Human Rights in Australia

Edited by Justin Healey
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INTRODUCTION

Human Rights in Australia is Volume 429 in the ‘Issues in Society’ series of educational resource books. The aim of this series is to offer current, diverse information about important issues in our world, from an Australian perspective.

KEY ISSUES IN THIS TOPIC

Human rights recognise the inherent value of every person, regardless of our respective backgrounds, where we live, what we look like, what we think or what we believe. These rights are based on universal principles of dignity, equality and mutual respect, and are shared across cultures, religions and philosophies. Human rights are about being treated fairly, treating others fairly and being able to make choices about our own lives.

Australia was recently elected to a seat on the United Nations Human Rights Council, however its own human rights record is not without controversy, warranting extensive and ongoing international and domestic scrutiny. What are Australia’s international and domestic human rights obligations and how are they being addressed in relation to a number of high profile issues such as asylum seeker detention, racial discrimination, free speech, indigenous advancement, juvenile incarceration, disability rights, gender equality and same-sex marriage? Does Australia need to lift its game on human rights if it is to be taken seriously on the international stage?

SOURCES OF INFORMATION

Titles in the ‘Issues in Society’ series are individual resource books which provide an overview on a specific subject comprised of facts and opinions.

The information in this resource book is not from any single author, publication or organisation. The unique value of the ‘Issues in Society’ series lies in its diversity of content and perspectives.

The content comes from a wide variety of sources and includes:

- Newspaper reports and opinion pieces
- Website fact sheets
- Magazine and journal articles
- Statistics and surveys
- Government reports
- Literature from special interest groups

CRITICAL EVALUATION

As the information reproduced in this book is from a number of different sources, readers should always be aware of the origin of the text and whether or not the source is likely to be expressing a particular bias or agenda.

It is hoped that, as you read about the many aspects of the issues explored in this book, you will critically evaluate the information presented. In some cases, it is important that you decide whether you are being presented with facts or opinions. Does the writer give a biased or an unbiased report? If an opinion is being expressed, do you agree with the writer?

EXPLORING ISSUES

The ‘Exploring issues’ section at the back of this book features a range of ready-to-use worksheets relating to the articles and issues raised in this book. The activities and exercises in these worksheets are suitable for use by students at middle secondary school level and beyond.

FURTHER RESEARCH

This title offers a useful starting point for those who need convenient access to information about the issues involved. However, it is only a starting point. The ‘Web links’ section at the back of this book contains a list of useful websites which you can access for more reading on the topic.
Understanding human rights: free and equal

A GUIDE FROM AMNESTY INTERNATIONAL AUSTRALIA

WHAT ARE HUMAN RIGHTS?

Human rights are the basic freedoms and protections that belong to every single one of us. All human beings are born with equal, inalienable rights and fundamental freedoms.

Human rights are based on dignity, equality and mutual respect – regardless of your nationality, your religion or your beliefs.

Your rights are about being treated fairly and treating others fairly, and having the ability to make choices about your own life.

These basic human rights are:

• Universal: they belong to all of us – everybody in the world.
• Inalienable: they cannot be taken away from us.
• Indivisible and interdependent: governments should not be able to pick and choose which rights are respected.

What is the Universal Declaration of Human Rights (UDHR)?

In 1948, following the traumatic events of World War II, country representatives at the United Nations (UN) banded together to create a list of the rights everyone around the world should enjoy.

Under the guidance of Eleanor Roosevelt, then-first lady of the United States and a politician, diplomat and activist in her own right, the Universal Declaration of Human Rights (UDHR) was born.

Article 1 of the UDHR states that: “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.”

There are 30 articles in the Declaration of Human Rights – 30 rights of everyone on this planet. The articles include the right to asylum, the right to freedom from torture, the right to free speech and the right to education.

Despite the Declaration’s international credibility, the standards outlined in it are sometimes difficult to enforce. That’s why it’s important for ordinary people to speak out whenever human rights violations happen and to keep governments and others across the world accountable.


"While before I felt all hope had gone, the story changed when Amnesty International came in. The messages I received overwhelmed me. I regained hope." Moses Akatugba

Moses Akatugba in Nigeria was sentenced to death at the age of 16, for allegedly stealing three mobile phones. Moses was shot in his hand and beaten at the time of his arrest. He says that police officers tortured him until he signed two “confessional” statements already written by the police.

After 10 years in prison and over 800,000 messages from activists around the world, the Governor of Delta State in Nigeria responded to pressure from Amnesty supporters and granted a full pardon to Moses.

The UDHR applies equally to everyone

To further protect the rights of the world’s most vulnerable people the UN has adopted several other human rights agreements. When countries sign up to these agreements, it means their governments commit to protecting these rights in their countries.

The rights of indigenous people

The International Declaration on the Rights of Indigenous Peoples (DRIP) outlines the unique rights of Indigenous
The Universal Declaration of Human Rights

The General Assembly of the United Nations adopted the UDHR on 10 December 1948. These rights belong to you. They are your rights. Familiarise yourself with them. Help to promote and defend them for yourself as well as for your fellow human beings.

“All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Universal Declaration of Human Rights, Article 1

**Article 1**
Everyone is born free and equal in dignity and with rights.

**Article 2**
You should never be discriminated against for any reason. Rights belong to all people, whatever our differences.

**Article 3**
Everyone has the rights to life, liberty and security.

**Article 4**
No one shall be held in slavery or servitude.

**Article 5**
No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

**Article 6**
You have the right to be treated as a person in the eyes of the law.

**Article 7**
You have the right to be treated by the law in the same way as everyone else. Everyone has a right to protection against violations of their human rights.

**Article 8**
If your rights under law are violated, you have the right to see justice done in a court or tribunal.

**Article 9**
No one shall be subject to arbitrary arrest, detention or exile.

**Article 10**
You have the right to a fair and public trial by an independent and impartial tribunal.

**Article 11**
Everyone is to be presumed innocent until proven guilty in a fair trial. No one should be charged with a criminal offence for an act which wasn’t an offence at the time the act was done.

**Article 12**
No one has the right to intrude in your private life or interfere with your home and family without good reason. No one has the right to attack your good name without reason.

**Article 13**
You have the right to freedom of movement within your country. Everyone has the right to leave a country and to return home.

