the rights of man led to the promulgation of rules that were incorporated into the constituent documents of the newly emerged revolutionary States. In the American *Declaration of Independence* of 1776 one finds the famous lines:

we take these truths to be self-evident, that all men are created equal, and that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.

Article 1 of France’s 1789 *Declaration of the Rights of Man and the Citizen* echoes these sentiments when it states that:

all men are born and remain free and equal in their rights.

Both the American and French declarations represent important steps in the evolution of human rights. They reflect a systematic attempt to enshrine human rights as fundamental and guiding principles for newly emerged nations. Inspired largely by individuals’ struggles against arbitrary rule, the declarations sought to offer citizens ‘fundamental freedoms’ – basic guarantees against the arbitrary exercise of power by their State.

These notions of the rights of man were far from universal: they applied only to the citizens of States willing to proclaim and observe them, and even then excluded groups such as slaves, prisoners of war and stateless people. The principal tenet of international

¹ Writs of habeas corpus are used to review the legality of a person’s arrest, imprisonment or detention.

relations – national sovereignty – reigned supreme, as did the related assumption that States could treat their citizens as they wished, without interference.

With the establishment of the League of Nations after the First World War, human rights were further developed in the international sphere. While human rights were not expressly mentioned in the *Covenant of the League of Nations*, the organisation sought to protect the rights of two particular groups, namely minorities and inhabitants of the colonies of the defeated powers. To be admitted to the league, states with ethnic minorities had to enter into minority protection treaties or similar guarantees, enforceable by other members. Similarly, the need to protect the inhabitants of colonies led to the creation of the League's mandate system, which was guided by the principle that 'the wellbeing and development of such peoples form a sacred trust of civilization'. (Australia was one of the League members to be granted mandates over the former German colonies of New Guinea and Nauru).

The League was also active in the protection of workers' rights, with the goal of 'fair and humane conditions of labour for men, women and children' expressly mentioned in the League's Covenant. This objective was put into practice through the creation of the International Labour Organization (ILO) in 1919. The ILO has since been instrumental in promoting and monitoring compliance with international labour standards (the work of the ILO is discussed further in Chapter 4).

The horrors of the Second World War led to the birth of the modern human rights system, which ensured that human rights were a cornerstone of the new post-war international order. President Roosevelt's proclamation in 1941 of the *Four Freedoms* (freedom of speech and expression, freedom of belief, freedom from fear, and freedom from want) as a universally applicable set of standards provided important groundwork for this system.

But it was the establishment of the United Nations in 1945, and the provisions of its founding document, the *Charter of the United Nations*, which ushered in a new period of international concern for, and commitment to, human rights. In the second preambular paragraph of the UN Charter, this commitment is reflected in Members' determination:

to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small...

In its emphasis on the universal rights of **all** people the *UN Charter* represented a major shift from the League. The purposes of the United Nations articulated in article 1 of the UN Charter include:

1(2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace.

1(3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.

The notion that universal human rights exist as a matter of international law, to be observed by all governments, had far-reaching implications. States could no longer hide behind the defence that the abuse of human rights was an internal affair, since human rights were now firmly established as a matter of legitimate international concern.

A fundamental element of the post-war human rights regime is the *Universal Declaration of Human Rights (UDHR)*, adopted on 10 December 1948 (later designated as ‘Human Rights Day’). Although not a legally binding treaty, the *UDHR* establishes an internationally recognised set of standards applicable to all persons without qualification. It is unique in that it represents a worldwide charter of rights, proclaiming universal and fundamental freedoms which transcend national, religious, cultural and ideological factors. In this respect, it remains the most fundamental expression of international human rights standards.

The *UDHR* provided the foundation for the *International Covenant on Civil and Political Rights (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, as well as the subsequent development of other international human rights standards (see Chapter 3 for details on the main international human rights instruments).

The role of the United Nations in the promotion and protection of human rights has been significant. The UN has been instrumental in the promotion of human rights through its role in the drafting of human rights instruments, its focus on human rights situations throughout the world, and the provision of capacity building and development programs which support human rights.

Some parameters of contemporary human rights practice

First, second and third generation human rights

The rights proclaimed by the *UDHR* are often divided into two categories: **civil and political rights** (articles 3 to 21) and **economic, social and cultural rights** (articles 22 to 28). This distinction is reflected in the existence of two separate covenants, the *ICCPR* and the *ICESCR*.

Civil and political rights are the basic rights from which the philosophy of human rights developed, namely the protection of the individual from the arbitrary exercise of power by the State. These rights are sometimes referred to as **‘first generation rights’**. Civil and political rights contain both ‘negative’ and ‘positive’ obligations. Negative obligations require States to refrain from certain acts against the individual, with the result that the individual has the freedom to pursue, within acceptable limits, their inalienable human rights. To safeguard civil and political rights, States are also obliged to undertake many ‘positive’ acts, such as training police and judiciaries, or establishing appropriate organisations to support the achievement of human rights.

The class of **civil rights**, set out in articles 3 to 18 of the *UDHR*, includes ‘physical integrity rights’ such as the right to life and the protection against torture, and ‘due process rights’ such as the right to a fair trial, the presumption of innocence, and the right to legal representation.

Political rights, enumerated in articles 19 to 21 of the *UDHR*, include freedom of expression, freedom of association and assembly, and the right to vote in free and genuine elections by secret ballot.

Economic, social and cultural rights are those rights concerned with the material, social and cultural welfare of persons. These rights are described as ‘positive’ or ‘distributive’ rights, since States must act to ensure or enable the provision of social goods and services – such as housing, clothing, food, education and social security – for these rights to be realised and enjoyed. Economic, social and cultural rights are sometimes called **‘second generation’** rights.

In recent years, there have been various proponents of a **‘third generation’** of human rights referred to as ‘group’ or ‘solidarity’ rights. Examples include the right to peace and the right to the enjoyment of a healthy environment. There is no consensus amongst States if these rights have any status in international law and Australia does not recognise such rights to be part of the current international human rights regime.

The universality and indivisibility of human rights

From the time of the *UN Charter*, there has been debate about the universality and indivisibility of human rights. Views differ about the relevance of cultural, religious, economic and other factors to the practical observance of human rights.

Australia considers all human rights to be universal. The *UN Charter* expressly recognises that human rights are universal in application and the *UDHR* is premised on this same view (see in particular article 2), as are the later Covenants.

At the first UN International Conference on Human Rights held in Tehran in 1968, more than eighty-five countries accepted the view that:

The Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community (*Proclamation of Tehran*, paragraph 2).

A reaffirmation of the universality of human rights was made at the 1993 Vienna World Conference on Human Rights, from which the *Vienna Declaration and Program of Action*, adopted by consensus of the 171 States in attendance, confirmed:

the solemn commitment of all States to fulfil their obligations to promote universal respect for, and observance and protection of, all human rights and fundamental freedoms for all in accordance with the Charter, other instruments relating to human rights, and international law. The universal nature of these rights and freedoms is beyond doubt (paragraph 1).

Australia also considers human rights to be interrelated, interdependent and indivisible. That is, there is no hierarchy or priority of the rights enshrined in the *UDHR*, nor are there preconditions imposed on the enjoyment of some of these rights. To quote again from the *Vienna Declaration*:

All human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms (paragraph 5).

Human rights and national sovereignty

The international legal system is underpinned by the concept of State sovereignty and the related prohibition against interference in the domestic affairs of States recognised in article 2(7) of the *UN Charter*. There is an inherent tension between these concepts and the recognition by the international community that human rights, as inherent, inalienable and universal rights, are the concern of all.

State practice in the post-war period makes clear that human rights are accepted as an international issue. Their promotion and protection are legitimate subjects for scrutiny and criticism by the international community. Indeed, articles 55 and 56 of the *UN Charter* – which require the UN to promote universal respect for, and observance of, human rights and fundamental freedoms, and for Member States to support this purpose – strengthen this position.

It is increasingly rare to find States rejecting human rights representations by other States, or other forms of international scrutiny, on the basis that they constitute an unacceptable interference in their internal affairs. Certainly, any State that has become a party to a human rights treaty cannot use this argument since it has expressly agreed to be bound by the terms of the treaty. Many States have also accepted that certain provisions contained in some human rights instruments have become customary international law which is binding on all States (customary law is discussed in greater detail in Chapter 2).

The tension between State sovereignty, non-interference and human rights was evident in recent debates on the doctrine of humanitarian intervention and the Responsibility to Protect (R2P) – the concept that each State has primary responsibility to protect its population from mass atrocity crimes of genocide, war crimes, crimes against humanity and ethnic cleansing.

Responsibility to Protect

The R2P principle was first outlined in the Report of the International Commission on Intervention and State Sovereignty (ICISS) in response to the international community's failure to respond adequately to mass atrocity crimes in Rwanda and Srebrenica in the 1990s. Australia's former Minister for Foreign Affairs, Gareth Evans, was an ICISS co-chair.

The R2P principle rests on three pillars:

1. Each State has the primary responsibility to protect its population from mass atrocity crimes;

2. The international community is responsible for assisting States to exercise this responsibility;
3. The international community is responsible for taking collective action, consistent with the *UN Charter*, to protect populations from mass atrocity crimes where a State is manifestly failing in its responsibility to protect.

Heads of State and government unanimously adopted R2P as a key principle of international affairs in 2005.

One of the great achievements of R2P is the balance it strikes between State sovereignty and the protection of vulnerable populations. Actions to implement R2P can include: early warning systems, national risk assessments, capacity building to strengthen a state's human rights architecture, political mediation, economic incentives, sanctions, diplomatic isolation and referral to the International Criminal Court. Military intervention, despite being the most well-known and controversial aspect of R2P, is reserved only for the most extreme situations and can only be exercised in accordance with the *UN Charter*.

Australia is a strong supporter of R2P and is a leading advocate for international adoption of the principle. Australia is a member of R2P support groups at the UN in both New York and Geneva, and supports projects, research and advocacy which aim to advance R2P. In 2011 Australia appointed a National Focal Point to champion R2P among national and international stakeholders, enhance common understanding of R2P, and coordinate policies and activities across government bodies to bolster Australia's resilience to the risks of instability, conflict and the commission of atrocities. Australia is a co-facilitator of the Global Network for R2P National Focal Points, with over 40 countries represented.

Australia promoted R2P during its recent term on the UN Security Council in 2013–14. Australia succeeded in placing the human rights situation in the Democratic People's Republic of Korea on the Security Council's agenda to underline that situations of mass human rights violations are of core concern to the international community. Australia invoked R2P while determinedly pushing the Council towards unified action to address the humanitarian crisis in Syria, securing Resolution 2139 and UNSC Resolution 2165 to improve humanitarian access to the people of Syria. Australia also secured reference to R2P in UNSC Resolution 2117 on combatting illicit small arms flows and in UNSC Resolution 2171 to strengthen the UN's approach to conflict prevention.

Australia will continue to be a strong supporter of R2P and will advocate for the principle through our diplomatic network and in various UN fora, including the General Assembly, the Human Rights Council and through open debates of the Security Council.

CHAPTER 2

The International Legal Framework

Wherever law ends, tyranny begins.

John Locke, *Second Treatise of Government*

What is international law?

The international legal system is underpinned by the concept of **State sovereignty**. That is, States exercise supreme authority within their territory. An important element of this concept is that no State can, without its consent, be bound by obligations at international law.

Public international law – previously called ‘the Law of Nations’ – is essentially the system of binding rules accepted by States as governing their conduct and relations with other States at the international level.

As even this basic definition makes clear, **the State is the main actor**, or ‘subject’, of international law. This reflects the fact that public international law has its origins in the rise of the modern nation State. As States emerged and their relationships developed, mutually agreed rules and mechanisms were necessary to regulate interactions and to provide a framework for the peaceful resolution of disputes.

The individual in international law

The State-based nature of the international legal system and the concept of State sovereignty can be difficult to reconcile with the idea that an individual can enjoy rights and privileges under international law. Through a combination of international treaty law and State practice, largely since the creation of the United Nations, human rights are now, as a matter of international law, considered to be universal and inalienable.

This evolution is evident in the writings of eminent international legal scholars before and after the founding of the United Nations. For example, Lassa Oppenheim, in his 1912 *Treatise on International Law*, could state quite categorically that, since international law is law between States only and exclusively, States only and exclusively are subjects of international law. A generation later, however, Hersch Lauterpacht, in his 1955 revision of Oppenheim’s work, was able to assert that:

The various developments since the two World Wars no longer countenance the view that, as a matter of positive law, States are the only subjects of international law. In proportion as the realization of that fact gains ground, there must be an increasing disposition to treat individuals, within a limited sphere, as subjects of international law.²

The sources of international law

Article 38 of the *Statute of the International Court of Justice* (ICJ), the principal judicial organ of the United Nations, is generally taken as listing the sources of international law. These are:

- (a) international conventions or treaties;
- (b) international custom, as evidence of a general practice accepted as law;
- (c) the general principles of international law recognised by civilised nations; and
- (d) judicial decisions and the teachings of the most highly qualified publicists, as subsidiary means for the determination of rules of law.

From a human rights perspective, the most important sources of international law remain **treaty law** and, to a lesser extent, **customary international law** (items (a) and (b) respectively). Both are discussed in further detail below.

The other sources of international law mentioned in article 38 are still of relevance to international human rights law. For instance, there have been several ICJ judgments that have touched on the universality of human rights (see for example the *Barcelona Traction* case (1970), the *Reservations to the Genocide Convention* case (1951), and *Questions relating to the Obligation to Prosecute or Extradite (Belgium v Senegal)* (2012)).

Treaties

Treaties have played a crucial role in the international development of human rights in the post-World War Two period. A treaty is defined in the *Vienna Convention on the Law of Treaties* of 1969 as:

² Lauterpacht, H., *International Law: A Treatise by L. Oppenheim*, (Longman's, Green and Co: London: 1955) p.639

an international agreement concluded between two States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation (article 2(1)(a)).

States can be parties to **bilateral treaties** (with another State or international organisation) or **multilateral treaties** (involving more than two States or international organisations). Multilateral treaties are often called a 'convention'. Each country has its own constitutional procedures that need to be followed before it can become '**a State party to a treaty**' (Australia's procedures are discussed below).

In the context of multilateral human rights treaties, the following is an explanation of common terms:

Adoption: the text of a multilateral treaty is usually adopted by the consent of all States, whether involved or not in the negotiation of the text, at an international forum. For example, the *ICCPR* and the *ICESCR* were formally adopted at the 1966 General Assembly. Adoption is associated with a call to all States to sign the treaty: the treaty thus becomes '**open for signature**'.

Signature: by signing a treaty, a State indicates its intention to become a party to that treaty subject to the completion of any necessary domestic legislative or executive action (such as approval by Parliament and/or the passage of enabling legislation). Signature alone does not impose on the State the specific obligations under the treaty. A State that signs a treaty is, however, obliged to refrain, in good faith, from acts that would defeat the object and purpose of the treaty. For some States, signature alone may be all that is needed to be bound by a treaty under their domestic constitutional arrangements (known as 'definitive signature').

Ratification: refers to the act whereby a State establishes its consent to be bound by a treaty. Ratification is also called 'acceptance', 'approval' or 'confirmation'.

Accession: treaties usually remain open for signature until ratified by the requisite number of States stipulated in the treaty at which point the treaty **enters into force**. Once a treaty has entered into force, a State may become a party to the treaty by accession. By doing so, the State assumes the same legal obligations and rights as other parties.

Limitations

A general principle of international treaty law, reflected in the maxim of *pacta sunt servanda* ('agreements must be kept'), is that parties to a treaty should comply with its terms. This principle is expressed in article 26 of the *Vienna Convention* which provides that 'every treaty in force is binding upon the parties to it and must be performed by them in good faith'.

Many treaties, however, including most human rights conventions, provide for specific mechanisms whereby the scope of parties' obligations are, or can in practice, be qualified in various ways.

First, various treaties impose **permissible limitations** on the extent to which individuals can enjoy these rights. An example is the right to freedom of expression set out in article 19(2) of the *ICCPR*. Article 19(3) recognises that States can place legitimate limitations on the practical enjoyment of this right for permissible purposes, including respect for the rights or reputations of others or for the protection of national security, public order or public health or morals.

Second, most human rights treaties also provide for more **general limitations** on the scope of specific rights. An example of this is article 4 of the *ICESCR* which provides that States parties may subject the rights in the Covenant:

only to such limitations as are determined by law only in so far as may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Given the scope of such provisions, it is accepted that limitations should have a clear legal basis, pursue a legitimate objective and should not destroy or impose improper limitations on the enjoyment of these rights. For an example of such a provision, see article 5 of the *ICCPR* (a near identical provision is contained in article 5 of the *ICESCR*), which provides:

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.

Third, a State may limit a multilateral treaty's applicability through the use of **reservations**. A reservation is a unilateral statement by a State, made at the time of signing, ratifying, accepting or acceding to a treaty, which purports to exclude or modify the legal effect of certain provisions in their application to that State (see article 2(1)(d) of the *Vienna Convention*). It is considered a notification to other State parties that a State proposes to interpret or implement a specific treaty provision in a certain way.

A reservation is not valid if it is prohibited under the treaty, does not fall within the scope of reservations permitted under the treaty, or is incompatible with the object and purpose of the treaty. The other State parties may accept or reject the terms of that reservation. A State is presumed to have accepted the reservation if it has not objected to it within a certain period. Most human rights treaties expressly allow States to make such reservations.

Reservations should be distinguished from unilateral statements made by States upon ratification or accession, and are called **declarations, interpretations or understandings**. While often similar in form (and purpose), declarations are an explanation of a State's unilateral understanding or interpretation of a treaty or certain of its provisions. Declarations do not purport to exclude or modify the legal effects of a treaty and do not affect the legal obligations of the State arising from the treaty.