**Article 14**
You have the right to seek and to enjoy asylum from persecution in other countries. You may not invoke this right if fleeing just laws in your own country.

**Article 15**
You have the right to a nationality.

**Article 16**
You have the right to marry and to raise a family. Men and women have the same rights when they are married and when they are separated.

**Article 17**
You have the right to own property and it cannot randomly be taken away from you.

**Article 18**
You have the right to freedom of thought, conscience and religion and to peacefully express those beliefs in teaching, practice and worship.

**Article 19**
You have the right to freedom of opinion and expression.

**Article 20**
You have the right to freedom of peaceful assembly and association.

**Article 21**
You have the right to take part in the government of your country.

**Article 22**
As a member of society, you have a right to social security.

**Article 23**
You have the right to work, to good working conditions, to equal pay for equal work and to form and join unions.

**Article 24**
You have the right to rest and leisure.

**Article 25**
You have the right to a decent life, including enough food, clothing, housing, medical care and social services.

**Article 26**
You have the right to an education.

**Article 27**
No one may stop you from participating in the cultural life of your community.

**Article 28**
You have the right to live in the kind of world where your rights and freedoms are respected.

**Article 29**
We all have a responsibility to the people around us and should protect their rights and freedoms.

**Article 30**
There is nothing in this declaration that justifies any person or country taking away the rights to which we are all entitled.

“Everyone has a right to be treated by the law in the same way as everyone else. Everyone has a right to protection against violations of their human rights.” Universal Declaration of Human Rights, Article 7

The above Articles are abbreviated. For a full version of the Declaration go to: www.un.org/en/universal-declaration-human-rights

“I thank everyone very much for their support for me and our movement. Receiving letters gives me real inspiration for what we are doing. I have begun to notice that the world is watching and cheering us – we are not alone.” Phyoe Phyoe Aung

In 2015, student leader Phyoe Phyoe Aung was jailed for helping organise peaceful protests against the government in Myanmar. For this she was charged with a range of offences, including inciting the public to commit offences against the state, and faced up to nine years’ imprisonment.

After almost 400,000 Amnesty supporters called for her release, Phyoe Phyoe Aung walked free in April 2016.

Find more successes for human rights at www.amnesty.org.au/wins
Peoples and sets a standard for the protection of these rights.

The UN adopted the Declaration on 13 September 2007, after more than 20 years of discussion.

Outlined in the DRIP include Indigenous Peoples’ rights to:

• Be free from discrimination
• Their cultural identity
• Self-determination (the right to decide on matters that affect your own life, land or livelihood)
• Free, prior and informed consent (the right to be consulted and given all the information necessary to make decisions that may impact your life or land).

Download a simplified version of the Declaration with commentary from Aboriginal and Torres Strait Islander people at: www.amnesty.org.au/DRIP

The rights of refugees and asylum seekers

By the end of 2015, 65.3 million people worldwide had been forced to leave their homes as a result of conflict, persecution, violence and human rights violations.

Of these:

• 21.3 million people had to escape to another country. These people are referred to as refugees.
• 3.2 million people have sought safety in another country. These are people seeking asylum and are awaiting recognition as refugees.
• 40.8 million people were displaced within their own country. These people are described as internally displaced persons.

When people are forced to flee their countries, the international community must step in to provide refugees with the protection and rights due to them. This is outlined in Article 14 of the UDHR.

Further, the 1951 Refugee Convention outlines who is a refugee and the kind of legal protection, assistance and social rights a refugee is entitled to. Australia has signed up to abide by the Refugee Convention.

Read more at www.amnesty.org.au/refugees

LGBTQI rights

All people have the same human rights regardless of their sexual orientation, gender identity or because they are intersex. That includes the right to be free from discrimination based on gender or sexual orientation.

The right of adults to enter into consensual marriage is enshrined in the Universal Declaration of Human Rights (Article 16).

No one should be denied the right to marry the person they love because of their gender or sexuality.

Children’s rights

Children and young people (anyone below the age of 18) have further rights in recognition of their need to develop to their full potential, and to protect them from exploitation and abuse.

The rights of children are outlined in the Convention on the Rights of the Child.

Women’s rights

Despite some gains, most women and girls are far from enjoying equal rights and face widespread, often institutionalised discrimination and violence. Many women and girls around the world are married against their will, trapped in conflicts where rape is used as a strategy, blocked from fair wages, education and political participation.

Millions of women cannot choose freely what happens to their body. For example, in some countries abortion is a crime in all circumstances, even for survivors of rape and incest, or when a woman’s life is at risk.

This is not an exhaustive list; anyone can be at risk of having their rights taken away.

What is Amnesty International?

Amnesty International is the world’s largest and most-respected human rights organisation. In Australia and across the globe we bring torturers to justice, change oppressive laws and free people jailed for voicing their opinions.

We send researchers into countries where human rights abuses are occurring to investigate and report. We then use this evidence to call on governments or companies to uphold, create or change laws or policies that will protect human rights.

Amnesty’s vital work is funded by people just like you. We’re independent of any government, political ideo-
logy, economic interest or religion to ensure we can speak out on human rights abuses wherever they occur.

**People power**

Amnesty is a grassroots movement: ordinary people from all walks of life, standing together for justice, freedom, human dignity and equality.

Around the world we stand with people and communities who come under attack, encourage governments and others to respect human rights and raise awareness of the international standards that protect us all.

Our 7 million supporters worldwide sign petitions, write letters, partake in peaceful protests and take online actions directed at governments, groups or individuals. And we also support human rights advocates and activists defending human rights in their own countries.

Together our movement:

- Defends freedom of expression and association
- Demands safety for people fleeing war and persecution
- Works to protect and defend women’s rights
- Campaigns for the abolition of the death penalty everywhere
- Works for and with indigenous people to secure equality
- Demands justice for genocide, crimes against humanity and war crimes
- Defends the rights of the LGBTQI community.

**Watch a video about how Amnesty works at**

www.amnesty.org.au/the-movement

- The world’s largest human rights organisation.
- A global movement of 7 million supporters in more than 150 countries.
- Over 500,000 supporters in Australia working to defend human rights.

Human rights are being violated all the time and right now thousands of people are being denied a fair trial, tortured and imprisoned because of what they think or believe. The UDHR is the bedrock of our campaigning for these people – allowing us to hold authorities to account when rights are abused.

Our members take up human rights issues through letter-writing, online and offline campaigning, demonstrations, vigils and direct lobbying of those with power and influence. Locally, nationally and globally, we join together to mobilise public pressure and show international solidarity. And together, we make a difference.

**Join Amnesty and act on behalf of people whose human rights are being abused. Your support can change lives.**

Register your interest in volunteering: www.amnesty.org.au/donate-my-time

Become a member: www.amnesty.org.au/sign-up

Donate: www.amnesty.org.au/give-once

Find a local group or event: www.amnesty.org.au/find-my-group

Sign an online petition: www.amnesty.org.au/add-my-voice

Amnesty International Australia (January 2017), Understanding Human Rights – Free and Equal.


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**DEFINING HUMAN RIGHTS**

Human rights are often defined in different ways, says the Australian Human Rights Commission

Simple definitions that are often given include:

- The recognition and respect of people’s dignity
- A set of moral and legal guidelines that promote and protect a recognition of our values, our identity and ability to ensure an adequate standard of living
- The basic standards by which we can identify and measure inequality and fairness
- Those rights associated with the Universal Declaration of Human Rights.


‘Human rights’ are defined by section 3 of the AHRC Act as 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 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.

The effect of this limited definition is to limit the scope of the functions of the Australian Human Rights Commission that relate to ‘human rights’ (see section 11 of the AHRC Act). The Aboriginal and Torres Strait Islander Social Justice Commissioner also exercises functions on behalf of the Commission in relation to the human rights of Aboriginal and Torres Strait Islander people (see section 46C of the AHRC Act). ‘Human rights’ in this context includes the rights and freedoms recognised by the International Convention on the Elimination of All Forms of Racial Discrimination (see section 46A of the AHRC Act).

In exercising these functions, the Commissioner is also required to have regard to additional human rights instruments where appropriate, namely:

- Universal Declaration of Human Rights
- International Covenant on Economic, Social & Cultural Rights
- Any other instrument relating to human rights that the Commissioner considers relevant (see section 46A(4) of the AHRC Act).

### A BRIEF HUMAN RIGHTS TIMELINE

**COURTESY OF THE AUSTRALIAN HUMAN RIGHTS COMMISSION**

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<tr>
<td>1760 BCE</td>
<td>In Babylon King Hammurabi draws up the ‘Code of Hammurabi’, an early legal document that promises to ‘make justice reign in the Kingdom and promote the good of the people’.</td>
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<td>c. 528 BCE – 486 BCE</td>
<td>In India, Gautama Buddha advocates morality, reverence for life, non-violence and right conduct.</td>
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<td>500 BCE</td>
<td>Confucian teaching develops based on ‘jen’ or benevolence and respect for other people.</td>
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<td>27 BCE – 476 CE</td>
<td>Roman Empire develops the concepts of natural law and the rights of citizens.</td>
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<tr>
<td>c. 26 – 33 CE</td>
<td>In Palestine, Jesus Christ preaches morality, tolerance, justice, forgiveness and love. The Christian New Testament teaches equality before God: ‘In Christ there is neither Jew nor Greek, slave nor free, male nor female’.</td>
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<tr>
<td>613 – 632</td>
<td>In Saudi Arabia, Prophet Mohammed teaches the principles of equality, justice and compassion revealed in the Qur’án.</td>
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<td>1215</td>
<td>Britain’s King John is forced by his lords to sign the Magna Carta, acknowledging that free men are entitled to judgment by their peers and that even a king is not above the law. It also stated that taxes could not be demanded without first obtaining the consent of ‘the realm’.</td>
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<td>1583 – 1645</td>
<td>Hugo Grotius, Dutch jurist credited with the birth of international law, speaks of brotherhood of humankind and the need to treat all people fairly.</td>
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<td>1689</td>
<td>In England, Parliament adopts the Bill of Rights that curtails the power of the monarch and includes freedom from torture and from punishment without trial. The Bill sets out that it is the job of government to represent the people and their rights.</td>
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<td>1776</td>
<td>US Declaration of Independence proclaims that ‘all men are created equal’ and endowed with certain inalienable rights.</td>
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<td>1789</td>
<td>In France the National Assembly adopts the Declaration of the Rights of Man and of the Citizen, which guarantees the rights to liberty, equality, property, security and resistance to oppression.</td>
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<td>1791</td>
<td>The United States Congress adopts their Bill of Rights, amending the US Constitution to include rights to trial by jury, freedom of expression, speech, belief and assembly.</td>
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<td>1833</td>
<td>The British Parliament abolishes slavery through the Slavery Abolition Act.</td>
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<td>1945</td>
<td>The United Nations is created ‘to affirm the dignity and worth of every human person’.</td>
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<tr>
<td>1948</td>
<td>The United Nations adopts the Universal Declaration of Human Rights.</td>
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<tr>
<td>1951</td>
<td>The Convention Relating to the Status of Refugees (‘The Refugee Convention’) is adopted and opened for signature. It defines who a refugee is and what the rights and legal obligations of states are in relation to them.</td>
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<tr>
<td>1965</td>
<td>The Convention on the Elimination of All Forms of Racial Discrimination (CERD) is adopted and opened for signature. It is introduced to eliminate racial discrimination and promote understanding among all races.</td>
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<tr>
<td>1966</td>
<td>The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) are adopted and opened for signature.</td>
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<tr>
<td>1979</td>
<td>The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is adopted and opened for signature. It is introduced to prevent discrimination against, and to promote the rights of, women.</td>
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<tr>
<td>1984</td>
<td>In Australia, the Sex Discrimination Act comes into force. The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is adopted and opened for signature.</td>
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<td>1986</td>
<td>In Australia, the Human Rights Commission Act is enacted, today known as the Australian Human Rights Commission.</td>
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<tr>
<td>1992</td>
<td>In Australia, the Disability Discrimination Act comes into force.</td>
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<tr>
<td>2004</td>
<td>In Australia, the Age Discrimination Act comes into force.</td>
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<td>2013</td>
<td>The first National Children’s Commissioner is appointed in Australia.</td>
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Australian Human Rights Commission.
Go to the following URL to access hyperlinks which explain the domestic and international laws which underpin the rights and freedoms listed: www.humanrights.gov.au/rights-and-freedoms-right-right-o