Australia does not generally favour the use of reservations in treaties and has only infrequently lodged them. Australia lodged some reservations when ratifying the ICCPR, a number of which were subsequently withdrawn in 1984, and it has a policy of periodically reviewing existing reservations to human rights treaties. Australia's reservations and declarations are set out in Chapter 3.

The final issue to be considered in the context of limitations is **derogation**. This allows States to suspend the operation of certain provisions of a treaty in exceptional circumstances, most usually in cases of national emergency. The right of derogation is strictly circumscribed because of the potential for abuse. For example, article 4 of the *ICCPR* allows States to derogate from their obligations under the Covenant, but only subject to strict conditions whereby:

- the derogating measures must be only to the extent strictly required by the exigencies of the situation;
- the measures have to be in conformity with international law and must not be discriminatory; and
- there must be a publicly proclaimed emergency which threatens the life of the nation.

Article 4 also makes clear that there are some core rights that are 'non-negotiable' and from which there can never be any derogation. Such rights include the right to life, freedom from torture and slavery, and freedom of thought, conscience and religion.

How treaties are implemented in Australia

The means by which States give effect to treaty obligations depends on their national constitutional arrangements. Most countries with a common law tradition (including Australia) adopt a 'dualist' approach, which requires a specific act of implementation or incorporation into domestic law for the provisions of a treaty to have domestic effect.

In Australia, 'enabling' legislation, in Commonwealth Parliament and/or State and Territory Parliaments, is often necessary to implement treaties. In some cases, the full text of the treaty is included as an annex to such legislation; for example, the *ICCPR* was included as a schedule to the *Australian Human Rights Commission Act 1986* (Cth). However, this does not in itself make the treaty part of domestic law. The terms of a treaty are 'incorporated' into Australian law to the extent that substantive provisions are enacted to give effect to the requirements of the treaty.

Since 1996, the Joint Standing Committee on Treaties (JSCOT) has examined and reported on all treaties on which the Australian Government is considering taking action. A National Interest Analysis (NIA) details obligations and costs, the consultation undertaken, and any steps necessary for domestic implementation. JSCOT's enquiries involve extensive consultation and public hearings and their reports, with few exceptions, are by consensus.

While the *Australian Constitution* does not expressly grant the federal government power to legislate in the human rights area, section 51(xxix) of the Constitution vests in the Australian Government the power to legislate with respect to 'external affairs'. This power has been interpreted by the High Court as including the power to legislate to give effect to the international obligations Australia has assumed under treaties.

When enacting international treaties into Australian law, state and territory legislation may need to be created or amended. This means that extensive federal-state consultations are usually required in order to establish the appropriate legislative framework to ensure that Australia can comply with its international legal obligations. Such agreement is usually reached before the Australian Government proceeds to accession or ratification. A State cannot justify a breach of an international obligation on the basis of domestic federal-state implementation issues or otherwise on the basis of difficulties in implementing the treaty in its domestic law. In this context, section 109 of the *Australian Constitution* declares that, in the case of a conflict between state and federal legislation, a valid federal law shall prevail over any inconsistent state law.

An example of a situation involving a conflict between a federal act and an inconsistent state law is the High Court case of *Koowarta v Bjelke-Petersen*. In 1975, the *Racial Discrimination Act 1975* (Cth) was enacted by the federal government to give domestic effect to the *International Convention on the Elimination of all Forms of Racial Discrimination* (CERD). Following action by persons challenging the validity of Queensland laws by relying on the provisions of the *Racial Discrimination Act*, the Queensland Government, in order to avoid the application of section 109, challenged the validity of the Act.

The High Court decided the case in favour of the federal government, on the basis that the *Racial Discrimination Act* had been validly enacted pursuant to section 51 (xxix) of the Constitution. The Court held that enactment of such an Act had been a valid and good faith exercise of the 'external affairs' power, since international concern about racial discrimination leading to concrete action in the form of the CERD had made racial discrimination very much a part of any nation's 'external affairs'. Some High Court

judges also observed that – even in the absence of a binding Convention such as the CERD – the elimination of racial discrimination had become an obligation of customary international law status. Accordingly, these judges considered that it may well be that the federal government would have been entitled to use its external affairs power to legislate against racial discrimination even in the absence of an internationally binding treaty.

In the 1995 case of *Minister for Immigration and Ethnic Affairs v Ah Hin Teoh*, the High Court held that ratification of a treaty by the Australian executive gave rise to a **legitimate expectation** that decision makers would act consistently with the provisions of the treaty and take them into account in making administrative decisions, even if those provisions had not been incorporated into domestic law. It also held that such a legitimate expectation could be set aside by an executive or legislative indication to the contrary. On 25 February 1997, the Attorney-General and the Minister for Foreign Affairs issued an Executive Statement to the effect that the act of entering into a treaty does not give rise to legitimate expectations that could form the basis for challenging an administrative decision.

Customary international law

The second major source of international law – which can be particularly relevant to human rights – is customary international law. Customary law reflects the concept that general principles of international law binding on all States can be discerned by the way States habitually behave with one another.

For a rule of customary international law to emerge it requires both ‘**State practice**’ – unambiguous, discernible and consistent behaviour by States in a particular field over a period of time – and ‘*opinio juris*’ – the belief by States that such practice is mandatory. For a rule to reach such a customary status a high threshold must be met, both in terms of its identification and acceptance by States as custom.

The implications of customary international law for the practice of human rights are potentially great. It could mean that States are bound by human rights rules even where they may not be parties to the relevant treaty or where the rule is expressed in documents other than treaties, such as declarations or resolutions of the United Nations General Assembly. The reason is that the rules or principles expressed in such documents may have acquired the status of customary international law.

The most obvious and formidable example of this process is the *UDHR*. As a declaration of the General Assembly, the *UDHR* is not a treaty and does not create legally binding obligations on any State. The fact remains, however, that several of the rights expressed

in the Declaration have acquired the status of customary international law and are binding upon all States by virtue of this status. While there is debate about which provisions of the Declaration have acquired such a status, it is generally accepted that the rules prohibiting slavery, torture, and systematic racial discrimination such as apartheid, have become customary international law.

Customary international law can also emerge through States' activities and pronouncements in international organisations. The most obvious examples are the numerous human rights **resolutions of the United Nations General Assembly** and the **Human Rights Council**. Although these resolutions are not in and of themselves legally binding, they may be evidence of State practice and *opinio juris*, and thereby contribute to the development of a rule of customary international law. Several factors play a role in this respect, such as voting patterns on a resolution, the degree of international consensus in the adoption of a resolution and the ongoing reference to a resolution. Statements or explanations of vote made by States at the time resolutions are adopted may also be relevant.

Relevant to the discussion of customary rules is the concept of *jus cogens*: a fundamental, overriding principle of international law that can invalidate treaties to the extent of any inconsistency (article 64 of the *Vienna Convention*). The question of how an obligation attains the status of *jus cogens* is complex. Nonetheless, it is widely accepted that the prohibitions of slavery, genocide, and racial discrimination are rules of *jus cogens*.

Enforcement

Compliance with international law by States and individuals, as well as the settlement of disputes between countries, is a complex issue given the underlying concept of State sovereignty.

The *UN Charter* focuses on encouraging States to resolve their disputes by peaceful means. Chapter VI of the Charter is entitled 'Pacific Settlement of Disputes' and article 33 of that Chapter lists various mechanisms open to States to resolve their differences. These include negotiation, enquiry, mediation, conciliation, arbitration, judicial settlements, resort to regional agencies or arrangements, or 'other peaceful means of their own choice'.

One means of international ‘judicial settlement’ is the International Court of Justice (ICJ). The ICJ was established in 1945 as the principal judicial organ of the United Nations. The Court, based in The Hague, is comprised of 15 judges elected for nine year terms by the UN General Assembly and the Security Council.

Unlike a domestic court’s mandatory jurisdiction, the ICJ’s jurisdiction is dependent on the consent of States. This means it cannot hear any case involving a State which has not submitted to its jurisdiction. Article 36 of the *ICJ Statute* sets out the circumstances in which the Court has jurisdiction:

- where the parties agree to refer a dispute to the Court;
- where the *UN Charter*, or a relevant treaty, confers jurisdiction on the Court; or
- where the parties to a dispute have made formal declarations (‘optional clause declarations’) recognising the Court’s jurisdiction as compulsory. These declarations may be unconditional or they may contain exceptions that limit the Court’s jurisdiction. Australia’s present optional clause declaration was lodged in 2002.

The conferral of jurisdiction on the ICJ to hear disputes arising under treaties is especially relevant as numerous human rights treaties expressly provide for States to refer treaty disputes directly to the ICJ. Examples include the *Slavery Convention*, the *Convention on the Elimination of All Forms of Racial Discrimination* and the *Convention on the Elimination of All Forms of Discrimination against Women*.

Another example of a treaty that confers jurisdiction on the ICJ is the *Genocide Convention*. Article 9 of the *Genocide Convention* allows parties to refer to the ICJ disputes concerning the interpretation, application or fulfilment of the Convention. In 1993, Bosnia-Herzegovina relied on article 9 to bring an action against the Federal Republic of Yugoslavia (Serbia and Montenegro). The Court granted provisional measures, requesting that the Federal Republic of Yugoslavia take all measures within its powers to prevent the commission of genocide.

There are several features of the ICJ that are distinctive. First, it is not a supreme court of appeal from other national or international judicial bodies. Second, the Court is not bound by its earlier decisions, although in practice it treats them as persuasive. Third, under article 94 of the *UN Charter*, UN members undertake to comply with any ICJ decision in any case to which they are a party; failure to do so allows the other party to seek recourse to the Security Council which may make recommendations or decide upon measures to give effect to the ICJ judgment.

Particularly important from a human rights perspective is the fact that, pursuant to article 34 of the *ICJ Statute*, only States may be parties before the ICJ. This means that individuals or groups do not have any ‘standing’ to bring a case before the Court. In some cases, a State may choose to bring a claim on behalf of one of its nationals, in the exercise of ‘diplomatic protection’. Even so, it is up to the State (not the individual) to decide whether to bring a claim. In exceptional circumstances a State can bring an action to protect persons other than its own nationals. In the *Barcelona Traction* case of 1970, the ICJ indicated that a State may bring a claim to enforce an obligation that is owed *erga omnes* – that is, owed to the international community as a whole. The Court suggested that *erga omnes* obligations include those relating to aggression, slavery, genocide and racial discrimination.

Apart from the ICJ, the international community has developed various mechanisms for enforcement of international law in more specific circumstances. In 1993 the United Nations established the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (ICTY). The following year, a separate tribunal was established dealing with crimes committed in Rwanda, the International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States, between 1 January 1994 and 31 December 1994 (ICTR).

The experience of the two tribunals contributed to the development of the *Rome Statute of the International Criminal Court* (ICC) which entered into force on 1 July 2002. Australia deposited its instrument of ratification to the *Rome Statute* on 1 July 2002.

Unlike the International Court of Justice, the ICC does not hear disputes between States, but instead tries individuals who are alleged to have committed serious crimes of international concern. The Court has jurisdiction to hear only cases of genocide, war crimes, and crimes against humanity committed after the ICC Statute’s entry into force. Discussions continue about a crime of aggression. The definition of these crimes adopted in the Statute reflect international law which existed prior to the Court’s establishment. The ICC’s jurisdiction is limited to crimes committed in a territory of a State party or by a national of a State party (unless a situation is referred to the Court by the UN Security Council) and then only where national courts are unwilling or unable to investigate or prosecute a case.

CHAPTER 3

The Major International Human Rights Instruments

It is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.

From the Preamble to the *Universal Declaration of Human Rights*

The Universal Declaration of Human Rights

Under the presidency of former Australian Foreign Minister, Dr Herbert Vere (HV) Evatt, the General Assembly proclaimed the *Universal Declaration of Human Rights (UDHR)* in 1948 as ‘a common standard of achievement for all peoples and all nations’. Forty-eight States voted in support of the *UDHR* and none voted against. It was the first time the international community had made a united statement of human rights and fundamental freedoms. Dr Evatt declared at the time:

The Declaration has a moral power which is of enormous weight and influence. The statement of the rights represent a goal, or a standard, to which every man can look and with which he can compare what he in fact enjoys. The fact that no country was prepared to vote against the Declaration indicates its compelling moral force.

The Declaration lists those human rights and fundamental freedoms to which the international community believed all people, everywhere in the world, are entitled, without discrimination.

Article 1 lays down the philosophy upon which the Declaration is based. It asserts that the right to liberty and equality is the inalienable birthright of all human beings.

Article 2 sets out, for the first time at the international level, the fundamental human rights principle of equality and non-discrimination in the enjoyment of human rights and fundamental freedoms. It forbids distinction of any kind, whether on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 3 proclaims the right to life, liberty and security of the person.

Articles 4 to 21 set out other civil and political rights, including the right to:

- freedom from slavery and servitude;
- freedom from torture or cruel, inhuman or degrading treatment or punishment;
- recognition everywhere as a person before the law, equality before the law and an effective judicial remedy, including the presumption of innocence;
- freedom from arbitrary arrest, detention or exile;
- freedom from arbitrary interference with privacy, family, home or correspondence;
- freedom of movement and residence;
- leave any country and to return to one's country;
- asylum;
- a nationality;
- marry and to found a family;
- own and not be arbitrarily deprived of property;
- freedom of thought, conscience and religion;
- freedom of opinion and expression;
- peaceful assembly and association;
- take part in the government of one's country and to equal access to public service in one's country.

Article 22 notes that the economic, social and cultural rights of the Declaration are to be realised through national effort and international cooperation. It also acknowledges the limitations on the realisation of these rights because they are dependent upon the resources available to each State.

Articles 22 to 27 set out economic, social and cultural rights, including the right to:

- social security;
- work, free choice of employment and to just and favourable conditions of work;
- equal pay for equal work;
- rest and leisure;
- education;
- participate in the cultural life of the community.

The final provisions, **articles 28 to 30**, recognise that everyone is entitled to a social and international order in which the human rights and fundamental freedoms in the

Declaration can be realised, and stress the duties and responsibilities which each individual owes to his or her community.

Article 29(2) states that in the exercise of rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing their recognition and respect for the rights and freedoms of others and of meeting the first requirements of morality, public order and the general welfare in a democratic society.

Article 29(3) adds that in no case may human rights and fundamental freedoms be exercised contrary to the purposes and principles of the United Nations.

Article 30 warns that no State, group or person may claim any right, under the Declaration, to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in the Declaration.

The *UDHR* has great moral authority but it does not bind States in a legal sense in the way a treaty would. It was for this reason that a significant number of the standards set out in the *UDHR* were later reaffirmed in two legally binding agreements: the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

The International Covenants

The General Assembly first requested the Commission on Human Rights to prepare a draft treaty on human rights in 1946. Subsequent debate led to a revised request in 1951 to instead draft two treaties on human rights, one on civil and political rights and the other covering economic, social and cultural rights. The two international covenants on human rights – the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* and the *International Covenant on Civil and Political Rights (ICCPR)* – were formally adopted in 1966.

The Covenants share almost identical preambles and some common guiding principles in articles 1, 3 and 5. The preamble to each Covenant recalls the obligation of States under the *UN Charter* to promote human rights, reminds individuals of their responsibility to strive for the promotion and observance of those rights, and recognises that, in accordance with the *UDHR*, the ideal of free human beings enjoying civil and political freedom, and freedom from fear and want, can only be achieved if conditions are created whereby everyone is able to enjoy civil and political rights, as well as economic, social and cultural rights.

The ‘common’ articles recognise a **universal right to self-determination** by which people may freely determine their political status and pursue their economic, social and cultural development (article 1); the **equal rights of men and women** to the enjoyment of all human rights (article 3); and safeguards against the destruction or undue limitation of any human right or fundamental freedom, against misinterpretation of the Covenant as a means of justifying infringement or restriction of a right or freedom and prevents States from limiting rights already enjoyed within their territories on the ground that such rights are not recognised, or recognised to a lesser extent, in the Covenants (article 5).

International Covenant on Economic, Social and Cultural Rights

Adopted by General Assembly on 16 December 1966; entered into force on 3 January 1976. At the time of publication there were 164 State parties. Australia became a party to the ICESCR on 10 December 1975.

The rights enumerated in the *ICESCR* are generally subject to progressive realisation. In accordance with article 2, State parties undertake to take steps, individually and through international assistance and cooperation to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights recognised in the Covenant.

The rights protected under the *ICESCR* include the right to:

- work (article 6);
- enjoyment of just and favourable conditions of work (article 7);
- form and join trade unions (article 8);
- social security (article 9);
- the widest possible protection and assistance for the family, mothers, and children (article 10);
- an adequate standard of living (article 11);
- the enjoyment of the highest attainable standard of physical and mental health (article 12);
- an education (articles 13 and 14); and
- take part in cultural life (article 15).

International Covenant on Civil and Political Rights

Adopted by the General Assembly on 16 December 1966; entered into force on 23 March 1976. At the time of publication there were 168 State parties. Australia became a party to the ICCPR on 13 August 1980.

The ICCPR provides for the following civil rights:

- the right not to be arbitrarily deprived of life (article 6);
- the prohibition of torture or cruel, inhuman or degrading treatment or punishment (article 7);
- the prohibition of slavery, the slave trade, forced or compulsory labour (article 8);
- the prohibition of arbitrary arrest or detention (article 9);
- all persons deprived of their liberty to be treated with humanity (article 10);
- not to be imprisoned merely on the grounds of inability to fulfil a contractual obligation (article 11);
- freedom of movement and freedom to choose a residence (article 12);
- limitations upon the expulsion of aliens lawfully in the territory of a State party (article 13);
- equality of all persons before the courts and tribunals, and for guarantees in criminal and civil proceedings (article 14);
- a prohibition on retroactive criminal legislation (article 15);
- the right of everyone to recognition everywhere as a person before the law (article 16);
- the prohibition of arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and of unlawful attacks on his or her honour and reputation (article 17);
- the right of men and women of marriageable age to marry and to found a family, and the principle of equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution (article 23);
- measures to protect the rights of children (article 24).

The political rights enshrined in the *ICCPR* are:

- the right to freedom of thought, conscience and religion (article 18); and freedom of opinion and expression (article 19);
- the prohibition by law of any propaganda for war and of any advocacy of national, racial or religious hatred that constitutes an incitement to discrimination, hostility or violence (article 20);
- the right of peaceful assembly (article 21) and freedom of association (article 22);
- the right of every citizen to take part in the conduct of public affairs, to vote and to be elected, and to have access, on general terms of equality, to public service in one's country (article 25);
- equality of all persons before the law and entitlement to equal protection of the law (article 26);

- the protection of ethnic, religious or linguistic minorities which may exist in the territories of States parties to the Covenant (article 27).

Australia has made the following reservations and declaration under the ICCPR:

Reservations:

Article 10 (segregation of convicted persons from unconvicted persons and adults from children)

In relation to paragraph 2 (a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraph 2 (b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned.

Article 14 (compensation for miscarriage of justice according to law)

Australia makes the reservation that the provision of compensation for miscarriage of justice in the circumstances contemplated in paragraph 6 of article 14 may be by administrative procedures rather than pursuant to specific legal provision.

Article 20 (propaganda for war and prohibition by law of advocacy of national, racial or religious hatred constituting incitement to discrimination, hostility or violence)

Australia interprets the rights provided for by articles 19, 21 and 22 as consistent with article 20; accordingly, the Commonwealth and the constituent States, having legislated with respect to the subject matter of the article in matters of practical concern in the interest of public order (*ordre public*), the right is reserved not to introduce any further legislative provision on these matters.

Declaration

Australia has a federal constitutional system in which legislative, executive and judicial powers are shared or distributed between the Commonwealth and the constituent States. The implementation of the treaty throughout Australia will be effected by the Commonwealth, State and Territory authorities having regard to their respective constitutional powers and arrangements concerning their exercise.

First Optional Protocol to the International Covenant on Civil and Political Rights
Adopted by the General Assembly on 16 December 1966; entered into force on 23 March 1976. At the time of publication there were 115 State parties. Australia became a party to the First Optional Protocol on 25 September 1991.

State parties to the *First Optional Protocol to the ICCPR* agree to the Human Rights Committee receiving written complaints from individuals subject to its jurisdiction of violations by the State party of any of the rights enumerated in the *ICCPR*. This mechanism is commonly referred to as an ‘individual complaints’ or ‘communications’ mechanism and is discussed more fully in Chapter 4.

Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
Adopted by the General Assembly on 15 December 1989; entered into force on 11 July 1991. At the time of publication there were 81 State parties. Australia acceded to the Second Optional Protocol on 2 October 1990.

The *Second Optional Protocol to the ICCPR* was adopted in 1989 with the objective of abolishing the death penalty within a State party’s jurisdiction. By becoming a party to the Protocol, States undertake that capital punishment is never imposed on anyone, anywhere, in their territory. The preamble of the Protocol recalls article 3 of the *UDHR* and article 6 of the *ICCPR*, both of which refer to the right to life as a fundamental human right. In particular, the preamble notes that the *ICCPR* references in article 6 to the right to life could be read as a call to all States to progressively abolish the death penalty worldwide.

Convention on the Elimination of All Forms of Racial Discrimination
Adopted by the General Assembly on 21 December 1965; entered into force on 4 January 1969. At the time of publication there were 177 State parties. Australia became a party to the Convention on 30 September 1975.

In 1962, the General Assembly tasked the Economic and Social Council and the Commission on Human Rights to prepare a draft declaration and convention on the elimination of racial discrimination. Ultimately prepared by the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the *UN Declaration on the Elimination of Racial Discrimination* was adopted by the General Assembly in 1963 and the *Convention on the Elimination of Racial Discrimination (CERD)* in December 1965.

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).

Article 1(4) allows States to adopt special measures for the sole purpose of securing adequate advancement of certain racial or ethnic groups as long as this does not lead to the maintenance of separate rights after these objectives have been achieved. Such measures are not deemed to be racial discrimination.

Pursuant to article 2, State parties to the *CERD* expressly condemn racial discrimination and undertake to pursue **policies to eliminate racial discrimination**, including:

- to engage in no act or practice of racial discrimination;
- to ensure that all public authorities and institutions do the same;
- not to sponsor, defend or support racial discrimination;
- to review government, national and local policies and to amend, rescind or nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination;
- to prohibit and end, by legislation if necessary, racial discrimination by any persons, group or organisation;
- encourage integrationist, multiracial organisations and movements to eliminate barriers between races.

Article 5 makes clear that the general **obligation to end racial discrimination extends to all human rights**, including equal treatment before tribunals, security of the person and protection against State violence, political and civil rights, economic and cultural rights, and the right to access any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.

State parties **condemn racial segregation and apartheid** and must prevent, prohibit and eradicate such practices (article 3).

State parties are required to **prohibit the promotion or incitement of racial discrimination** by making illegal: the dissemination of ideas based on racial superiority or hatred; assistance, including financial assistance, to racist activities; organisations which promote and incite racial discrimination and participation therein; and the promotion of racial discrimination by public authorities or institutions (article 4).

State parties must ensure there are **effective protections and remedies** against acts of racial discrimination and adequate reparation for any resultant damages (article 6).

Australia has lodged the following declaration under the CERD:

The Government of Australia ... declares that Australia is not at present in a position specifically to treat as offences all the matters covered by article 4 (a) [*propaganda and organisations based on racism*] of the Convention. Acts of the kind there mentioned are punishable only to the extent provided by the existing criminal law dealing with such matters as the maintenance of public order, public mischief, assault, riot, criminal libel, conspiracy and attempts. It is the intention of the Australian Government, at the first suitable moment, to seek from Parliament legislation specifically implementing the terms of article 4 (a).

Convention on the Elimination of All Forms of Discrimination against Women

Adopted by the General Assembly on 18 December 1979; entered into force on 3 September 1981. At the time of publication there were 189 State parties. Australia became a party to the Convention on 28 July 1983.

The *Convention of the Elimination of All Forms of Discrimination against Women* (CEDAW) represents the outcome of a lengthy process of negotiation, led by the Commission on the Status of Women from 1974 until an agreed text was adopted by the General Assembly in 1979. CEDAW is commonly described as an international bill of rights for women. Although the human rights instruments which preceded it – the UDHR, the ICCPR and ICESCR – make clear their equal application to men and women without distinction, the international community was concerned that discrimination against women continued. This is expressly recognised in the Convention’s preamble which notes with concern ‘that despite these various instruments extensive discrimination against women continues to exist’. The Convention details measures to end discrimination and to bring about equality between the sexes in four Parts.

Part I of the Convention requires State parties to **combat discrimination between the sexes**. Discrimination against women is defined in article 1 as:

any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and

women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

To end discrimination, State parties must ensure the principle of equality is protected in national constitutions and other laws, adopt legal measures to end discrimination and ensure the legal protection of women's rights (article 2). Article 3 requires State parties to take all appropriate measures to ensure the full development and advancement of women. Special measures to accelerate equality of men and women, or to protect maternity, do not amount to discrimination (article 4). This part also requires State parties to work to **end gender stereotypes**, including in relation to the upbringing of children (article 5) and to **suppress exploitation, prostitution and trafficking** of women (article 6).

Part II of the Convention enshrines the **right to equality in public and political life and nationality**. Women are to have an equal right to vote, stand for election, participate in public policy, hold public office and participate in non-government organisations (article 7) and to represent their governments internationally and participate in international organisations (article 8). Similarly, women and men are to have equal rights regarding the acquisition, change or retention of nationality, particularly as a result of marriage, and with respect to the nationality of children (article 9).

Equality in economic and social life is covered in Part III of the Convention. Article 10 addresses the right to education without discrimination, including access and opportunities from preschool to higher education and in rural and regional areas, curriculum, teaches and premises, and scholarships. Equality in employment includes the free choice of profession as well as equal opportunities, benefits, training, remuneration and work place health and safety (article 11). State parties are required to prohibit dismissal on the grounds of pregnancy, maternity leave or marital status, to introduce maternity leave with pay or comparable social benefits and support to allow parents to combine work and family obligations, including child care centres (article 11). Access to health services, including family planning, must be provided without discrimination (article 12), as should other elements of economic and social life including family benefits, bank loans and other financial credit, recreational activities, sport and cultural life (article 13). The Convention recognises the challenges faced by rural women and requires State parties to ensure the protections of the Convention apply to them (article 14).

Finally, Part IV provides **for equality before the law**, including equal opportunity in civil matters such as contracts and property, in regard to laws relating to movement of persons and freedom to choose a place of residence (article 15) and in relation to

marriage and family, including the entry into marriage with free and full consent, divorce, responsibility for children and property rights (article 16).

Australia has lodged the following reservations and declaration under CEDAW:

Reservations

The Government of Australia states that maternity leave with pay is provided in respect of most women employed by the Commonwealth Government and the Governments of New South Wales and Victoria. Unpaid maternity leave is provided in respect of all other women employed in the State of New South Wales and elsewhere to women employed under Federal and some State industrial awards. Social Security benefits subject to income tests are available to women who are sole parents.

The Government of Australia advises that it is not at present in a position to take the measures required by article 11 (2) [*discrimination in employment*] to introduce maternity leave with pay or with comparable social benefits throughout Australia.

The Government of Australia advises that it does not accept the application of the Convention in so far as it would require alteration of Defence Force policy which excludes women from combat duties³.

Declaration

Australia has a Federal Constitutional System in which Legislative, Executive and Judicial Powers are shared or distributed between the Commonwealth and the Constituent States. The implementation of the Treaty throughout Australia will be effected by the Commonwealth State and Territory Authorities having regard to their respective constitutional powers and arrangements concerning their exercise.

Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment

Adopted by the General Assembly on 10 December 1984; entered into force on 26 June 1978. At the time of publication there were 158 State parties. Australia became a party to the Convention on 8 August 1989.

³ As part of its Universal Periodic Review in 2015, Australia announced an intention to remove this reservation

The *Convention against Torture (CAT)* requires State parties to take all legislative, administrative, judicial and other measures necessary to prevent torture within its jurisdiction (article 2). Torture is defined in article 1 as:

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him, or a third person, information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in, or incidental to, lawful sanctions.

State parties are also required to prevent other acts of cruel, inhuman or degrading treatment or punishment that do not amount to torture (article 16).

State parties must make acts of torture, including attempts or complicity therein, criminal acts with appropriate penalties (article 4) and an extraditable offence (article 8). Other obligations on State parties include a prohibition against expelling, returning or extraditing a person to a country where there are substantial grounds for believing he or she would be in danger of being subjected to torture (article 3); prompt investigation of allegations of torture (articles 12 and 13); an enforceable right to compensation for victims of torture or their dependents (article 14); and a prohibition on the use of evidence gained through torture in courts (article 15).

A State party's jurisdiction is broadly defined to include its territory as well as ships or aircraft registered in the State and covers acts of torture committed by and against its nationals. State parties are also required to establish 'universal jurisdiction' to prosecute an individual accused of committing torture present in its territory who cannot be extradited (article 5).

No derogation is permitted from the prohibition against torture. That is, torture cannot be justified in any circumstances, including a state or threat of war, political instability, or public emergency, or because it was ordered by a superior officer or public authority (article 2).

Convention on the Rights of the Child

Adopted by the General Assembly on 20 November 1989; entered into force on 2 September 1990. At the time of publication there were 191 State parties to the convention. Australia became a party to the Convention on 17 December 1990.

The *Convention on the Rights of the Child* (CROC) establishes an international legal regime for the promotion and protection of the rights of children and is the most widely ratified human rights instrument.

The **guiding principles** of the CROC are **non-discrimination** of any kind, including on the basis of the status of the child or that of his or her parents or legal guardians (article 2); the need for the **best interests of the child** to be considered (article 3); the child's **right to life** (article 6) and **the right of the child to express views freely** in all matters affecting the child where they are capable of forming a view (article 12). Importantly, the CROC also recognises the need to respect the responsibility, rights and duties of parents, extended family and legal guardians (article 5). Children are all persons under the age of 18 unless a majority is attained earlier under the State party's law (article 1).

State parties are required to take legislative, administrative and other measures necessary to realise the rights recognised in the Convention. In the case of economic, social and cultural rights, measures must be taken to the extent resources are available (article 4).

The rights protected in the Convention include:

- the right to registration after birth, including a name, nationality, to know and be cared for by parents (article 7);
- the right to preserve an identity, including nationality, name and family relations (article 8);
- the right not to be separated from parents against the child's will, unless done so by competent authorities in accordance with the law and in the best interests of the child (article 9);
- the right to freedom of expression (article 13);
- the right to freedom of thought, conscience and religion (article 14);
- the right to freedom of association and peaceful assembly (article 15);
- the right to freedom from arbitrary and unlawful interference with privacy, family or correspondence (article 16);

- the right to the highest standard of health care and facilities (article 24);
- the right to benefit from social security (article 26);
- the right to an adequate standard of living, recognising parents have primary responsibility in this regard (article 27);
- the right to an education, including free and compulsory primary education (article 28);
- the right to rest and leisure, play and recreational activities, and to participate in cultural life and arts (article 31);
- the right to be protected from economic exploitation and work likely to be hazardous, interfere with education, or harmful to health or social development (article 32);
- freedom from torture, cruel, inhuman or degrading treatment or punishment and freedom from unlawful or arbitrary deprivation of liberty (capital punishment or life without parole are not permitted for offences committed by persons under 18 years old) (article 37);
- fair trial rights, including the presumption of innocence (article 40).

The Convention recognises categories with additional needs, including refugee children or children seeking refugee status (article 22), children with a disability (article 23) and children belonging to a minority (article 30).

The Convention also imposes obligations on State parties to protect children from violence, abuse, neglect and negligent treatment (article 19) and sexual exploitation and abuse (article 34). In the case of armed conflict, State parties are to ensure respect for international humanitarian law and to take all feasible measures to ensure children under 15 do not take a direct part in armed conflict and agree not to recruit children under 15 into their armed forces (article 38). States also commit to taking all feasible measures to ensure the protection and care of children affected by armed conflict.

Australia has made the following reservation under the CROC:

Australia accepts the general principles of article 37 [*deprivation of liberty*]. In relation to the second sentence of paragraph (c), the obligation to separate children from adults in prison is accepted only to the extent that such imprisonment is considered by the responsible authorities to be feasible and consistent with the obligation that children be able to maintain contact with their families, having regard to the geography and demography of Australia. Australia, therefore, ratifies the Convention to the extent that it is able to comply with the obligation imposed by article 37 (c).

Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

Adopted by the General Assembly on 25 May 2000; entered into force on 18 January 2002. At the time of publication there were 169 State parties. Australia became a party to the Optional Protocol on 8 January 2007.

Following the entry into force of the *CROC*, there was growing acknowledgment by the international community that the provisions of the Convention relating to the sexual exploitation of children (article 34) needed to be augmented. In 1995, the Commission on Human Rights established a working group to draft an optional protocol to the Convention.

The *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC)* requires State parties to criminalise certain acts, whether committed domestically or transnationally, by an individual or on an organised basis (article 3). These include:

- offering, delivering or accepting the sale of a child for sexual exploitation, organ transfer for profit or forced labour;
- improperly inducing consent for adoption;
- offering, obtaining, procuring or providing a child for prostitution;
- producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography.

State parties are required, under article 4, to exercise jurisdiction over these offences where:

- committed in its territory, including on a ship or aircraft registered in the State;
- committed by a national of the State party or a person who habitually resides there;
- the victim is a national of the State party;
- the alleged offender is present in the State party's territory and is not being extradited.

The *OPSC* also requires State parties to make these offences extraditable offences (article 5) and to assist other States in investigations, criminal and extradition proceedings (article 6).

The *OPSC* is open to States that are parties to, or that have signed, the *CROC*.

Optional Protocol on the Involvement of Children in Armed Conflict

Adopted by the General Assembly on 25 May 2000; entered into force on 12 July 2002. At the time of publication there were 159 State parties. Australia became a State party to the Optional Protocol on 26 September 2006.

Like the *OPSC*, the *Optional Protocol on the Involvement of Children in Armed Conflict* (*OPAC*) was drafted to enhance the existing protections recognised under the *CROC*. Article 38 (2) of the *CROC*, which requires State parties to take all feasible measures to prevent persons under 15 taking direct part in hostilities, was not considered strong enough as it departed from the general definition of a child in the Convention as a person under 18.

The *OPAC* seeks to limit the participation of people under the age of 18 in armed conflict. State parties are required to take all feasible measures to ensure that members of their armed forces who are younger than 18 do not take a direct part in hostilities (article 1). The *OPAC* prohibits compulsory recruitment of those under 18 into the armed forces (article 2) and requires the minimum age for voluntary recruitment to be greater than 15 years old (article 3). State parties are required to take all feasible measures to prohibit and criminalise the recruitment or use of persons under 18 by non-state armed groups (article 4).

Like the *OPSC*, the *OPAC* is open to States that are parties to, or that have signed, the *CROC*.