Civil and political rights
• Right to self-determination (ICCPR Article 1)
• Rights to equality and non-discrimination (ICCPR Article 2.1, 26; ICESCR Article 2.1; CERD; CEDAW; CAT; CROC; CRPD)
• Human rights and non-citizens (ICCPR Articles 2.1, 13)
• Legislative and other measures for implementation (ICCPR Article 2.2; ICESCR Article 2.1; CERD; CEDAW; CAT; CROC; CRPD)
• Right to an effective remedy (ICCPR Article 2.3)
• Permissible limitations on rights
• Equal rights of men and women (ICCPR Article 3; ICESCR Article 3; CEDAW)
• Derogation from rights in emergencies (ICCPR Article 4)
• Non-diminution of rights (ICCPR Article 5; ICESCR Article 5)
• Right to life (ICCPR Article 6)
• Freedom from torture or cruel, degrading or inhuman treatment or punishment (ICCPR Article 7; CAT)
• Freedom from slavery and forced labour (ICCPR Article 8)
• Security of the person and freedom from arbitrary detention (ICCPR Article 9)
• Right to humane treatment in detention (ICCPR Article 10)
• Prohibition on imprisonment for inability to fulfil a contract (ICCPR Article 11)
• Right to freedom of movement (ICCPR Article 12)
• Fair trial and fair hearing rights (ICCPR Article 14.1)
• Minimum guarantees in criminal proceedings (ICCPR Articles 14.2-14.7)
• Prohibition on retrospective criminal laws (ICCPR Article 15)
• Right to recognition as a person (ICCPR Article 16; CRPD Article 12)
• Freedom from interference with privacy, family, home or reputation (ICCPR Article 17)
• Freedom of thought, conscience and religion or belief (ICCPR Article 18)
• Freedom of information, opinion and expression (ICCPR Article 19)
• Prohibition of advocacy of national, racial or religious hatred (ICCPR Article 20; CERD Article 4)
• Freedom of assembly (ICCPR Article 21)
• Freedom of association (ICCPR Article 22; ICESCR Article 8)
• Right to respect for the family (ICCPR Article 23.1)
• Right to marry and found a family (ICCPR Article 23.2)
• Rights of parents and children (ICCPR Article 24; CRC)
• Right to name and nationality (ICCPR Article 24; CERD; CEDAW; CRC; CRPD)
• Right to take part in public affairs, voting rights and access to public service (ICCPR Article 25)
• Rights of members of ethnic, linguistic and religious minorities (ICCPR Article 27).

Economic, social and cultural rights
The legislation defining human rights for the purposes of Commission functions is complicated.
In particular, the Commission currently only has direct jurisdiction regarding the International Covenant on Economic, Social and Cultural Rights in relation to the work of:
• The Aboriginal and Torres Strait Islander Social Justice Commissioner, and
• The National Children's Commissioner.

This is despite human rights being repeatedly referred to as “universal and indivisible” (in the Universal Declaration on Human Rights, in the ICCPR and ICESCR, and in subsequent instruments).

However, the Commission also has jurisdiction regarding a range of economic, social and cultural rights:
• Under each of the discrimination Acts and
• In relation to rights of persons with disabilities.

Information on economic, social and cultural rights is included here accordingly. Having regard to the principles of universality and indivisibility, the Commission supports protection of the full range of human rights for all people in Australia.
• Nature of obligations under ICESCR (ICESCR Article 2)
• Right to work and rights in work (ICESCR Articles 6, 7, 10; CERD; CEDAW; CRC; CRPD; ILO 111)
• Right to education (ICESCR Article 13; CERD, CEDAW, CRC; CRPD)
• Right to an adequate standard of living, including food, water and housing (ICESCR Article 11)
• Right to health (ICESCR Article 12)
• Right to social security (ICESCR Article 9)
• Rights to enjoy and benefit from science and culture (ICESCR Article 15).

Rights of indigenous people
Rights of indigenous peoples are addressed in the main human rights treaties including through the rights to self-determination and through obligations to prevent racial discrimination.

The Declaration on the Rights of Indigenous Peoples and the functions of the Aboriginal and Torres Strait...
Islander Commissioner within the Commission address in more detail a wide range of human rights issues including civil, political, economic, social, and cultural rights issues.


Women’s rights
As indicated above, in addition to the general requirements of non-discrimination in Article 2 of each of the ICCPR and ICESCR, Article 3 of both Covenants requires parties to ensure and promote equal enjoyment of rights for women. These rights and requirements are set in more detail in the Convention on the Elimination of All Forms of Discrimination Against Women.

More detailed information on the Commission’s work is available in the Sex Discrimination section of this site: www.humanrights.gov.au/our-work/sex-discrimination

Children’s rights
The ICCPR recognises children’s rights, although only relatively briefly.

The Convention on the Rights of the Child addresses in more detail a wider range of human rights including civil, political, economic, social, and cultural rights.

More detailed information is available in the Children’s Rights section of this site: www.humanrights.gov.au/our-work/childrens-rights

Rights of people with a disability
The Human Rights Covenants cover people with disability (by implication, through their reference to rights for “all individuals”, and without discrimination of “any kind”, including on the basis of “other status”).

• The Committee on Economic Social and Cultural Rights has included the rights of persons with disability among its General Comments. The Committee on Human Rights has not done so at this point.
• The Convention on the Rights of the Child was the first of the main human rights treaties to deal expressly with rights of people with a disability.

The Convention on the Rights of Persons with Disabilities addresses in detail a wide range of rights including civil, political, economic, social, and cultural rights. It:
• Confirms that these rights apply to people with disability
• Provides more detail on what some rights mean in the context of disability (for example regarding accessibility and independent living)
• Sets out in more detail than other human rights instruments what obligations governments have.

More detailed information is available in the Disability Rights section of this site: www.humanrights.gov.au/our-work/disability-rights

Rights of older persons
The existing main human rights treaties apply to older people as a matter of law (since they recognise rights for “all” individuals and without “any” discrimination) although they do not address ageing expressly or in detail.