Australia has made the following declaration under the *OPAC*:

The Australian Defence Force (ADF) shall continue to observe a minimum voluntary recruitment age of 17 years.

Pursuant to article 3 (5) of the Optional Protocol, age limitations do not apply to military schools. A list of authorised establishments, both military and civilian (including those used to train apprentices), to which this age exemption applies is held by the Service Director-General Career Management. Age limitations also do not apply to cadet schemes, members of which are not recruited into, and are therefore not members of, the ADF.

Persons wishing to join the ADF must present an original certified copy of their birth certificate to their recruiting officer. Before their enlistment or appointment, all ADF applicants who are less than 18 years of age must present the written informed consent of their parents or guardians.

All applicants wishing to join the ADF must be fully informed of the nature of their future duties and responsibilities. Recruiting officers must be satisfied that an application for membership by a person less than 18 years of age is made on a genuinely voluntary basis.

International Convention on the Protection of the Rights of all Migrant Workers and Members of their Family

Adopted by the General Assembly on 18 December 1990; entered into force on 1 July 2003. At the time of publication there were 48 parties to the Convention. Australia is not a party to the Convention and is not contemplating becoming a party at this stage.

The *International Convention on the Protection of the Rights of all Migrant Workers and Members of their Family* (CMW) seeks to ensure the international protection and humane treatment of migrant workers and their family. A migrant worker is defined as a person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national (article 2).

The Convention reaffirms the application of basic human rights to migrant workers and their families in Part III, including the right to life (article 9), freedom of thought, conscience and religion (article 12) and freedom from arbitrary deprivation of property (article 15).

The Convention also details rights particularly relevant to the group of people it seeks to protect, including:

- the prohibition on the confiscation or destruction, other than by public officials duly authorised by law, of identity documents, residence or work permits and requires State parties to ban the destruction of passports (article 21);
- rules for the expulsion of migrant workers and a prohibition on collective expulsion (article 22);
- the right to diplomatic or consular protection or assistance whenever rights protected in the Convention are impaired (article 23);
- no less favourable treatment than State nationals in relation to remuneration, conditions and terms of employment (article 25);
- the right to receive urgent medical care (article 28).

The Convention provides for further rights for documented workers in Part IV and special rights applicable to particular categories of migrant workers, such as seasonal workers, seafarers and workers on offshore installations, in Part V.

Convention on the Rights of Persons with Disabilities

Adopted by the General Assembly on 13 December 2008; entered into force on 3 May 2008. At the time of publication there were 154 State parties to the Convention. Australia became a party to the Convention on 17 July 2008.

The *Convention on the Rights of Persons with Disabilities (CRPD)* was drafted by an ad hoc committee of the General Assembly between 2002 and 2006. There were eighty-two signatories on the date it opened for signature, the highest number ever for a UN Convention.

The purpose of the Convention, expressed in article 1, is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by persons with disabilities, and to promote respect for their inherent dignity.

The **guiding principles of the Convention** are outlined in article 3 as:

- respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- non-discrimination;
- full and effective participation and inclusion in society;
- respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- equality of opportunity;
- accessibility;
- equality between men and women;
- respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

The Convention imposes a number of **general obligations** on State parties to ensure the effective enjoyment of fundamental rights and freedoms of persons with a disability on an equal basis with others (article 4). These include:

- to adopt appropriate legislative, administrative and other measures to implement the Convention;
- to modify and abolish discriminatory laws, regulations, customs and practices;
- to consider the promotion and protection of human rights of persons with a disability in all policies and programs;

- not to act inconsistently with the Convention and ensure public authorities and institutions do the same;
- to take appropriate measures to eliminate discrimination by any person, organisation or private enterprise;
- to undertake and promote research and development of goods, services, equipment and facilities, promote their availability and use and to provide universal design in development of standards and guidelines;
- to provide training in the rights recognised by the *CRPD* for those working with persons with a disability.

The **principle of equality and non-discrimination** is addressed in article 5 of the Convention. State parties are required to provide equal and effective legal protection against discrimination. Specific measures necessary to accelerate or achieve de facto equality do not amount to discrimination.

State parties are required to take all appropriate steps to ensure that **reasonable accommodation** is provided. Reasonable accommodation is defined in article 2 as necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms. The provisions in the Convention dealing with deprivation of liberty (article 14), education (article 24) and work and employment (article 27) specifically require reasonable accommodation in certain contexts.

Article 9 of the Convention details the requirements of State parties with respect to **accessibility**. State parties are required to take appropriate measures to provide access on an equal basis to the physical environment, transport, information and communications, and other facilities and services open to or provided by the public, in both rural and urban areas (article 9). States parties must also take appropriate measures to:

- develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- provide training for stakeholders on accessibility issues facing persons with disabilities;
- provide in buildings and other facilities open to the public signage in Braille and

- in easy to read and understand forms;
- provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

The Convention recognises the rights and freedoms enshrined in existing human rights treaties and **clarifies the application of these rights to persons with a disability**. Such rights include:

- the right to live independently and to be included in the community, which encompasses the opportunity to choose one's place of residence, and access to in-home residential and other support services (article 19);
- the right to reasonable mobility, including facilitating access to mobility aids and assistance technologies at an affordable cost (article 20);
- freedom of expression and opinion and access to information, which includes accessible formats in a timely manner and without additional cost, use of accessible forms of communication in official interactions (article 21);
- respect for home and family life, encompassing the right to found a family, access to appropriate family planning information and the right to retain fertility on the same basis as others (article 23);
- health care and programs must be the same as those provided to others and there should be no discrimination in health and life insurance (article 23).

To give effect to the economic, social and cultural rights, State parties are required to take measures to the maximum of its available resources, and with international cooperation where required, to progressively achieve the full realisation of these rights (article 4(2)).

The Convention recognises the particular needs of both women (article 6) and children (article 7). In the case of children, the guiding principles of the *CROC* regarding the best interests of the child and right of the child to express views freely in all matters affecting the child are to apply equally to children with a disability. Children with a disability are not to be separated from their parents against their will, unless determined by a

competent authority to be in the best interest of the child, and cannot be separated from their parents on the basis of a disability of either the child or the parents (article 23).

Australia has made the following declaration under the CRPD:

Australia recognises that persons with disability enjoy legal capacity on an equal basis with others in all aspects of life. Australia declares its understanding that the Convention allows for fully supported or substituted decision-making arrangements, which provide for decisions to be made on behalf of a person, only where such arrangements are necessary, as a last resort and subject to safeguards; Australia recognises that every person with disability has a right to respect for his or her physical and mental integrity on an equal basis with others.

Australia further declares its understanding that the Convention allows for compulsory assistance or treatment of persons, including measures taken for the treatment of mental disability, where such treatment is necessary, as a last resort and subject to safeguards; Australia recognises the rights of persons with disability to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others.

Australia further declares its understanding that the Convention does not create a right for a person to enter or remain in a country of which he or she is not a national, nor impact on Australia's health requirements for non-nationals seeking to enter or remain in Australia, where these requirements are based on legitimate, objective and reasonable criteria.

Convention for the Protection of all Persons from Enforced Disappearance

Adopted by the General Assembly on 20 December 2006; entered into force on 23 December 2010. At the time of publication there were 46 State parties. Australia has not signed the Convention and is not contemplating becoming a party to the Convention at this stage.

The *Convention for the Protection of all Persons from Enforced Disappearance (CED)* was drafted by a Working Group of the Commission on Human Rights from 2001 and adopted by the Human Rights Council in 2006.

The Convention **prohibits enforced disappearances**, defined in article 2 as the arrest, detention, abduction or any other form of deprivation of liberty by agents of the state or

by persons or groups of persons acting with the authorisation, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. State parties are required to make enforced disappearances a criminal offence (article 4) and to investigate and bring offenders to justice (article 3). The widespread or systematic practice of enforced disappearance is a crime against humanity (article 5).

State parties to the convention are required to **establish jurisdiction** over enforced disappearances that occur in its territory, or on board a ship or aircraft registered in the State; where committed by one of its nationals; where the disappeared person is one of its nationals (and the State party considers it appropriate); and where the alleged offender is present in its territory unless that person is extradited or surrendered to an international criminal tribunal (article 9).

States cannot derogate from the prohibition against enforced disappearances. No exceptional circumstances, including a state of war or a threat of war, internal political instability or any other public emergency, can be used to justify enforced disappearance (article 1(2)). Nor can an order or instruction from any public authority, including the military (article 6(2)).

Individuals must be held **criminally responsible** where they commit, order, solicit or induce the commission of, attempts to commit, is an accomplice to or participates in, an enforced disappearance. This includes superiors who knew or consciously disregarded information that indicated subordinates were committing or about to commit an enforced disappearance, or exercised effective responsibility and control over activities concerned with an enforced disappearance, and failed to take all reasonable and necessary measures to prevent its commission or submit the matter to competent authorities (article 6).

The Convention addresses appropriate punishment for the commission of enforced disappearances (article 7), criminal procedures (article 10 and 11), extradition (article 13), and mutual assistance in criminal proceedings (article 14) and to victims (article 15). State parties are required to ensure prompt and impartial examination, and investigation where necessary, of an allegation of an enforced disappearance or where there are reasonable grounds to believe a person has been disappeared (article 12). Individuals cannot be extradited, expelled or returned to a State where there are reasonable grounds to believe they may be subjected to enforced disappearance (article 12). The Convention also prohibits secret detention and details State parties' obligations in relation to the deprivation of liberty (article 17 and 18). State parties are

required to educate civilian and military law enforcement officials, medical personnel, public officials and any other person associated with the custody and treatment of a person deprived of their liberty on the Convention (article 23).

The Convention details the rights of victims of enforced disappearances, which includes both individuals who have been disappeared or who have suffered direct harm as a result of an enforced disappearance. These rights include the right of any victim to know the truth about the circumstances of an enforced disappearance and to prompt, fair and adequate compensation (article 24). The same article requires State parties to search for and release disappeared persons and to locate and return persons killed as a result of an enforced disappearance. The need to protect the rights of children is recognised in article 25. State parties are required to make punishable under criminal law the enforced disappearance of a child, the parents or legal guardians of a child or children born during captivity to a mother who has been forcibly disappeared, as well as the destruction, concealment or falsification of identity documents of such children.

UN declarations and resolutions

In addition to these multilateral instruments of treaty status, the General Assembly and the Economic and Social Council (ECOSOC) have adopted various resolutions and declarations that have played a major role in influencing common understandings of international human rights standards. While these resolutions and declarations are not legally binding, they may contribute to the development of customary international law (see Chapter 2). Many of these declarations were precursors to the core human rights conventions discussed above. These instruments cover a wide range of specific areas of human rights concern and include the *Declaration on the Right to Development (1986)* and the *Declaration on the Rights of Indigenous Peoples (2007)*.

Declaration on the Rights of Indigenous Peoples

On 13 September 2007, the **Declaration of the Rights of Indigenous Peoples** was adopted by the United Nations General Assembly. While the Declaration is not a formally binding treaty, it sets out key principles relating to the minimum standards necessary for the dignity, security and wellbeing of Indigenous peoples.

The Australian Government announced it supported the Declaration on the Rights of Indigenous Peoples on 3 April 2009.

The Declaration recognises and reaffirms that Indigenous individuals are entitled, without discrimination, to all human rights recognised in international law and that Indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development as peoples.

There is no singularly authoritative definition of ‘indigenous peoples’ under international law. Articles 9 and 33 of the Declaration state that indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned, and that they have the right to determine their own identity.

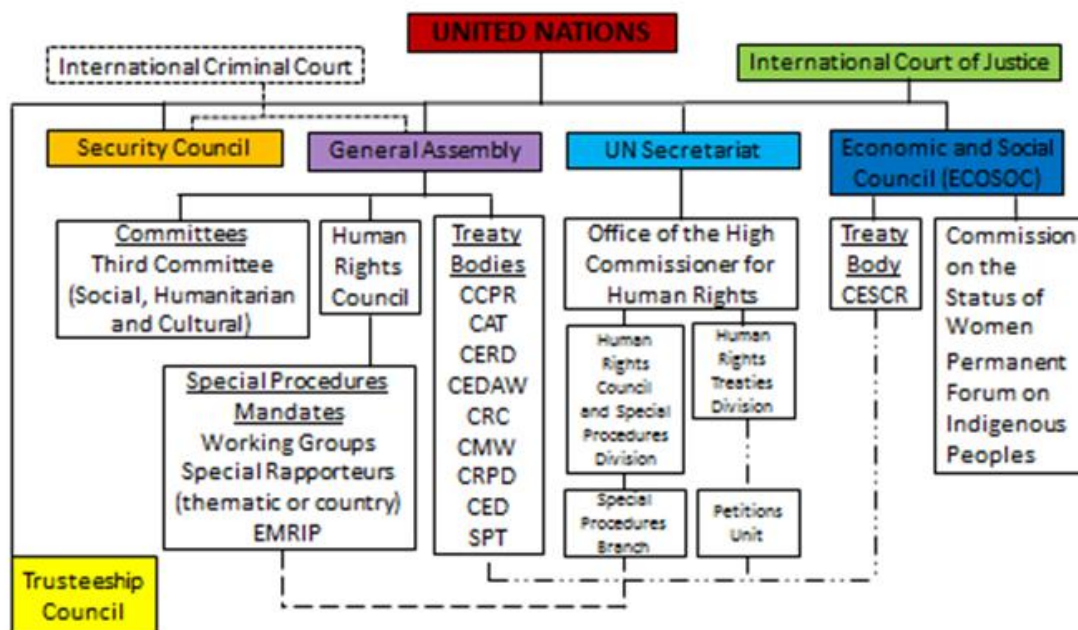
CHAPTER 4

The United Nations System and Human Rights

We the Peoples of the United Nations determined to reaffirm faith in fundamental human rights, in the dignity and worth of the human person in the equal rights of men and women and of all nations large and small.

From the Preamble of the *Charter of the United Nations*

UN human rights system



From its founding in 1945, the promotion and protection of human rights and fundamental freedoms has been central to the purpose and operation of the United Nations. Steeled with the belief that human rights are universal, indivisible and inalienable, the international community ensured the United Nations, as the apex of the new international system, had a clear mandate to promote the international observance of human rights.

The *Charter of the United Nations*, the organisation's founding document, includes human rights in many of its key provisions. The promotion of human rights and

fundamental freedoms without distinction based on race, sex, language or religion is specified as one of the purposes of the organisation in article 1. Similarly, article 55 requires the United Nations to promote the *‘universal respect for, and observance of, human rights and fundamental freedoms for all without discrimination as to race, sex, language, or religion’*. Under article 56, all UN Member States are required to *‘take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55’*.

The *Charter of the United Nations* was signed on 26 June 1945 in San Francisco at the United Nations Conference on International Organisations and came into effect on 24 October 1945. The precursor to the Charter was the 1942 Declaration of the United Nations, originally signed by 26 States in 1942 and by another 21 by the end of the Second World War. The 1942 Declaration was followed by the 1944 Dumbarton Oaks proposals for the creation of a new world body. Following the San Francisco Conference, this body came to be known as the United Nations. Australia was a founding member, having been admitted to the United Nations on 1 November 1945.

Charter-based bodies

The *Charter of the United Nations* establishes the machinery of the organisation. The bodies that derive their mandate directly from the Charter are referred to as ‘charter-based’. Reflecting the centrality of human rights to the United Nations system, a number of these bodies have human rights mandates.

The General Assembly

The United Nations General Assembly (UNGA) is the main representative body of the United Nations and is composed of all Member States. The functions, responsibilities and powers of the General Assembly are set out in Chapter IV of the Charter. These include initiating studies and making recommendations *‘assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion’*.

The General Assembly plays an important role in the advancement of human rights in the United Nations system. Resolutions and declarations adopted by the General Assembly have contributed to the setting of international human rights standards. The adoption of the *Universal Declaration of Human Rights* in 1948 is the most well-known, but is far from the only example. The General Assembly adopts human rights conventions before they open for signature and elects members of the Human Rights Council, as well as other UN bodies that contribute to the protection of human rights.

Human rights items included on the agenda of the General Assembly usually originate in the Economic and Social Council (ECOSOC) or in decisions taken by the Assembly at earlier sessions, but have also been proposed by other principal organs of the UN, Member States and the Secretary-General.

Most items relating to human rights are referred by the General Assembly to its **Third Committee**, which deals with social, humanitarian and cultural matters. Some human rights issues are, however, considered by the Assembly without reference to a 'Main Committee'. The other committees of the General Assembly may also touch on issues with a human rights dimension: **First Committee** (international security and disarmament), **Second Committee** (economic and financial matters), **Fourth Committee** (special political and decolonisation matters); **Fifth Committee** (administrative and budgetary questions), and **Sixth Committee** (legal issues).

There are also a small number of **subsidiary and ad hoc bodies** of the General Assembly that consider human rights issues in a particular field, notably the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples (known as the Special Committee on Decolonisation); the the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories, and the Committee on the Exercise of the Inalienable Rights of the Palestinian People.

The General Assembly meets annually in New York from September until December. Special sessions and Emergency Special Sessions can be called by the Security Council, the majority of Member States or one Member State with the support of the majority.

The Security Council

Article 24 of the UN Charter confers primary responsibility for the maintenance of international peace and security on the Security Council. The Security Council has wide-ranging enforcement powers, listed in Chapter VII of the Charter, including the power to authorise sanctions, embargoes and all other necessary means, including the use of force, to maintain or restore international peace and security.

Although the Charter does not confer any express powers on the Security Council to protect human rights, its 'international peace and security' mandate is considered sufficiently wide to ensure its role in human rights and humanitarian affairs is a

substantial one. For example, the Security Council acted against both the former Rhodesia and South Africa as a result of their racist policies, and has considered the situations in Kashmir (1948), Indonesia (1949), and the Congo (1964) after human rights concerns in those countries were raised by Member States.