However:
• The United Nations has adopted a range of non-binding instruments on the rights of older persons including the United Nations Principles for Older Persons
• The Committee on Economic Social and Cultural Rights has included the rights of older persons among its General Comments. The Committee on Human Rights has not done so at this point.
• Development of a specific Convention on the rights of older persons is currently being considered.

Further information in this area is available in the Age Discrimination section of this site: www.humanrights.gov.au/our-work/age-discrimination

Human rights and sexual orientation, gender identity and intersex issues
The existing human rights treaties apply to all people, and include human rights issues regarding sexual orientation, gender identity and intersex people.

Issues regarding sexual orientation, gender identity and intersex people involve a wide range of rights.

Further information in this area is available in the Sexuality, Sex and Gender Identity section of this site: www.humanrights.gov.au/our-work/sexual-orientation-gender-identity-intersex-status

Introductory material on these pages draws on guidance sheets prepared by the Attorney-General’s Department in consultation with the Commission. The assistance of the Department is gratefully acknowledged.

After the end of World War II a series of conventions and declarations began to articulate universal human rights.

A convention (sometimes called a covenant) is a binding treaty, coming into force upon ratification by a certain number of States. Article 26 of the Vienna Convention on the Law of Treaties provides that: ‘Every treaty in force is binding upon the parties to it and must be performed by them in good faith’.

A declaration is not legally binding but carries moral weight because it is adopted by the international community.

The United Nations was established, partly to continue the work of the dissolved League of Nations, in response to proposals for the creation of a new world body to monitor relations between States.

The United Nations is an international organisation representing the body of States, established according to the United Nations Charter in 1945.1 One of the purposes of the United Nations is to promote and encourage respect for human rights through international co-operation.

There are currently one hundred and ninety two member States. Each has one vote in the United Nation’s parliament, the General Assembly (www.un.org/ga).

What is known as the International Bill of Human Rights is made up of:

• Universal Declaration of Human Rights (1948)
• International Covenant on Civil and Political Rights (1966)
• International Covenant on Economic, Social and Cultural Rights (1966)
• Optional Protocol to the International Covenant on Civil and Political Rights
• Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

UNIVERSAL DECLARATION OF HUMAN RIGHTS (UDHR)

In 1948 the United Nations General Assembly adopted the UDHR. This was the first time that countries agreed on a comprehensive statement of inalienable human rights. The UDHR is not a treaty, so it does not directly create legal obligations for States. The Declaration has however, had a profound influence on the development of international human rights law. It is argued that because States have constantly invoked the Declaration over more than 50 years, it has become binding as a part of customary international law.3

On the same day that it adopted the UDHR, the United Nations General Assembly asked its Commission on Human Rights to draft a covenant on human rights, which could become a binding treaty. After six years of drafting and debate, in 1952 the General Assembly requested that the Commission on Human Rights draft two covenants rather than one. The covenants, International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights were opened for signature in 1966 and entered into force in 1976.

For the rules on treaties coming into force go to: https://treaties.un.org/

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS 1966 (ICCPR)

Civil and political rights include the right to freedom of conscience and religion, the right to be free from torture, and the right to a fair trial.

Most of these rights are not absolute. Instead they are subject to reasonable limitations which are created for a legitimate purpose. For example, it may be legitimate to limit a right in order to protect national security, public order or the general welfare of a democratic society.

Some rights, such as the right not to be held in slavery and the right to be free from torture are absolute. Article 4 of the ICCPR identifies absolute (or non-derogable) rights which can not be infringed in any circumstances.

Australia agreed to be bound by the ICCPR on 13 August 1980, subject to certain reservations.3 Article 2(2) of the ICCPR requires Australia to take all necessary legislative and other measures to give effect to the rights in the Convention. The ICCPR is scheduled to the Australian Human Rights Commission Act 1986 (Cth) (the AHRC Act), and the Australian Human Rights Commission is responsible for monitoring Australia’s compliance with the ICCPR.4

The ICCPR has two Optional Protocols. An optional protocol supplements the original convention with additional obligations.
Optional Protocol to the International Covenant on Civil and Political Rights 1966
On 25 September 1991, Australia agreed to be bound by the First Optional Protocol to the ICCPR. This means the United Nations Human Rights Committee can hear complaints from individuals who allege that the Australian Government has violated their rights under the ICCPR. However, the findings of the Human Rights Committee are not enforceable. For examples refer to the case studies.

Second Optional Protocol to the International Covenant on Civil and Political Rights
On 2 October 1990, Australia agreed to be bound by the Second Optional Protocol to the ICCPR. The purpose of this protocol is for States to eliminate the death penalty.

A convention (sometimes called a covenant) is a binding treaty, coming into force upon ratification by a certain number of States.

International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)
Economic, social and cultural rights include the right to an adequate standard of living, the right to education, the right to fair wages and the right to safe working conditions.

Article 2(1) of the ICESCR requires States to take steps, including legislative measures, to achieve the ‘progressive realisation’ of ICESCR rights. This requires that States only demonstrate in good faith the fulfilment of the rights over time within their capacities. For example, it is assumed that where States have inadequate resources to ensure free education is provided, they will work towards achieving this goal.

The United Nations Committee on Economic Social and Cultural Rights (the CESCR) monitors compliance with the ICESCR and provides guidance on how countries should interpret the ICESCR.5

An increasing number of countries, across all continents and legal systems, have incorporated judicial review of economic, social and cultural rights. These include South Africa, Finland, Argentina, Mauritius, Canada, Latvia, France, India, Bangladesh, Nigeria, and most countries in Central and Eastern Europe.

On 10 December 1975, Australia agreed to be bound by the ICESCR.