The Security Council's ability to act in the face of large-scale human rights abuses has been hampered at times by its composition and political factors. The Council is comprised of 15 members, 5 of which are permanent (China, France, Russia, the United Kingdom and the United States) and hold the right to veto any non-procedural resolution. This power of veto, coupled with other factors such as differing ideologies on non-interference in the domestic affairs of States and political allegiances, has at times stymied the Council's ability to act.

The period immediately following the end of the Cold War saw the Council take a more active role in conflicts that raised human rights concerns. The Council took mandatory measures in relation to the situations in Somalia, the former Yugoslavia and Rwanda, where the systematic violation of human rights were considered to be directly or indirectly related to threats to international peace and security. Resolution 688 of April 1991 was the basis for the establishment of 'safe havens' for the Kurdish minority in Iraq and is an important illustration of the role the Security Council is capable of playing in relation to the protection of human rights. The same observation can be made with respect to the creation, pursuant to Security Council resolutions, of the International Criminal Tribunals for the former Yugoslavia and Rwanda that have jurisdiction over serious violations of international humanitarian law.

This period of activity was relatively short lived and the Security Council's action on human rights since has been inconsistent, as its response to the conflicts associated with the 'Arab Spring', such as those in Syria and Libya, has all too clearly shown. Nevertheless, the Council has remained seized of situations involving human rights abuses as many Council members – including Australia during its term as a non-permanent member from 2013-14 – have argued that widespread human rights violations are often a predictor for future conflict, and ending impunity for serious international crimes is important for maintaining international peace and security.

The Council has taken concrete steps to address many human rights abuses, including the referral of the situations in Darfur and Libya to the ICC and the decision to include the human rights situation in the DPRK on the Council's agenda at Australia's initiative, following the UN Commission on Inquiry chaired by a former Australian High Court Judge, Michael Kirby. The Council has also reaffirmed its commitment to

the principle of the Responsibility to Protect (R2P) in resolutions on Darfur (2006), Libya (2011-12), Cote D'Ivoire (2011), Yemen (2011), Mali (2012-13) and Sudan and South Sudan (2011 and 2013).

The Economic and Social Council

The United Nations is charged by its Charter with promoting, in the economic and social fields, the universal observance of human rights and fundamental freedoms without distinction based on race, sex, language or religion. Responsibility for discharging these functions is vested in the UN General Assembly and, under its authority, the Economic and Social Council (ECOSOC).

Under **article 62** of the UN Charter, ECOSOC may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms. It may also prepare draft conventions for submission to the General Assembly and call international conferences on human rights matters.

ECOSOC, which is composed of 54 members elected by the General Assembly for three-year terms, holds one substantive session annually, alternating between New York and Geneva.

Pursuant to article 68 of the UN Charter that enables ECOSOC to set up commissions for the protection of human rights, the Council established two functional committees: the **Commission on Human Rights (CHR)** and the **Commission on the Status of Women (CSW)**. The Commission on Human Rights was dissolved in 2006 and replaced by the Human Rights Council, which is a subsidiary body of the General Assembly. The role and functions of these bodies is discussed further below.

ECOSOC has also established ad hoc committees composed of representatives of Member States, experts nominated by their governments, or outstanding personalities serving in their personal capacity. The Council has also appointed or authorised the Secretary-General to appoint special rapporteurs or committees of experts to prepare reports on technical subjects or situations.

Commission on the Status of Women

The Commission on the Status of Women (CSW) was established by ECOSOC in 1946 with the objective of promoting gender equality and women's rights. Its main

functions are to submit recommendations and reports to ECOSOC on promoting women's rights in the political, economic, civil, social and educational fields and to make recommendations to ECOSOC on women's rights issues requiring immediate attention. The Commission also adopts its own resolutions and decisions and prepares draft resolutions and decisions for consideration by ECOSOC.

The Commission's work is largely focused on the implementation of the Platform for Action adopted at the Fourth World Conference on Women in Beijing in 1995 and the Outcomes Document of the subsequent 23rd Special Session of the General Assembly known as Beijing +5.

The Commission meets annually for two weeks in New York and has 45 members, elected for four-year terms.

Human Rights Council

The Human Rights Council was established by the General Assembly in 2006 with the purpose of promoting the universal protection of human rights and addressing situations of human rights violations. The Council replaced the Commission on Human Rights which had become increasingly discredited by its politicisation. This hampered the Commission's ability to act in the face of grave human rights violations. Unlike the Commission which was a subsidiary body of the Economic and Social Affairs Council, the Human Rights Council holds the higher status as a subsidiary body of the General Assembly.

Membership and structure

The Council is comprised of 47 members elected by a majority of the General Assembly. Membership is geographically distributed with the African Group assigned 13 seats, the Asian Group 13 seats, the Eastern European Group 6 seats, the Latin American and Caribbean Group 8 seats, and the Western and Other Group (of which Australia is a member) 7 seats. Members are elected for three-year terms and can serve no more than two consecutive terms.

In an attempt to address one of the key criticisms of the former Commission on Human Rights, the Council's founding resolution specifies that Member States are to take into account the candidate's contribution to the promotion and protection of human rights. The General Assembly, with a 2/3 majority, also has the power to suspend from the Council any member who commits gross and systematic human rights violations.

Members of the Council are reviewed under the Universal Periodic Review mechanism (see below) during their term.

The Council meets three times each year in March, June and September and can also call special sessions to consider human rights violations and emergencies at the request of 1/3 of Member States.

To assist with its work, the Council is supported by the **Human Rights Council Advisory Committee**, comprised of 18 independent experts selected on the basis of geographical representation, which are nominated by their governments and elected by the Council. The Advisory Committee acts as a kind of think tank for the Council, undertaking studies on human rights issues referred to it by the Council. It can also suggest issues to examine.

Universal Periodic Review

One of the most important functions of the Human Rights Council is the Universal Periodic Review (UPR) mechanism which provides for the regular consideration of the human rights records of all UN Member States. The UPR is the first – and only – universal mechanism to regularly review a State's fulfilment of their human rights obligations.

The review assesses a State's compliance with its obligations under the *UN Charter*, the *UDHR*, the *ICCPR* and the *ICESCR*, human rights treaties to which the State is a party, voluntary commitments such as domestic human rights programs and policies, and relevant international humanitarian law. Each review is based on information provided by the State party itself, usually in the form of a national report, special rapporteurs and working groups, treaty bodies and other UN entities, National Human Rights Institutions and NGOs.

The review is conducted by the **UPR Working Group** comprised of the 47 members of the Council and chaired by the President of the Council. Each State's review is supported by a 'troika' of three Council members, selected randomly. The review itself takes the form of an interactive dialogue during a meeting of the UPR Working Group, with all UN Member States entitled to ask questions, make comments and offer recommendations. The reviews are open to observers such as NGOs.

The Troika prepares an '**outcome report**' for adoption by the UPR Working Group. The State party under review has the opportunity to make comments and to accept or note the

recommendations, both of which are included in the outcome report. The Human Rights Council adopts these reports at a plenary meeting where States again have the opportunity to respond to questions, issues and comments by other UN Member States. Council members, observer States, National Human Rights Institutions and NGOs are also able to comment. The State's implementation of the report is followed up in subsequent periodic reviews.

Australia's last UPR appearance was in November 2015, when 104 countries made 290 recommendations covering a wide range of human rights, with a focus on immigration and asylum seeker issues, the rights of Indigenous Australians, gender, and the rights of people with disability. The Report on Australia's UPR, including recommendations received and Australia's response was formally adopted by the Human Rights Council in March 2016. In developing Australia's response, the Australian Government consulted with relevant departments and Ministers at federal, state and territory level, and with civil society to the widest extent possible. Australia has accepted 150 recommendations in its formal response, noting other recommendations. Where recommendations were noted, Australia's response sought to provide clarity and context, while emphasising Australia's commitment to ongoing consideration of recommendations.

Special Procedures

The Human Rights Council assumed the **Special Procedures** created by the Commission on Human Rights. These Special Procedures include **special rapporteurs, special representatives, independent experts and working groups** that examine and report on both thematic issues and human rights situations. Working groups are made up of individuals from each of the five geographic groups of the UN. Appointments are made by the Human Rights Council and individuals serve in their personal capacity. Special Procedures report annually to the Council and nearly all are mandated to report to the General Assembly.

Special procedures cover all rights, civil and political as well as economic, social and cultural. Examples of the thematic issues currently being considered include arbitrary detention, the right to education, the independence of judges and lawyers, and extreme poverty and human rights. States currently being monitored include Haiti, Cote D'Ivoire, DPRK and Syria.

The Special Procedures fulfil their mandate through country visits (at the invitation of States, which States can declare to be standing invitations); studies and consultation; advocacy and public awareness raising; and technical cooperation. The Special

Procedures mechanism also has a **communications procedure**, whereby allegations of human rights violations within a mandate can be raised directly in writing with the State concerned. Special Procedures can request information and follow up action. The Special Procedures submit ‘communications reports’ to the Human Rights Council annually.

In August 2008, the Australian Government issued a standing invitation to Special Procedures of the UN Human Rights Council to visit Australia, demonstrating its willingness to engage positively with the international community to implement human rights obligations.

Complaints procedure

In 2007, as part of its institution building framework, the Human Rights Council established a complaints procedure to ‘*address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances*’.

Communications can be submitted by individuals, groups or non-government organisations who are alleged victims of human rights violations or who have direct and reliable knowledge of human rights violations. Communications must also:

- not be politically motivated;
- provide a factual description of the rights violated;
- not be abusive (although this is not fatal if other criteria are met and the abusive language can be struck out); and
- not based solely on the reports of mass-media.

The situation must not be under consideration by another UN or regional body and domestic remedies must be exhausted (unless they are likely to be ineffective or unreasonably prolonged).

Other subsidiary bodies

There are four other subsidiary bodies that report directly to the Human Rights Council. These are:

- **Expert Mechanism on the Rights of Indigenous Peoples:** a five member group that undertakes research on the rights of Indigenous peoples and provides recommendations to the Council.
- **Forum on Minority Issues:** is an annual forum that considers the human rights of national, ethnic, religious or linguistic minorities.
- **Social Forum:** an annual meeting of representatives from governments, NGOs and intergovernmental organisations to consider opportunities for the advancement of human rights.
- **Forum on Business and Human Rights:** an annual meeting of representatives from governments, the United Nations, intergovernmental and regional organisations, business, labour unions, National Human Rights Institutions and NGOs to discuss the implementation of the *Guiding Principles on Business and Human Rights*. The Forum operates under the guidance of the Working Group on Human Rights and Transnational Corporations.

Office of the High Commissioner for Human Rights

The **Office of the High Commissioner for Human Rights**, which forms part of the UN Office in Geneva, is the focal point for the human rights activities of the United Nations and is the primary organisational unit within the UN Secretariat for the implementation of the United Nations' human rights program. The office is headed by the **High Commissioner for Human Rights** who is appointed by the Secretary-General and approved by the General Assembly.

The **Office of the High Commissioner for Human Rights** is focused on promoting international cooperation on human rights issues and to stimulate and coordinate action for human rights throughout the United Nations system. A significant component of the work of the Office is the maintenance of field operations in countries that have experienced particularly grave and widespread breaches of human rights. The Office is also responsible for providing human rights education, information, advisory services and technical assistance.

As Head of the Office, the High Commissioner for Human Rights coordinates the human rights program with related activities within the Secretariat and the United

Nations system, and represents the Secretary-General at meetings of human rights organisations and at other human rights events. The High Commissioner for Human Rights also promotes the ratification and application of international human rights treaties, and assists in the exercise of the humanitarian good offices of the Secretary-General.

Treaty-based bodies

The international community, through the United Nations, has established a number of ‘treaty-based’ bodies under the major UN human rights treaties to monitor State parties’ compliance with the relevant convention. Although there are some variations, these treaty bodies, known as committees, discharge their monitoring function through a number of common mechanisms.

The primary means by which treaty bodies review compliance with treaty obligations is through the consideration of **periodic reports**. Under each convention, State parties are required to report to the relevant committee on action taken to give effect to the rights and freedoms protected in the treaty. For the most part, an initial report is due within one to two years of a State becoming a party to a treaty and then at regular intervals, usually every four to five years. The process for the consideration of periodic reports varies between committees. Commonly committees will undertake an initial examination of the report and send the State a list of issues for further discussion. The State will then appear before the committee for a dialogue in an open session. The Committee’s recommendations and concerns are published in the form of ‘**concluding observations**’. Committees may take into account reports from National Human Rights Institutions and NGOs as part of its consideration of a country’s compliance.

The other key monitoring mechanism is the consideration of **individual complaints or communications**. A State party must expressly accept the competence of the committee to receive communications from individuals within the State’s jurisdiction. Depending on the treaty, this is done through a declaration to the relevant article or by becoming party to an optional protocol to the relevant treaty. To be admissible, complainants generally need to have exhausted domestic remedies and the issue must not be under consideration by another treaty body or regional mechanism. More specific rules for admissibility are usually set out in the treaty or are agreed by the committee, but can include that the complaint is in writing, not anonymous, not an abuse of the right of submissions, not incompatible with the treaty, ill-founded or not substantiated, the events must have occurred after the treaty entered into force for the State party

concerned and/or that the communication must be submitted within one year after all domestic remedies have been exhausted.

As a general rule, communications are brought to the attention of the State party, who has the opportunity to respond. Some committees may issue a request for interim measures before deciding on the merits of a communication. Complaints are considered in **closed sessions** but the final views of the committee are made public. The Committee's views, which are not binding on States, are final and there is no appeal mechanism.

Where the committee finds that a State party has violated an individual's rights, it will usually require a written response to the committee's findings, within a specified time frame, on the steps taken to remedy the violation. The Office of International Law in the Attorney-General's Department coordinates the Australian Government's response to these communications and prepares Australia's submissions to these committees where Australia has recognised their competence to receive individual communications.

Some of the treaty bodies are able to hear **State complaints** about another State party's failure to fulfil its obligations under the relevant convention. Like individual complaints, this mechanism requires the express consent of the State party concerned, usually by declaration under the relevant treaty. To date, this mechanism has rarely been used although its inclusion in the mandates of recently established committees suggests that there may nonetheless be support for it. Some committees also have an **inquiry procedure** that permits the examination of allegations of grave or systematic violations of the relevant covenant. Again, a State must expressly accept the jurisdiction of the committee in this regard.

Finally, an important function of the treaty bodies that warrants mention is the publication of non-binding **General Comments**, which detail a committee's interpretation of provisions of the relevant treaty, thematic issues and the working methods of the committee. These General Comments have come to represent an important body of material relevant to the interpretation and effective implementation of human rights treaties.

The treaty bodies are comprised of human rights experts of high moral standing who are nationals of a State party to the relevant treaty. Members are elected in secret ballots from a list of persons nominated by State parties and membership is usually for four-year terms. A number of the conventions specify that due regard should be given to geographic balance as well as representation of the principle legal systems. Members are

not representatives of their government but serve in their personal capacity.

Human Rights Committee – International Covenant on Civil and Political Rights

Mandate and composition: the Human Rights Committee has 18 members (article 28) elected for four-year terms (article 32). The Committee also has monitoring responsibility for the *Second Optional Protocol to the ICCPR, aiming at the Abolition of the Death Penalty*. The Committee meets in Geneva three times per year.

Periodic reports: an initial report is due within one year of becoming a party to the *ICCPR*, then as requested by the Committee, usually every 4 to 5 years (article 40). State parties to the *Second Optional Protocol* must include in their reports to the Committee information on measures to give effect to the Protocol (article 3, *Second Optional Protocol*).

- Australia's reports are prepared by the Attorney-General's Department and are available on the Department's website (www.ag.gov.au).

Individual communications: State parties consent to the Committee hearing individual complaints by becoming a party to the *First Optional Protocol to the ICCPR* (article 1, *First Optional Protocol*). This consent extends to the *Second Optional Protocol* unless a State makes a declaration to the contrary at the time of ratification or accession (article 5, *Second Optional Protocol*).

- Australia became a party to the *Optional Protocol to the ICCPR* in 1991 and has therefore accepted the competence of the Committee to consider individual communications. As a party to the *Second Optional Protocol*, Australia has also accepted to competence of the Committee under this treaty.

State complaints: the State concerned must have lodged a declaration accepting the Committee's competence to hear State complaints (article 41). This consent extends to the *Second Optional Protocol* unless a State declares otherwise at the time of ratification or accession (article 4, *Second Optional Protocol*).

- Australia has recognised the competence of the Committee to hear interstate complaints under article 41, both under the *ICCPR* and the *Second Optional Protocol*.

Inquiry procedure: none.

Committee on Economic, Social and Cultural Rights – International Covenant on Economic, Social and Cultural Rights

Mandate and composition: Unlike the other treaty bodies, the Committee on Economic, Social and Cultural Rights is not established under the treaty but was created by ECOSOC (resolution 1985/17) to carry out its monitoring functions in Part IV of the Covenant. The Committee is comprised of 18 individual experts serving four-year terms. Fifteen of the seats are equally distributed among the regional groups. The Committee meets twice a year in Geneva.

Periodic reports: an initial report is due within two years of the Covenant entering into force for a State party and every five years thereafter (articles 16 and 17, *ICESCR*).

- Australia's periodic reports are prepared by the Department of Foreign Affairs and Trade and are available on the Department's website (www.dfat.gov.au).

Individual communications: State parties must expressly consent to the Committee hearing individual communications from individuals within its jurisdiction by becoming a party to the *Optional Protocol to the ICESCR*. Article 2 of the *Optional Protocol* permits communications from groups. The admissibility requirements are set out in article 3.

- Australia is not a party to the *Optional Protocol to the ICESCR* and is not contemplating becoming a party at this stage.

State complaints: State parties to the *Optional Protocol to the ICESCR* can declare that they recognise the competence of the Committee to receive communications from another State party claiming that it has not fulfilled its obligations under the Covenant (article 10).

Inquiry procedure: State parties to the *Optional Protocol* can declare they recognise the competence of the Committee to examine allegations of grave or systematic violations of any of the Covenant rights (article 11).

Committee on the Elimination of Racial Discrimination – Convention on the Elimination of Racial Discrimination

Mandate and composition: the Committee is made up of 18 experts who serve four-year terms (article 8). The Committee meets in Geneva for two sessions each year.

Periodic reports: State parties must report on the legislative, judicial, administrative or other measures adopted to give effect to the *CERD* within one year of becoming a party to the treaty and every two years thereafter (article 9).

- Australia's periodic reports are prepared by the Department of Foreign Affairs and Trade and are available on the Department's website (www.dfat.gov.au).

Individual communications: a State party must declare that it recognises the competence of the Committee to hear complaints of violations of *CERD* rights by individuals or groups within its jurisdiction (article 14).

- Australia has accepted the competence of the Committee to receive individual communications in accordance with article 14.

State complaints: articles 11 to 13 detail the procedures for State parties to make a complaint about another State's violation of the *CERD*, including through the establishment of an ad hoc conciliation commission. Unlike the *ICCPR* and the *ICESCR*, this mechanism applies to all State parties to the *CERD* and does not require an express declaration recognising the competence of the Committee to hear such complaints. Article 22 also establishes a process for resolving disputes between States over the interpretation or application of the *CERD*. This process begins with negotiation and arbitration and, absent a resolution, can be referred by one of the parties to the International Court of Justice. States can opt out of this procedure by making a declaration at the time of ratification or accession.

Inquiry procedure: none.

Other: the Committee has adopted an 'early warning and urgent procedures' mechanism to address serious violations of the *CERD* within a State party's jurisdiction. The Committee may request further information from the State concerned, make recommendations, including to the Security Council, and offer its good offices or technical assistance.

Committee on the Elimination of Discrimination against Women – Convention on the Elimination of all forms of Discrimination against Women

Mandate and composition: the Committee is made up of 23 experts who serve four-year terms (article 17). The Committee meets in Geneva.

Periodic reports: State parties must report on the legislative, judicial, administrative or other measures adopted to give effect to the *CEDAW* within one year of becoming a party to the treaty and every four years thereafter (article 18).

- Australia's periodic reports under the *CEDAW* are prepared by the Office for Women in the Department of the Prime Minister and Cabinet (www.dpmc.gov.au/office-women).

Individual communications: the Committee may consider complaints from individuals or groups where the State party concerned has become a party to the *Optional Protocol to CEDAW* (see articles 1 and 2, *Optional Protocol*). The criteria for admissible communications are detailed in articles 3 and 4 of the *Optional Protocol*.

- Australia became a party to the *Optional Protocol* in 2008 and therefore recognises the competence of the Committee to consider individual communications.

State complaints: article 29 establishes a process for resolving disputes between States over the interpretation or application of the *CEDAW*. The process starts with negotiation or arbitration and, absent a resolution, can be referred by one of the parties to the International Court of Justice. States can opt out of this procedure by making a declaration at the time of ratification or accession.

Inquiry procedure: the *Optional Protocol* gives the Committee the right to inquire into grave or systematic violations of the rights protected under the Convention (article 8). A State can declare that it does not recognise the Committee's competence to undertake inquiries at the time of ratification or accession (article 10).

Committee against Torture – Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Mandate and composition: the Committee has 10 experts who serve four-year terms (article 17).

Periodic reports: an initial report is due within one year of becoming a party to the *CAT* and every four years thereafter.

- Australia's periodic reports under the *CAT* are prepared by the Attorney-General's Department and are available on the Department's website (www.ag.gov.au).

Individual communications: State parties can recognise the competence of the Committee to receive individual complaints under article 22 of the *CAT*.

- Australia recognised the competence of the Committee to receive individual communications in 1993.

State complaints: the Committee can receive inter-state complaints of a violation of the *CAT* by another State party only where States have expressly recognised the competence of the Committee to do so (article 21). Article 30 establishes a process for resolving disputes between States over the interpretation or application of the *CAT*. The process starts with negotiation or arbitration and, absent a resolution, one of the parties may refer the issue to the International Court of Justice. States can opt out of this procedure by making a declaration at the time of ratification or accession.

- Australia recognised the competence of the Committee to consider inter-state complaints in 1993.

Inquiry procedure: the Committee can receive information and initiate investigations into allegations of the systematic practice of torture. State parties can opt out of this provision by lodging a declaration to the effect that it does not recognise the Committee's competence in this regard at the time of ratification or accession (article 20).

Other: an *Optional Protocol to the CAT* was adopted by the UN General Assembly in 2002. The objective of the *Optional Protocol* is to establish a system of regular visits by independent international and national bodies to places where individuals are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment (article 1). The *Optional Protocol* establishes a new subcommittee to the Committee against Torture (Subcommittee on Prevention) responsible for, amongst other things, undertaking visits to States parties and advising and assisting national preventive mechanisms established by States.

- Australia ratified the *Optional Protocol* in 2017.

Committee on the Rights of the Child – *Convention on the Rights of the Child*

Mandate and composition: the Committee is made up of 18 experts elected for four-year terms (article 43). The Committee's mandate also covers the compliance of State parties with the *Optional Protocol on the Sale of Children (OPSC)* and the *Optional Protocol on Children in Armed Conflict (OPAC)*.

Periodic reports: States are required to submit an initial report two years after becoming a party to the *CROC* and then every five years thereafter (article 44). The Committee also considers reports of State parties to the *OPSC* and the *OPAC*. Initial reports are due under these protocols within two years of becoming a State party and measures to give effect to the protocols should then be included in periodic reports under the *CROC* (but it should be noted that both protocols are open to States that have signed but not ratified the *CROC* and in this case reports are due every five years) (see article 12 of the *OPSC* and article 8 of the *OPAC*).

- Australia's periodic reports under the *CROC* – and both the *OPSC* and *OPAC* – are prepared by the Attorney-General's Department and are available on the Department's website (www.ag.gov.au).

Individual communications: the Committee can consider individual complaints of violations of the *CROC* and the two optional protocols where a State has also become a party to the *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC)*. Communications can be lodged by individuals or by a group (article 3). Admissibility requirements are detailed in article 7.

- Australia is not a party to the *OPIC* and is not contemplating becoming a party at this stage.

State complaints: State parties to the *OPIC* can recognise the competence of the Committee to receive communications from another State party alleging violations the *CROC* (as well as the *OPAC* and the *OPSC* if the State is also a party to these instruments) (article 12). The State making the complaint must also have accepted the competence of the Committee under article 12.

Inquiry procedure: article 13 of the *OPIC* confers on the Committee the ability to initiate an inquiry into grave or systematic violations of the *CROC* (or the *OPAC* and the *OPSC* where the State is a party to those treaties). A State party can declare that it does not recognise the competence of the Committee to undertake such inquiries.

Committee on Migrant Workers – International Convention on the Protection of All Migrant Workers and Members of Their Families

Mandate and composition: the Committee is comprised of 14 members elected for four-year terms (article 72). The Committee meets in Geneva and usually holds two sessions each year.

- Australia is not a party to the Convention and is not contemplating becoming a party at this stage.

Periodic reports: an initial report is due within one year of becoming a party to the Convention and every five years thereafter (article 73).

Individual communications: article 77 of the Convention envisages an individual complaints mechanism that will come into effect when 10 State parties have recognised the competence of the Committee to receive such complaints. At the time of writing the mechanism is yet to enter into force.

State complaints: article 74 establishes a mechanism for inter-state complaints where both States have made a declaration recognising the competence of the Committee to receive such complaints. The Convention also sets out a process for the resolution of inter-state disputes on the application of the Convention. Article 92 establishes a process for resolving disputes between States over the interpretation or application of the Convention which starts with negotiation, arbitration and, absent a resolution, one of the parties may refer the issue to the International Court of Justice. States can opt out of this procedure by making a declaration at the time of ratification or accession.

Inquiry procedure: none.

Committee on the Rights of Persons with Disabilities – Convention on the Rights of Persons with Disabilities

Composition and mandate: the Committee is comprised of 18 members elected for four-year terms (article 34). The Committee meets in Geneva for two sessions each year.

Periodic reports: States are required to submit reports within two years of becoming a party to the Convention and then every four years thereafter (article 35).

- Australia's periodic reports under the Convention are prepared by the Attorney-General's Department and are available on the Department's website (www.ag.gov.au).

Individual communications: State parties to the *CPRD* can recognise the right of the Committee to receive communications from individuals or groups within its jurisdiction by becoming a party to the *Optional Protocol to the CPRD*. Admissibility requirements are detailed in article 2.

- Australia has accepted the competence of the Committee in this regard by becoming a party to the *Optional Protocol* in 2009.

State complaints: no mechanism

Inquiry procedure: articles 6 and 7 of the *Optional Protocol* establish an inquiry procedure. States can opt out of this mechanism at the time of signature, ratification or accession (article 8).

Committee on Enforced Disappearances – International Convention for the Protection of All Persons from Enforced Disappearances

Mandate and composition: the Committee has 10 members who serve four-year terms (article 26). The Committee meets for two sessions per year in Geneva.

- Australia is not a party to the Convention and is not contemplating becoming a party at this stage.

Periodic reports: State parties are required to submit a report within two years of becoming a party to the Convention and then as directed by the Committee (article 29).

Individual communications: State parties can recognise the competence of the Committee to receive communications from individuals subject to its jurisdiction (article 31).

State complaints: the Committee can consider complaints from one State party that another State party is not fulfilling its obligations under the Convention where both parties have recognised the competence of the Committee to do so (article 32). Article 32 also establishes a process for resolving disputes between States over the interpretation or application of the Convention which starts with negotiation, arbitration and, absent a resolution, one of the parties may refer the issue to the International Court

of Justice. States can opt out of this procedure by making a declaration at the time of ratification or accession.

Inquiry procedure: the Committee may request permission for one or more of its members to visit a State party which is alleged to be committing serious violations of the Convention (article 33).

Other: the Committee may request a State party to take urgent action to locate and protect a disappeared person where certain criteria are met (article 30). The Committee may also bring well founded indications of enforced disappearances on a widespread or systematic basis in the territory of a State party to the attention of the General Assembly (article 34).

The Australian Government has created a publicly accessible online database that draws together recommendations made by the United Nations human rights treaty bodies to Australia as well as recommendations made to Australia in the Universal Periodic Review.

www.ag.gov.au/RightsAndProtections/HumanRights/United-Nations-Human-Rights-Reporting/upr-recommendations/Pages/default.aspx

Treaty body reform

There are ten human rights treaty bodies that monitor the implementation of State parties' international human rights obligations. The exponential growth of the treaty body system has caused major challenges including non-compliance with reporting obligations, a lack of capacity or resources to report efficiently, the volume of documentation treaty bodies consider, and resourcing.

In light of these challenges, the High Commissioner for Human Rights held consultations on treaty body reform from 2009-12. Australia, a strong advocate for treaty body reform, made six written recommendations for streamlining the treaty body process. These were: applying page limits and common templates for treaty body reports; applying time limits for treaty body appearances; ensuring treaty body recommendations are consistent with those of special procedure mandate holders; ensuring the independence and expertise of treaty body Committee members; and improving the use of information technology. The High Commissioner launched the *Strengthening the United Nations* human rights treaty body system report in June 2012.

An intergovernmental process within the UN General Assembly was also launched in February 2012. In April 2012, the General Assembly adopted a resolution on treaty body reform which included measures to improve the functioning of the treaty bodies through additional meeting time and human and financial resources from the regular budget to the treaty bodies and a capacity building package to assist States in fulfilling their treaty obligations. It also recommended the harmonisation of working methods of the ten treaty bodies.

Other organisations within the United Nations system

United Nations Educational, Scientific and Cultural Organization

The purpose of the **United Nations Educational, Scientific and Cultural Organization** (UNESCO), as set out in article 1 of its constitution, is

to contribute to peace and security by promoting collaboration among the nations through education, science and culture in order to further universal respect for justice, for the rule of law and for human rights and fundamental freedoms which are armed for the peoples of the world, without distinction of race, sex, language or religion, by the Charter of the United Nations.

Several conventions and declarations addressing human rights have been developed under UNESCO auspices, including the 1960 *Convention against Discrimination in Education* and the 1997 *Universal Declaration on the Human Genome and Human Rights*. The 1997 Declaration is particularly noteworthy as it seeks to balance the rights of people subjected to human genetic research and the freedom to conduct research – an attribute of the freedom of thought. The 2003 UNESCO General Conference endorsed the development of an *Integrated Strategy to Combat Racism, Racial Discrimination, Xenophobia and Related Intolerance*.

UNESCO has also established a Committee on Conventions and Recommendations mandated to receive and hear complaints from groups or individuals about human rights violations in the educational, scientific, cultural or information fields committed in Member States.

United Nations High Commissioner for Refugees

The **Office of United Nations High Commissioner for Refugees** (UNHCR) was established by the UN General Assembly and commenced operations on 1 January 1951.

UNHCR is the organisation mandated by the United Nations to lead and coordinate international action for the protection of refugees and the resolution of refugee problems. The three ‘durable solutions’ promoted by UNHCR that provide for the longer term protection needs of people displaced by humanitarian crises are: voluntary repatriation in conditions of safety and dignity; local integration in the country of first asylum; or resettlement in a third country – resettlement is often described as the durable solution of last resort and is the preferred option for a relatively small number of people.

UNHCR also has limited responsibility for persons uprooted from their homes but who remain within the borders of their own country (known as internally displaced persons), and performs certain functions to assist stateless persons under the **Convention on the Reduction of Statelessness**.

International Labour Organization

The **International Labour Organization** (ILO) promotes social justice and internationally recognised human and labour rights. Since its establishment under the 1919 *Treaty of Versailles*, the ILO’s main concern has been the formulation of international labour standards and their effective implementation.

In 1998, the ILO’s International Labour Conference adopted the *Declaration on Fundamental Principles at Work* which requires all ILO Member States ‘to respect, to promote and to realize’ the principles and rights in four categories: freedom of association and the effective recognition of the right to collective bargaining; the elimination of forced or compulsory labour; the abolition of child labour; and the elimination of discrimination in respect of employment. This obligation arises by virtue of a State’s membership of the ILO and applies regardless of whether or not it has ratified the existing eight core ILO conventions on these issues.

Australia has ratified the following ILO Conventions associated with the *Declaration*:

- ***Forced Labour (ILO Convention No. 29)***, adopted 1930, ratified by Australia in 1932.
- ***Freedom of Association and Protection of the Right to Organize (ILO Convention No. 87)***, adopted 1948, ratified by Australia in 1973.
- ***Right to Organize and Collective Bargaining (ILO Convention No. 98)***, adopted 1949, ratified by Australia in 1973.
- ***Equal Remuneration (ILO Convention No. 100)***, adopted 1951, ratified by

Australia in 1974.

- ***Abolition of Forced Labour (ILO Convention No. 105)***, adopted 1957, ratified by Australia in 1960.
- ***Discrimination (Employment and Occupation) (ILO Convention No. 111)***, adopted 1958 and ratified by Australia in 1973.

The ILO has also adopted two Conventions associated with the Declaration that implement the principle of abolishing child labour, ***Convention 138 (Minimum Age, 1973) and Convention 182 (Worst forms of child labour, 1999)***. Australia ratified Convention 182 on 19 December 2006. Although our law and practice already comply with the provisions of Convention 138, Australia is unable to ratify the convention as the law in most states and territories does not specifically establish a minimum age of 15 years for employment. Australia believes that children undertaking work, which is outside school hours and is not harmful to the child's health or development, can be valuable experience and can contribute to their physical and mental development. Furthermore, Australian law and practice meets the objectives of Convention 138 through state and territory laws requiring children aged up to 15 years (16 in Tasmania) to attend school, providing for minimum ages for employment in selected occupations, and through laws providing for child welfare, occupational health and safety, working conditions for young persons, and minimum age to claim unemployment benefit.

The ILO consists of an International Labour Conference, a Governing Body (an executive council), an International Labour Office (which acts as the secretariat), regional conferences, committees and groups of experts. The International Labour Conference meets annually in Geneva.

Information on the ILO can be found at www.ilo.org.

International Law Commission

The **International Law Commission (ILC)**, established in 1947, is composed of 34 international legal experts elected by the General Assembly, and has the function of encouraging the codification and progressive development of international law. The ILC has considered many human rights issues, including international law relating to stateless persons, state responsibility for internationally wrongful acts, and the establishment of an International Criminal Court.

While the main focus of the ILC is in the international legal field, in particular the drafting of conventions in areas where law is not sufficiently developed, it is inevitable

that the work of the Commission should often have an impact in relation to the development or strengthening of human rights standards. Areas where the ILC plays a key role in the development of human rights law include statelessness, state responsibility, nationality and international criminal law. For example, the ILC developed the draft *Statute for the International Criminal Court*.

More information on the ILC can be found at its website: www.un.org/law/ilc.

Food and Agriculture Organization

Since its inception in 1945, the **Food and Agriculture Organization** (FAO) has worked to alleviate poverty and hunger by raising levels of nutrition and standards of living, improving agricultural productivity and bettering the condition of rural populations. The organisation promotes a long-term strategy for increasing food production and food security, while conserving and managing natural resources. More information on the FAO can be found at its website: www.fao.org.