The ICESCR does not, however, form part of Australia’s domestic law and is not scheduled to, or declared under, the AHRC Act. However, the AHRC Act does give the Aboriginal and Torres Strait Islander Social Justice Commissioner specific statutory functions in relating to protecting and promoting the human rights of Aboriginal persons and Torres Strait Islanders.6 In the performance of these functions the Social Justice Commissioner must have regard to a number of international declarations and conventions, including the ICESCR.7

Endnotes
4. Since 1986, the Commission has had the powers to investigate alleged violations of the ICCPR, although it has no power of penalty or enforcement. The Commission also has other powers to monitor Australia’s compliance with the ICCPR, including the power to examine whether federal legislation complies with Australia’s obligations under the ICCPR. See Australian Human Rights Commission Act 1986 (Cth), s 11(1)(e) and s 11(1)(f).
How states commit to human rights treaties

According to this fact sheet from the Australian Human Rights Commission, the process of committing to international human rights treaties involves:

Signing international human rights treaties

If Australia signs an international human rights treaty it is making a preliminary endorsement of the treaty. Signing the instrument does not create a binding legal obligation but does demonstrate the State’s intent to examine the treaty domestically and consider ratifying it.

Ratifying international human rights treaties

States that are members of the UN can elect to ratify or accede to a treaty or convention. Ratification or accession is a voluntary undertaking by the State to be bound by the terms of the treaty under international law.

Though accession has the same effect as ratification, the process differs. In the case of ratification, the State first signs and then ratifies the treaty. The process for accession has only one step – it is not preceded by an act of signature.

If a State chooses to ratify and ‘become party’ to a human rights treaty, that country is obliged to ensure that its domestic legislation complies with the treaty’s provisions.

In the case of major human rights treaties, the obligations of State Parties include regular reporting to and scrutiny by, UN human rights bodies. If a State fails to comply with the terms of the treaty, that country will be in breach of international law.

Reservations and understandings

Reservations and Understandings are statements made by State Parties at the end of a Convention, which limit some of their obligations under the terms of the Convention.

The Australian Government has made reservations to specific Articles in Conventions where the requirement of the Article conflicts with an area of domestic law.

Making international human rights treaties part of domestic law

Each State must create legislation that incorporates the articles of Conventions that have been ratified. This process can differ according to each State’s legal system.

For example, in the United States all international conventions are automatically considered part of federal law after the convention has been ratified, owing to their Constitution. In Australia however, federal legislation needs to be created by parliament for a convention to be binding in Australia. Depending on the area of law, Australian States and Territories may also be required to introduce relevant legislation.

The United Nations (UN) system has two main types of bodies to promote and protect human rights: Charter Bodies and Treaty Bodies.

Charter Bodies are established under the UN Charter in order to fulfil the UN’s general purpose of promoting human rights. They have broad mandates that cover promoting human rights in all UN member states.

THE HUMAN RIGHTS COUNCIL
The principal UN Charter Body responsible for human rights is the Human Rights Council (HRC). The General Assembly established the HRC in 2006, in the hope that it would be more efficient and effective than its predecessor, the Human Rights Commission. Forty-seven UN member states sit on the HRC. One of its main purposes is to review the human rights record of every UN member state once every four years and to make recommendations for improvement. Australia is not currently a member of the Human Rights Council (Addendum: In October 2017 Australia was elected to a seat on the Human Rights Council for a three-year term from 2018 to 2020).

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS
The Office of United Nations High Commissioner for Human Rights (OHCHR), a department of the United Nations Secretariat was established following the World Conference on Human Rights in 1993. Its role is to prevent human rights violations and secure respect for human rights by promoting international cooperation and coordinating the United Nations’ human rights activities. The OHCHR conducts a very broad range of activities from its headquarters in Geneva. It also works directly in areas where there are severe human rights violations through field offices and as part of UN peace missions.

Treaty Bodies have responsibility for monitoring and promoting compliance with a particular human rights treaty. As such they are only concerned with countries that are a party to that treaty.

A number of human rights treaties have established treaty-monitoring bodies to supervise the implementation of treaty obligations by State Parties:

- The Committee on the Elimination of Racial Discrimination monitors State Parties compliance with ICERD
- The Human Rights Committee monitors State Parties compliance with the ICCPR
- The Committee on Economic, Social and Cultural Rights monitors State Parties compliance with the ICESCR
- The Committee against Torture monitors State Parties compliance with CAT
- The Committee on Migrant Workers monitors State Parties compliance with the International Convention on the Protection of the Rights of Migrant Workers and their Families
- The Committee on the Elimination of Discrimination against Women monitors State Parties compliance with CEDAW, and
- The Committee on the Rights of the Child monitors State Parties compliance with the CRC.

Treaty Bodies consider reports from State Parties on their compliance with the treaty and some treaty bodies can receive individual complaints of treaty body violations.

REPORTING OBLIGATIONS AND MONITORING
Treaty Bodies consider periodic reports from State Parties about the measures they have adopted to carry
out their obligations under each treaty. When Treaty Bodies assess reports from State Parties they may also consider information contained in ‘shadow reports’. Shadow reports are those submitted to the Treaty Bodies by NGOs and National Human Rights Institutions (rather than government).

After considering the reports, Treaty Bodies make recommendations (often called Concluding Comments or Recommendations) about how the State Party can improve its compliance with its treaty obligations.

**INDIVIDUAL COMPLAINTS**

Some Treaty Bodies have additional powers to receive and consider complaints from individuals who allege they are the victims of human rights violations by the State.

The bodies with the power to hear individual complaints are:
- The Human Rights Committee
- The Committee on the Elimination of Racial Discrimination
- The Committee against Torture, and
- The Committee on the Elimination of Discrimination Against Women.

A finding of a Treaty Body that a State Party has violated a person’s human rights under the treaty is not legally binding.

Individuals can only make complaints to Treaty Bodies if they have exhausted all domestic remedies and if the relevant State Party has recognised the competence of the Treaty Body to hear their complaint.

By ratifying the ICERD, the CAT and the First Optional Protocol to the ICCPR, Australia has recognised the competence of Committee on the Elimination of Racial Discrimination, the Committee against Torture and the Human Rights Committee to hear individual complaints about violations of the relevant treaty provisions.

The United Nations is currently considering proposals to reform the treaty bodies and make reporting obligations easier for States, by establishing a single, unified Treaty Body to monitor implementation of all the principal human rights treaties.

**COMMITTEE REPRESENTATION**

UN Treaty Bodies are committees of experts in the relevant area who serve in their personal capacity, not as representatives of their countries. Emeritus Professor Ivan Shearer and Elizabeth Evatt, former Chief Justice of the Family Court of Australia, are two examples of recent Australian representatives.