World Health Organization

The main objective of the **World Health Organization** (WHO), as set out in its Constitution, is the attainment by all people of the highest possible level of health. Health is defined in WHO's Constitution as a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity. The WHO serves as the coordinating authority on international health work. It maintains certain necessary international health services, promotes and conducts research in the field of health, and works to improve standards of teaching in the health, medical and related professions.

More information on the WHO can be found at its website: www.who.int/en.

CHAPTER 5

National Human Rights Institutions and Regional Approaches

National human rights institutions – an overview

A number of countries, including Australia, have established National Human Rights Institutions (NHRI) to protect and promote human rights. These specialised institutions, commonly called human rights commissions, allow States to enhance the promotion and protection of human rights within their own jurisdictions. They do not replace the role of the courts, legislative bodies, government agencies or civil society organisations but are an important complement to these other elements of state administration and civil society.

National Human Rights Institutions are established either by a constitutional provision or through an act of parliament. While the mandates of national human rights institutions vary, they generally have the power to:

- receive and act upon individual complaints of human rights violations;
- promote conformity of national laws and practices with international standards;
- promote awareness of human rights through information and education and carry out research;
- submit recommendations, proposals and reports on any matter relating to human rights to the government, parliament or any other competent body;
- encourage ratification and implementation of international human rights standards and to contribute to the reporting procedure under international human rights instruments; and
- cooperate with the United Nations, regional institutions and NHRIs of other countries and NGOs.

The concept of National Human Rights Institutions is not a recent one. In 1946 the UN Economic and Social Council (ECOSOC) invited Member States ‘to consider the desirability of establishing information groups or local human rights committees within their respective countries to collaborate with them in furthering the work of the Commission on Human Rights’. However, it was not until the late 1970s and early 1980s that National Human Rights Institutions were established in a number of States. Australia first established a human rights commission in 1981.

National institutions and international cooperation

International cooperation between national institutions, both in the multilateral forums of the United Nations and in regional and bilateral dealings, is a significant area of

activity. These links have been encouraged by the United Nations and supported by Australia as a means of further strengthening universal observance of human rights through the protection and promotion of these rights at the domestic level.

In October 1991, the United Nations organised the First International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris. It was at this meeting that the participating National Institutions drafted a set of international standards to guide the work of NHRIs, known as the **Paris Principles**. In 1993, the Principles were endorsed by the Commission on Human Rights, and were subsequently adopted by the General Assembly to define the role, composition, status and functions of NHRIs. NHRIs must comply with the Principles, which ‘identify their human rights objectives and provide for their independence, broad human rights mandate, adequate funding, and an inclusive and transparent selection and appointment process’.

National Human Rights Institutions cooperate internationally through the **International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights**. The Committee undertakes an accreditation process to encourage compliance with the Paris Principles and is also responsible for organising international conferences and liaison with the United Nations.

National Human Rights Institutions participate in international activities in their own right. For example, the Human Rights Council has recognised the role of National Institutions by allowing them to address the Council independently of either States or accredited NGOs.

Australia is a strong supporter of international efforts to establish and support National Human Rights Institutions. Australia has also assisted other States to establish and strengthen of National Human Rights Institutions.

National institutions and regional cooperation

The establishment of formal regional networks in Africa, the Americas, the Asia Pacific and Europe has strengthened the professional and personal networks between NHRIs. These regional networks are an effective means by which national institutions can strengthen their individual institutional capacities while strengthening regional cooperation on a range of human rights issues. The most advanced of these regional networks is the Asia Pacific Forum of National Human Rights Institutions.

Asia Pacific Forum of National Human Rights Institutions

The Asia Pacific Forum of National Human Rights Institutions (APF) is a regional association of NHRIs from the Asia Pacific Region, and was established in 1996 by NHRIs of four countries – Australia, India, Indonesia and New Zealand. The APF's primary objective is to protect and promote the human rights of the people of the Asia Pacific region, including:

- enhancing members' communication, cooperation and engagement;
- promoting compliance with the Paris Principles;
- engaging with regional and international human rights mechanisms;
- enhancing members' institutional capacity; and
- ensuring the effective, efficient and strategic management of the APF.

The growth of APF membership has been rapid, with 15 full member institutions and six associate members from the Asia-Pacific region. The institutions that currently constitute the full members of the APF are:

- the **Afghanistan** Independent Human Rights Commission
- the **Australian** Human Rights Commission
- the National Human Rights Commission of **India**
- the **Indonesian** National Commission on Human Rights
- the **Jordan** National Centre for Human Rights
- the Human Rights Commission of **Malaysia**
- the National Human Rights Commission of **Mongolia**
- the National Human Rights Commission of **Nepal**
- the **New Zealand** Human Rights Commission
- the **Palestinian** Independent Commission for Human Rights
- the **Philippines** Commission on Human Rights
- the National Human Rights Committee of **Qatar**
- the National Human Rights Commission of the **Korea**
- the National Human Rights Commission of **Thailand**
- **Timor Leste** Office of the Provedor for Human Rights and Justice.

Only NHRIs established in compliance with the Paris Principles are provided with full APF membership and equal participation in all aspects of the Forum's operation and decision-making processes. Associate membership is also available to institutions that are not, as yet, fully compliant with the Paris Principles. These institutions are not, however, entitled to vote or take part in the APF's decision-making processes.

Governments within the region, whether or not they have an established NHRI, may be associated with the APF as observers. Meetings of the APF also provide for observer status to be given to UN agencies and human rights NGOs.

One innovative component of the APF's structure is its **Advisory Council of Jurists (ACJ)** which advises the Forum Council on the interpretation and application of international human rights standards. The Advisory Council is comprised of eminent jurists who have held high judicial office or senior academic or human rights appointments. Since its establishment in 1998, the ACJ has considered a wide range of human rights issues including the death penalty, terrorism and the rule of law, prohibitions on torture and trafficking, the right to education, and the impact of the environment on human rights.

The APF undertakes a range of regional and 'in-country' activities on human rights. The approach of the APF is to focus on practical outcomes through constructive cooperation and dialogue. Specific activities have included training on investigation techniques, human rights education skills, international law, specific human rights issues such as trafficking, HIV/AIDS and internally displaced persons as well as general strategic and operational planning advice. The APF also provides advisory services including legal drafting assistance to governments and parliaments on the establishment of their NHRIs, including in Afghanistan, Bahrain, Fiji, Jordan, Malaysia, Mongolia, Myanmar, Nepal, Republic of Korea, Samoa, Thailand and Timor-Leste.

The APF is supported entirely by voluntary contributions from its member institutions and grants from various governmental and non-governmental organisations. The Australian Government has provided significant support of over \$9 million to the APF since its establishment in 1996.

Further information about the Asia Pacific Forum of National Human Rights Institutions is available at www.asiapacificforum.net.

Australian Human Rights Commission

The Australian Human Rights Commission is Australia's National Human Rights Institution. It is an independent statutory body and it has a defined statutory role in promoting Australians' rights and freedoms and investigating and conciliating anti-discrimination complaints.

The Commission was first established in 1986 as the Human Rights and Equal Opportunity Commission under the *Human Rights and Equal Opportunity Commission Act 1986* (Cth) (the HREOC Act) and became the Australian Human Rights Commission in 2009 when the HREOC Act was replaced by the *Australian Human Rights Commission Act 1986* (Cth) (the AHRC Act).

The Commission is an ‘A’ status accredited NHRI in accordance with the Paris Principles. The Commission was first accredited with ‘A’ status in 1999 and was reaccredited with its ‘A’ status again in 2006 and 2011.

Independence from Government

The Commission is an independent statutory body, and as such is able to direct how it utilises the funding it receives from the government, and is able to draw attention to situations where it considers that there has been a breach of domestic human rights legislation or a breach of the international human rights treaties to which Australia is a party. While the government can request the Commission to conduct inquiries into human rights matters, the Commission is free to express its views regarding government policy through these inquiries.

The Commission is accountable to the Commonwealth Parliament through legislated reporting requirements and through appearances at parliamentary hearings.

Statutory role and functions

The Commission’s functions are defined in the AHRC Act and include conciliating complaints of discrimination and breaches of human rights, conducting inquiries and research into human rights issues, contributing to policy development, performing legal advocacy, and providing education and raising public awareness. The Commission also advises government on existing and proposed legislation and its consistency with human rights obligations.

The AHRC Act also specifies the composition of the Commission, which is comprised of a President and seven special-purpose Commissioner portfolios. The role of these special-purpose Commissioners is to focus on particular areas: Sex (gender), Disability, Race, Human Rights, Age, Children and Aboriginal and Torres Strait Islander Social Justice. Individual Commissioners may hold multiple portfolios. Commissioners are appointed for fixed terms and cannot be dismissed, except under exceptional, defined circumstances.

Complaint and conciliation functions

The Commission has the authority to investigate and conciliate complaints of alleged discrimination and human rights breaches lodged under the following federal legislation:

- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984.*

The Commission also has specific responsibilities under the *Fair Work Act 2009* (Cth) in relation to employment discrimination and harassment complaints.

The Commission also has the power to investigate and conciliate acts or practices of the Australian Government that may be inconsistent with human rights in certain circumstances, and prepare a report for the Attorney-General with recommendations for action, which must be tabled in the Commonwealth Parliament.

The ‘human rights’ which the Commission can consider as part of its functions, including conciliating complaints, are defined in section 3 of the AHRC Act. These are the rights and freedoms contained in specific international instruments that are scheduled to, or declared under, the AHRC Act. These instruments are:

- *International Covenant on Civil and Political Rights*
- *Convention Concerning Discrimination in Respect of Employment and Occupation (ILO 111)*
- *Convention on the Rights of Persons with Disabilities*
- *Convention on the Rights of the Child*
- *Declaration of the Rights of the Child*
- *Declaration on the Rights of Disabled Persons*
- *Declaration on the Rights of Mentally Retarded Persons*
- *Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief.*

Other statutory functions

The Commission also has statutory responsibilities to report annually to the government regarding the enjoyment and exercise of human rights by children in Australia, as well as

the enjoyment and exercise of human rights by Aboriginal persons and Torres Strait Islanders, including recommendations as to the action that should be taken in relation to issues such as native title and other social justice issues faced by Indigenous Australians.

The Commission also promotes awareness of human rights issues through education campaigns and programs, including by supporting a coordinated and consistent approach to teaching human rights in Australian schools, engaging with business and industry to promote human rights principles as an everyday part of their operations, and building employers' understanding of their legal responsibilities and of strategies to create discrimination-free workplaces.

The Commission works closely with other national human rights institutions, particularly through the Asia Pacific Forum of National Human Rights Institutions, to address major human rights issues in the region. The Commission also plays an important role in the United Nations system and provides independent reports on Australia's progress in meeting its human rights obligations.

Regional approaches to the protection and promotion of human rights

Chapter VIII of the *UN Charter* supports the existence of regional arrangements with emphasis on their role in assisting with the peaceful settlement of disputes. In particular, article 52(1) of the Charter leaves it open for regional arrangements to be used in the human rights field. Such regional organisations have often led the way in standard-setting and institution-building. The European institutions are a good example of this.

The United Nations is actively working to strengthen cooperation with regional and sub-regional organisations, including in the area of human rights. At the request of the Human Rights Council, the Office of the High Commissioner for Human Rights has convened workshops bringing together representatives from the UN treaty bodies and special procedures, representatives from regional organisations, NHRIs and NGOs to exchange views and share lessons learned.

Europe

The Council of Europe

The European experience with human rights was closely linked to the founding of the Council of Europe in 1949, established with the aim of avoiding conflicts such as those which had devastated Europe during that decade. There are at present 47 members of the Council.

One of the first acts of the Council's Parliamentary Assembly, which, along with the Committee of Ministers, forms the main political organs of the Council, was to declare open for signature the *European Convention for the Protection of Human Rights and Fundamental Freedoms* in 1950. The Convention entered into force in 1953 and emphasises individual rights and fundamental freedoms. Protocols have added other rights to those set out in the Convention, such as the abolition of the death penalty (Protocol No 6). All Council of Europe Member States are party to the Convention and new members are expected to ratify the Convention at the earliest opportunity.

A key feature of the Convention is the establishment of international enforcement machinery. States and individuals may refer alleged violations of rights guaranteed in the Convention by States parties to the European Court of Human Rights in Strasbourg. The position of Human Rights Commissioner was created in 1999. The Commissioner does not have legal powers but provides advice and information on the protection of human rights and the prevention of human rights abuses.

In addition to the Convention regime that places particular emphasis on civil and political rights, the European human rights framework has been supplemented in the economic and social rights sphere by the 1965 European Social Charter. The Social Charter's impact has been in the area of social security rights and, while it does not have individual enforcement measures, its impact in the area of labour and union rights is important. Though many of the over 180 conventions drafted by the Council deal with human rights issues, the two other main human rights instruments are the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment* (entry into force 1989) and the *Framework Convention for the Protection of National Minorities* (entry into force 1998).

For more detail about these instruments and the Council of Europe generally, refer to: www.coe.int.

The European Union

While neither the *Treaty of Paris* nor the *Treaty of Rome* have express human rights provisions (apart from rules relating to non-discrimination on the basis of nationality and equal remuneration and free movement of workers), increasingly detailed statements of the EU's commitment to human rights are set out in the 1987 *Single European Act*, the 1992 *Maastricht Treaty on European Union* and the 1997 *Treaty of Amsterdam*. The Maastricht Treaty, as amended by the Treaty of Amsterdam, states that 'The Union is founded on the principles of liberty, democracy, respect for human rights

and fundamental freedoms, and the rule of law' (article 6) and includes a mechanism for suspending a Member State's rights under the Treaty in the event of a 'serious and persistent breach' of those principles by that Member State (article 7).

The EU's external policies are also guided by human rights considerations. In accordance with the Charter of Fundamental Rights of the European Union (2000), the promotion of freedom, democracy, rule of law and respect for human rights and fundamental freedoms constitutes one of the core objectives of the EU's external policies. Since the early 1990s, the EU has used a standard set of human rights provisions for inclusion in treaty-status cooperation agreements between the EU and third countries. The standard provisions enable one party to take 'appropriate measures' (suspension or termination of the cooperation agreement, in whole or in part) if the other party commits a human rights violation.

Further information on EU human rights can be found at: https://europa.eu/european-union/topics/human-rights_en

The Organization for Security and Co-operation in Europe (OSCE)

The OSCE is the largest regional security organisation in the world with 57 participating states from Europe, Central Asia and North America. The OSCE, which provides a forum for consultation and negotiation among participating states, is active in early warning, conflict prevention, crisis management and post-conflict rehabilitation. Its principal institutions are its Secretariat in Vienna; the Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw; a Representative on the Freedom of the Media in Vienna; and a High Commissioner on National Minorities in The Hague.

The ODIHR is responsible for the 'human dimension' of the OSCE agenda. It helps OSCE participating States 'to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and ... to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society'. The human rights standards of the OSCE are all non-binding on participating states.

Further information about the OSCE can be found at: <http://www.osce.org>.

Africa

The **African Union (AU)** was launched in Durban in 2002 with the First Assembly of the Heads of States of the African Union. The AU was the culmination of a variety of initiatives by its predecessor organisation, the Organisation of African Unity (OAU), which were aimed ‘to solidify African unity, economic integration and social development across the continent’. The AU describes itself as the continent’s primary institution promoting socio-economic integration, building partnerships between governments and all segments of civil society, in particular women, youth and the private sector. It focuses on the promotion of peace, security and stability on the continent as a prerequisite for the implementation of the development and integration agenda of the Union. For more information on the AU, refer to <https://au.int/>.

Among a variety of specific objectives, two pertain to human rights. The AU endeavors ‘to encourage international cooperation, taking account of the Charter of the United Nations and the Universal Declaration of Human Rights’ and ‘to promote and protect human and peoples’ rights in accordance with the *African Charter on Human and Peoples’ Rights* and other relevant human rights instruments’.

The African Charter on Human and Peoples’ Rights, a concept first raised at the 1961 Lagos Conference on the Rule of Law, was completed in 1981 at the Banjul Conference in the Gambia. The Charter was approved by the OAU Council of Ministers meeting in Nairobi in 1981 and formally adopted on 27 June 1981 by the OAU African Heads of State and Government. It entered into force on 21 October 1986.

This framework sets out the rights of the individual, including the right to life, due process, non-discrimination, freedom of association, economic rights, and the rights of peoples (such as self-determination, the enjoyment of wealth and resources, and the right to national and international peace and security). It also identifies the duties individuals owe to society, such as the duty not to compromise state security, the duty to the family, and the duty to positive African cultural values. The protection of human rights under the African Charter is complemented by additional protections under the *African Charter on the Rights and Welfare of the Child* and the *Protocol to the African Charter on the Rights of Women*.

The Charter provides for the establishment of the **African Commission on Human and Peoples’ Rights**. The Commission is charged with the promotion and protection of the human rights set out in the Charter and with interpretation of the Charter. The Commission’s mandate extends to collecting documents, undertaking studies and

research, organising conferences, cooperating with other African or international human rights institutions and to consider the periodic reports of states on the legislative or other measures adopted to give effect to the rights recognised and contained in the Charter.

The Commission is also given investigatory and recommendatory powers, including the powers to receive communications from States' parties which allege violations of the Charter. In addition, the Commission may receive communications from bodies other than States, including individuals. These rights are subject to the need for the exhaustion of local remedies. For more information on the Commission, refer to www.achpr.org.