Other UN organs that do important human rights work include:
- UN High Commissioner for Refugees
- Commission on the Status of Women
- United Nations Development Fund for Women (UNIFEM)
- United Nations Children’s Fund (UNICEF)
- UNAIDS.

The United Nations system has two main types of bodies to promote and protect human rights: Charter Bodies and Treaty Bodies.
HUMAN RIGHTS IN AUSTRALIA

Human rights are an important part of our lives. In fact, they are so much a part of everyday living that we often take them for granted, according to the Australian Human Rights Commission.

Consider how often you drink clean water, eat food, go to school, say or write what you think, get treated by a doctor, practise a religion (or not), or expect to be treated fairly by others. All of these everyday activities depend on the adequate protection of your human rights, and the rights of others.

Australia has a strong and proud record on human rights. However, that record is not perfect. Some people are denied their basic rights, because of their colour, their race, their sex, sexuality, a disability or some other aspect of who they are.

What human rights issues exist in Australia?

When people in Australia think about human rights, we often focus on violations that happen in other countries. Human rights are seen in terms of problems such as political dictatorship, torture, or unlawful executions.

Sometimes violations such as these happen on a large scale overseas and there is a tendency to think that, by comparison, any human rights problems in Australia are minor. However, human rights violations of one kind or another occur in all countries, including Australia.

Some groups in Australia are particularly vulnerable to human rights abuses. They include: Aboriginal and Torres Strait Islander people, asylum seekers, migrants from non-English speaking backgrounds, those living in poverty, people with a disability, and other groups.

Human rights issues can potentially affect anyone. Some people might experience discrimination in the workplace because of their age, race or gender. Other people with different sexual orientations or gender identities may be bullied for how they express themselves or who they are attracted to. Children and young people can be subjected to violence in the playground or at home. No matter what a person’s status in society, they or a family member may at some stage in their lives be affected by a violation of their human rights.

In the following quote, the former Social Justice Commissioner, Mick Dodson, spoke of what human rights means in Australia for Aboriginal and Torres Strait Islander people. He used the term ‘social justice’, but he might just as easily have spoken of human rights generally:
“Social Justice is what faces you in the morning. It is awakening in a house with an adequate water supply, cooking facilities and sanitation. It is the ability to nourish your children and send them to school where their education not only equips them for employment but reinforces their knowledge and appreciation of their cultural inheritance. It is the prospect of genuine employment and good health: a life of choices and opportunity. A life free from discrimination.”


How are human rights protected in Australia?
Everyone has the responsibility to respect the human rights of others. Within Australia, the Australian Government has particular responsibilities to ensure that human rights are protected.

In order to ensure that the human rights standards contained in international treaties are observed and enforceable within Australia, the government must introduce them into domestic law. This process is known as 'ratification'. Once international human rights standards are protected in national legislation, the Australian court system is able to ensure that they are protected and cannot be overruled by any State or Territory legislation that contradicts the treaty.

State and Territory governments also have a responsibility to fulfil Australia's human rights responsibilities. The State-level governments have the power to make and administer many of the laws that are relevant to human rights, such as laws relating to justice, health and education issues.

As a federation of States with a Westminster system of government, Australia's system of human rights protection has evolved according to its own unique history, and alongside the international human rights system, during the 100 years since Federation.

Our system of human rights protection can be found in:
• The Australian Constitution and the constitutions of the States and Territories
• Centuries of common law, inherited from England
• Statutory laws, especially federal and State anti-discrimination laws
• An independent judiciary
• Democratically elected governments
• A free and questioning media
• A strong, vibrant civil society, and
• Bodies created to advance the promotion and protection of human rights, such as the Australian Human Rights Commission.

There are also a number of federal laws that exist to protect people from discrimination and breaches of human rights. They include:
• Age Discrimination Act 1992
• Disability Discrimination Act 1992
• Racial Discrimination Act 1975
• Sex Discrimination Act 1984

How are human rights protected in Australia?

In addition to the efforts of the Australian Government, the Australian Human Rights Commission is responsible for overseeing and reporting on the protection of human rights in Australia.

Find out more about the work of the Australian Human Rights Commission at: www.humanrights.gov.au/about/

What international human rights treaties has Australia signed up to?

Australia has historically been an active participant in the development of international human rights standards. As new international standards have been developed, Australia has either endorsed non-binding human rights instruments such as the Universal Declaration of Human Rights and the Declaration on the Rights of Indigenous Peoples, or has signed and ratified binding legal instruments such as the international human rights treaties.

Australia is a party to seven of the key human rights treaties:
• International Covenant on Civil and Political Rights (ICCPR)
• International Covenant on Economic, Social and Cultural Rights (ICESCR)
• Convention on the Rights of the Child (CRC)
• Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
• Convention on the Rights of Persons with Disabilities (CRPD)
• Convention on the Elimination of All Forms of Racial Discrimination (CERD)
• Convention against Torture (CAT).

Australia has also ratified three of the mechanisms that give individuals the right to complain directly to United Nations bodies about violations of their rights.

Australia and human rights treaties

Australia does not generally agree to be bound by a human rights treaty unless it is satisfied that its domestic laws comply with the terms of the treaty. Australia has agreed to be bound by the ICCPR and the ICESCR as well as other major human rights instruments, including:

- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Political Rights of Women
- International Convention on the Elimination of all forms of Racial Discrimination
- Convention on the Elimination of all forms of Discrimination against Women
- Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Reduction of Statelessness
- Convention relating to the Status of Stateless Persons
- Convention Relating to the Status of Refugees
- Slavery Convention of 1926
- Supplementary Convention on Slavery
- Convention on the Rights of Persons with Disabilities

While Australia has agreed to be bound by these major international human rights treaties, they do not form part of Australia’s domestic law unless the treaties have been specifically incorporated into Australian law through legislation. Some provisions of a treaty may however already exist in national legislation. For instance, many of the provisions contained in the Convention on the Rights of People with Disabilities are mirrored in Australian law through the Disability Discrimination Act 1992 (Cth).

This principle reflects the fact that agreeing to be bound by a treaty is the responsibility of the Executive in the exercise of its prerogative power, whereas law making is the responsibility of the parliament. Section 51(xxix) of the Australian Constitution, the ‘external affairs’ power, gives the Commonwealth Parliament the power to enact legislation that implements the terms of those international agreements to which Australia is a party.