The **African Court on Human and Peoples' Rights** was established in 1998 pursuant to the *Protocol to the Charter on Human and Peoples' Rights on the Establishment of an African Court*. The Court has jurisdiction to hear cases referred by the Commission, State Parties to the Protocol and African inter-governmental organisations concerning the interpretation of the African Charter on Human and Peoples' Rights, the Protocol establishing the Court and other human rights treaties to which the State concerned is a party.

The Americas

The **Organization of American States (OAS)** is a recognised regional organisation within the United Nations. It was established in Bogotá, Colombia, in 1948 and currently consists of 35 Member States. In addition, the organisation has granted Permanent Observer status to 70 States and the European Union.

According to the OAS Charter, Member States seek 'to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence'. The organisation's focus is strengthening democracy, advancing human rights, promoting peace and security, expanding trade, and tackling complex problems caused by poverty, drugs and corruption.

The *American Convention on Human Rights*, also known as the *Pact of San José*, was adopted in November 1969 at the Inter-American Specialized Conference held under OAS auspices in San José, Costa Rica. The Convention sets out detailed rules in respect of civil and political rights (in articles 1 to 25) as well as an obligation with respect to the progressive development of economic, social and cultural rights (article 26). Part II

incorporates specific mechanisms to ensure State compliance with the Convention, the **Inter-American Commission on Human Rights** (based in Washington DC) and the **Inter-American Court of Human Rights** (whose seat is in San José, Costa Rica).

According to the OAS Charter, the Commission's functions are to promote and protect human rights and to act as a consultative organ of the OAS. Though the Commission predates the Convention, specific provisions ensure that the Commission also functions as a Convention organ. In its capacity as a Convention organ, the Commission's functions are to promote respect for, and the defence of, human rights. It also has fact-finding, conciliation, reporting (including country reports) and quasi-judicial functions. In particular, it can hear both private and State complaints in respect of violations of the Convention.

The **Inter-American Court of Human Rights** is the Convention's judicial organ. In accordance with its Statute, the Court is an 'autonomous judicial institution whose purpose is the application and interpretation of the Convention'. Under article 62, it has the power to hear cases, either referred to it by the Commission or by States' parties, subject to the case having first gone to the Commission. The Court's decisions are binding and can include awards of damages. The Commission is required to be present at all cases heard before the Court. Individuals have no right to appear before the Court.

The Court has, under article 64, the power to give advisory opinions when requested by OAS organs or parties. This power is one of the most extensive available to a human rights court, since it includes the power to advise on any treaties concerning human rights protection in the American States, as well as being open to OAS Charter States which may not have ratified the Convention. The Court has already contributed to the international human rights system by the advisory opinions it has given on issues such as the acceptability of reservations to human rights treaties and the question of the death penalty.

For more information on the OAS see www.oas.org.

The Middle East

The League of Arab States was founded in March 1945 when Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, Syria and Yemen formally adopted the *1944 Alexandria Protocol*, the constitutional pact of the League. This makes the League the oldest existing regional organisation. It now has 22 members. Having been established before the United Nations,

its official recognition as a UN regional body required a separate UNGA resolution in 1950. Nevertheless, the pact was drafted to take account of the imminent establishment of the United Nations and, indeed, implicitly recognises the United Nations' superior position.

The purposes of the League are strengthening relations between members, coordinating political activities for the purpose of mutual collaboration, safeguarding independence and defending the interests of all the Arab countries.

The League of Arab States established an Arab Commission on Human Rights in 1968. The Commission has examined questions relating to the rights of combatants in armed conflict and questions related to the Geneva Conventions, the situation of Palestine and the establishment of national commissions.

The League of Arab States approved an Arab Charter on Human Rights in September 1994. The Charter provides for periodic reports to the League's Human Rights Committee (as distinct from the Arab Commission on Human Rights) by States and for an independent Committee of Experts empowered to request and study reports and submit its own findings to the Human Rights Committee. A new charter on human rights was signed by foreign ministers at the Arab League Summit in Tunis in May 2004 and entered into force in 2008.

The Commonwealth

The Commonwealth is a voluntary association of countries most of which trace their association to the development of British colonial policy from the early nineteenth century. The Charter of the Commonwealth, agreed in 2013, brings together the values and aspirations of the Commonwealth in a single document. The Charter recognises the inalienable right of individuals to participate in democratic processes; reaffirms a commitment to the United Declaration of Human Rights and other human rights covenants and international instruments; and states that international peace and security, sustainable economic growth and development and the rule of law are essential to the progress and prosperity of all.

The Harare Declaration of 1991 also pledges the Commonwealth and its members to protect and promote the Commonwealth's fundamental political values of: democracy; democratic processes and institutions; the rule of law; just and honest government and fundamental human rights including equal rights and opportunities for all citizens regardless of race, colour, creed or political belief; promotion of equality for women;

universal access to education; and the extension of the benefits of development within a framework of respect for human rights. Compliance with the values, principles and priorities set out in the Harare Declaration is one of the conditions of membership of the Commonwealth.

In 1995, Commonwealth Heads of Government decided to establish a **Commonwealth Ministerial Action Group** (CMAG) to deal with serious or persistent violations of the principles contained in the Harare Declaration. CMAG is a committee of usually eight foreign ministers from around the Commonwealth whose authority extends to suspending countries who fail to meet their commitments in the Harare Declaration. The Commonwealth has also used other ad hoc arrangements to ensure adherence to the Harare Declaration, notably the ‘troika’ of Prime Minister Howard, President Obasanjo of Nigeria and President Mbeki of South Africa who suspended Zimbabwe from the Councils of the Commonwealth in March 2002.

The Commonwealth also supports such activity as strengthening the domestic human rights machinery of Member States, the establishment of ombudsmen’s offices, conducting workshops in such areas as criminal justice, administrative law and combating corruption, and implementation of international human rights conventions. A key activity has been the observance of elections by Commonwealth electoral observer groups, which the Commonwealth has sought to integrate with programs for the provision of legal and electoral experts. The Secretary-General of the Commonwealth also deploys his good offices in conflict prevention and resolution, to support efforts to maintain stability and democratic government and to advance the principles of good governance and human rights.

A notable feature of the Commonwealth is its rich and diverse range of associated NGOs, some of which also play an important role in promoting human rights and civil society. For example, the **Commonwealth Human Rights Initiative** (CHRI), a non-governmental charity established in 1987 by a range of Commonwealth NGOs, works to improve the human rights of citizens in Commonwealth countries. The CHRI’s policy is formulated by an international advisory commission, which is responsible for a biennial report to the Commonwealth on human rights issues.

CHAPTER 6

Human Rights in Practice – the Protection of Human Rights in Australia

How are human rights protected in Australia?

Human rights are protected in Australia through various mechanisms, which can be broadly divided into two categories. The first are the **existing institutionalised processes** present in a liberal and democratic society—such as parliaments and an independent judicial system - and the second are the **special legislative machinery** to protect human rights, such as the Australian Human Rights Commission.

Existing institutionalised processes

Australian parliaments

Australia has a **federal constitutional system** in which powers are shared between federal institutions and the six states (New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania) and three self-governing territories (the Australian Capital Territory, the Northern Territory and the Territory of Norfolk Island). Each of the states has its own constitution, a democratically elected parliament, and an independent judiciary. The Australian Capital Territory and Northern Territory have separate democratically elected representatives, administrative institutions and their own systems of courts.

The **liberal democratic system of government** in each jurisdiction allows individuals to bring to notice areas in which human rights and fundamental freedoms are in need of protection. Under the system of ‘**responsible government**’, Ministers are individually and collectively answerable to the Parliament and can retain office only while the Australian Government of which they form part retains the ‘confidence’ of the Lower House. Ministers must also answer questions in the Parliament concerning matters dealt with by their departments.

At the federal level, the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) was passed to ensure early and ongoing consideration of human rights issues in the development of policy and legislation. It established the Parliamentary **Joint Committee on Human Rights** in 2013. The Committee scrutinises the compatibility of proposed legislation with Australia’s obligations under the seven core human rights treaties to which it is a party, as well as review existing Acts and conducting inquiries into human rights issues referred to it by the Attorney-General. In addition, all new legislation before Parliament must be accompanied by a ‘Statement of Compatibility’ setting out the

consistency of the legislation with Australia's human rights obligations. The Committee can call for submissions, hold public hearings and call witnesses. It is composed of five Senators and five Members from the House of Representatives and reports to both Houses of Parliament.

There are several other Parliamentary Standing Committees with mandates that encompass the protection of rights in Australia. The Senate Standing Committee for the Scrutiny of Bills was established in 1981 to review proposed legislative measures and alert the Senate 'to the possibility of the infringement of personal rights and liberties or the erosion of legislative power of Parliament'. The Senate Standing Committee on Regulations and Ordinances examines delegated or subordinate legislation where it 'takes away, reduces, circumscribes or qualifies the fundamental rights and liberties traditionally enjoyed in a free and democratic society'. The Joint Standing Committee on Foreign Affairs, Defence and Trade, which has a Human Rights Sub-Committee, considers and reports on matters relating to foreign affairs, defence, trade and human rights.

Constitutional guarantees

Although the Australian Constitution does not contain a bill of rights, it does contain five **express guarantees** of rights and immunities. These are:

- the right to vote (section 41);
- protection against the acquisition of property on unjust terms (section 51 (xxxi));
- the right to trial by jury (section 80);
- freedom of religion (section 116); and
- prohibition of discrimination on the basis of state of residency (section 117).

Some provisions of the Constitution have also been found by the High Court of Australia to include **implied guarantees** of individual rights. For instance, the Court has recognised an implied restriction on the legislative and executive power of the Commonwealth and of the states and territories protecting freedom of communication on governmental and political matters.

The High Court has also indicated that there are **some rights inherent in the structure of the Constitution** itself. The Court has held that the Constitution is predicated on a system of 'representative democracy' and that, since free communication and debate on political issues and institutions of government are essential to that system, legislation which infringes a freedom of communication on 'political matters' is invalid, unless necessary to protect some other public interest.

The common law

Australia has a common law legal system which means that the recognition and protection of many basic rights and freedoms relies on the enunciation of those rights over the centuries by judges in common law. The right to a fair trial, for example, is protected by the common law.

The judiciary

An independent judiciary plays an important role in protecting certain recognised rights and freedoms which are regarded as fundamental and by developing rules of statutory construction which reduce the degree of inadvertent legislative encroachment into those rights and freedoms.

Administrative law remedies

Australia has a comprehensive framework for the independent review of administrative decisions. This allows people to challenge, and obtain reasons for, a wide range of decisions made under federal laws. All states and territories have similar mechanisms.

The **Administrative Appeals Tribunal** is an independent body whose function is to review decisions made by Commonwealth Ministers, authorities and officials under more than 200 Acts of the Commonwealth Parliament. Broadly reflecting the areas of jurisdiction, the Tribunal is made up of six divisions: General Division; Migration and Refugee Division; National Disability Insurance Scheme Division (see the section Disability below for more information); Security Division; Social Services and Child Support Division; and Taxation and Commercial Division.

The *Administrative Decisions (Judicial Review) Act 1977* (Cth) provides for judicial **review by the Federal Court of Australia of administrative action** taken under Commonwealth legislation. The Court can review the lawfulness of a decision, the conduct leading up to the decision, or circumstances where there has been failure to make a decision.

The **Office of the Commonwealth Ombudsman** investigates complaints about the administrative actions of all Australian Government departments and prescribed Commonwealth agencies. The Ombudsman can also investigate matters on his or her own motion.

The *Freedom of Information Act 1982* (Cth) creates a general right for members of the public to obtain access to documents, and sets out a range of obligations and restrictions on departments and the public for exercising these rights.

Australian governments may also establish Royal Commissions to inquire into matters of public concern, including human rights issues.

Specialised human rights machinery

Human rights legislation

An extensive human rights legislative framework exists in Australia at the **federal level**. These Acts give effect, in part, to Australia's obligations under a number of human rights treaties.

The *Racial Discrimination Act 1975* (Cth) implements domestically many of Australia's obligations under the *CERD*.

The *Sex Discrimination Act 1984* (Cth) implements domestically many of Australia's obligations under the *CEDAW*, as well the *ICCPR*, the *ICESCR*, the *CROC*, *ILO Conventions 100* (Equal Remuneration for Men and Women Workers for Work of Equal Value), *111* (Discrimination in respect of Employment and Occupation), *158* (Termination of Employment at the Initiative of the Employer) and *156* (Workers with Family Responsibilities).

The *Disability Discrimination Act 1992* (Cth) predated the *CRPD* but nonetheless implements some of Australia's obligations under the Convention.

The *Age Discrimination Act 2004* (Cth) makes it unlawful to discriminate against people on the basis of age in areas of public life.

The *Human Rights Commission Act 1986* (Cth), which established the Australian Human Rights Commission, authorises the Commission to inquire into and conciliate complaints of discrimination in employment on the basis of sexual preference, criminal record, trade union activity, political opinion, religion or social origin, implementing obligations under *ILO Convention 111 on Discrimination (Employment and Occupation)*.

The *Privacy Act 1988* (Cth) gives effect to aspects of the right to protection against arbitrary and unlawful interferences with privacy in article 17 of the

ICCPR, protecting personal information collected and held by Australian Government agencies and many private sector organisations.

The *Workplace Relations Act 1996* (Cth) includes a range of provisions intended to help prevent and eliminate discrimination in the workplace on the basis of race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin.

A comprehensive anti-discrimination legislative framework also exists in all **states and territories**. Additionally, the Australian Capital Territory and Victoria have passed versions of a Bill of Rights. The ACT *Human Rights Act 2004* establishes a ‘dialogue model’ which seeks to ensure that human rights are taken into account when developing and interpreting ACT law. The Victorian *Charter of Human Rights and Responsibilities Act 2006*, also a dialogue model, is an Act of Parliament that seeks to protect and promote civil and political rights, based on the *ICCPR*.

The Australian Human Rights Commission

As outlined in Chapter Five, the **Australian Human Rights Commission (AHRC)** is Australia’s national human rights institution which plays an important role in promoting awareness of, and a respect for, human rights in the community. Each **State and Territory** also has a human rights, anti-discrimination or equal opportunity board or commission. A common function of these bodies is the determination or conciliation of complaints of discrimination brought under the relevant legislation, as well as human rights education and awareness initiatives. The AHRC, together with the State and Territory bodies, constitutes the Australian Council of Human Rights Agencies (see Chapter 5 for more information on the AHRC).

Other protections

Non-government organisations and the media

Civil society and NGOs play an important role in the promotion and protection of human rights in Australia. A **strong and active NGO community** is essential to communicate advice about human rights issues, to facilitate human rights education, and to help register concerns with government, the United Nations and other international bodies. Some of these groups have received funding from Commonwealth, State or Territory governments to assist in their work. The Department of Foreign Affairs and Trade holds

an annual NGO Forum on Human Rights which provides an opportunity to exchange information in an informal, consultative setting.

The **media** in Australia also enjoys a high degree of freedom which allows the press, radio, television and the internet to play a significant role in exposing breaches of human rights and exerting pressure for remedial action. The media reports parliamentary and court decisions relating to human rights matters and parliamentary questions are often prompted by media coverage of a particular matter.

Human rights education

Education and raising public awareness are the most lasting and effective ways to minimise discrimination and promote tolerance of all members of the community.

Human rights education is one of the key statutory functions of the **Australian Human Rights Commission**. The Commission works with schools, state public services, the federal public sector, the vocational, education and training sector and business to provide education and training on human rights and fundamental freedoms. The Commission also makes fact sheets on key areas of its work as well as human rights more broadly available on its website. See www.humanrights.gov.au.

At the federal level, the Attorney-General's Department has developed **human rights education and training activities for the public sector** to help officials understand their human rights obligations, and deliver services and develop policy consistent with human rights. Resources include guidance sheets on the rights in the seven core international/UN human rights treaties to which Australia is a party and assistance in preparing Statements of Compatibility for all new legislation. See <https://www.ag.gov.au/RightsAndProtections/HumanRights/Human-rights-scrutiny/Pages/Statements-of-Compatibility.aspx>

The Federal, State and Territory Governments also have a number of initiatives in **human rights education for schools**. At the Federal level, a National Framework for Values Education in Australian Schools emphasises values such as respect, responsibility and understanding, tolerance and inclusion, to help students appreciate their local, national, regional and global responsibilities and to understand human rights.

The Government has provided support for the **Australian Council for Human Rights Education** to develop strategies for human rights education in Australia. It has hosted conferences on human rights education, with participants from government and non-government agencies in the Asia Pacific, contributed to the establishment of a Centre for

Human Rights Education at Curtin University of Technology in Western Australia, and helped to establish human rights education programs in several states.

For more information about the Council and its activities refer to:

www.humanrightseducationaustralia.com.

ANNEX ONE: Useful Resources

| Resource | Use |
|---|--|
| Universal Human Rights Index | The database contains information to country-specific human rights information arising from international human rights mechanisms in the United Nations system: the Treaty Bodies, the Special Procedures and the Universal Periodic Review. http://uhri.ohchr.org/ |
| United Nations Treaties database | The database contains information on the status of multilateral instruments, including human rights instruments. Information on the status of each instrument as states sign, ratify, accede or lodge declarations, as well as their reservations or objections is updated daily. https://treaties.un.org/ |
| The Attorney-General's Department website | This page of the Attorney-General's Department offers information on human rights and anti-discrimination in Australia. https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/default.aspx |
| The Australian Human Rights Commission website | The Commission's website provides information on human rights issues, submissions, publications and education resources. www.humanrights.gov.au |
| United Nations Office of the High Commissioner for Human Rights (OHCHR) website | The OHCHR website contains information on international human rights issues, research and education resources. www.ohchr.org |