For further information on the treaties and conventions that Australia has signed see the Department of Foreign Affairs and Trade (DFAT) Treaty Database (www.dfat.gov.au/treaties/index.html).

ENDNOTES

1. States can agree to be bound by a treaty by ratifying it or acceding to the treaty. ‘Ratification’ is the process by which a signatory state to a treaty confirms that it intends to be bound by that treaty. This is usually done by the signatory state signing the treaty. ‘Accession’ occurs when a state, which did not ratify a treaty, formally accepts its provisions.


AUSTRALIA’S INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

This policy agenda briefing from the Law Council of Australia explains Australia’s responsibilities in relation to maintaining and improving its human rights record.

Australia is a party to the seven key international human rights treaties. Australia has signed and ratified:

- The International Covenant on Civil and Political Rights (ICCPR)
- The International Covenant on Economic, Social and Cultural Rights (ICESCR)
- The Convention on the Rights of the Child (CRC)
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (CAT)
- The Convention on the Elimination of All Forms of Racial Discrimination (CERD)
- The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Australia has also signed and/or ratified a number of optional protocols to these treaties. For example:

- Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty
- Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict
- Optional Protocol to the Convention on the Rights of Persons with Disabilities
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

These treaties, which Australia has voluntarily entered in, set out in clear terms Australia’s international human rights obligations. Under international law, Australia is bound to comply with their provisions and to implement them domestically.

The Law Council uses these instruments to evaluate Australia’s human rights performance, particularly when assessing the appropriateness of proposed legislative or policy reforms.

The Law Council strongly encourages the Australian Government to follow up in a timely and effective manner to concluding observations and recommendations of United Nations Human Rights Council and international human rights treaty bodies, in accordance with relevant reporting guidelines and with the participation of human rights and civil society organisations.

The Law Council holds special consultative status with the United Nations Economic and Social Council. This status enhances the Law Council’s ability to engage with and contribute to the work of the United Nations Committees and bodies, and supports the Law Council’s advocacy directed at ensuring Australia complies with its obligations under international law.

Universal Periodic Review (UPR)


Second cycle of the UPR in November 2015

Australia was reviewed for the second time under the UPR on 9 November 2015. On 23 March 2015, the Law Council made a submission the OHCHR. The Law Council’s submission focuses on what it considers are the most pertinent rule of law issues in Australia: equality, freedom from arbitrary detention, fair hearing rights and democratic freedoms.

The Law Council was referred to 19 times in the UPR NGO/NHRI compilation Report, including in respect of withdrawing reservations to international conventions, administration of justice and the rule of law, indigenous peoples and migrants, refugees and...
asylum seekers. This is one of three Reports considered by the UPR Working Group in assessing Australia’s human rights record. This Report is compiled by the OHCHR and consists of information from civil society and national human rights institutions, such as the AHRC. There were 16 individual NGO submissions and five joint/coalition NGO submissions. The AHRC also made a submission.

The other two Reports considered by the Working Group in its assessment of Australia’s human rights record are Australia’s own Report, and another Report compiled by OHCHR which summarises Australia’s interaction with UN human rights processes.

The Australian Government submitted its Report to the UN in August 2015. In its Report it stated that Australia has accepted or accepted-in-part 137 of 145 recommendations from the First UPR, and that it has implemented in whole or part, or is progressing implementation of 130 recommendations. However, in its own Report on the Second UPR, the Australian Human Rights Commission stated that of the 145 recommendations made to Australia in 2011, 10% of those accepted (in whole or in part) have been fully implemented over the past four years and a further 62% have been partially implemented.

The Review on 9 November took place in the UPR Working Group’s 23rd session. The Hon Philip Ruddock MP (as Chair of the Parliamentary Joint Committee on Human Rights), Senator Anne McEwen and the President of the AHRC, Professor Gillian Triggs, were in attendance.

During the Review, UN Member States posed questions, made comments and made recommendations to Australia.

The Australian Government noted the following voluntary commitments in respect of human rights:

1. Holding a referendum to recognise Aboriginal and Torres Straight Islanders in the next term of Parliament, including a national consultation process

2. Resettling 12,000 refugees fleeing conflict in Syria and Iraq, and providing a further $44m in aid to assist those displaced by this conflict

3. A $100m package for combating family violence against women and children

4. Improving the way the criminal justice system treats people with cognitive disability who are unfit to plead or plead not guilty due to their impairment

5. Further steps to strengthen advocacy for the abolition of the death penalty, which will be informed by the outcomes of a Parliamentary Inquiry

6. Promoting and protecting the rights of older people internationally

7. Ending unlawful discrimination on the grounds of sexual orientation, gender identity and intersex status under Australian law

8. Supporting the protection and promotion of human rights through foreign aid, including by:

- advancing the Sustainable Development Goals agenda; the ‘Development for All’ Strategy 2015-20;

9. Working with the AHRC to develop a public and accessible process for monitoring Australia’s progress against UPR recommendations, including periodic statements from Government; and designating a standing mechanism to strengthen Australia’s engagement with UN human rights reporting.

The Australian Government also noted that the Government did not consider it necessary to enact a Human Rights Act or amend the Constitution, owing to the existing protections, including the requirement that new bills are accompanied by a statement of compatibility with human rights.

Further information on Australia’s second cycle, including the UPR Working Group’s final Report, can be found at the OHCHR website, www.ohchr.org.

First cycle of the UPR in January 2011

Australia was first reviewed under UPR on 27 January 2011. Following Australia’s review, a number of recommendations were made to improve Australia’s international human rights performance.


TREATY BODY REPORTING

The Attorney-General’s Department explains Australia’s obligations in relation to reporting progress on human rights to the United Nations

International Covenant on Civil and Political Rights (ICCPR)

On 17 March 2016, Australia submitted its Sixth Report under the International Covenant on Civil and Political Rights to the Human Rights Committee.


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


Australia’s Sixth Report is due to the Committee against Torture by November 2018.

Convention on the Rights of Persons with Disabilities (CRPD)


Australia’s next report is due to the Committee on the Rights of Persons with Disabilities in 2018.

Convention on the Rights of the Child (CRC)


Australia’s next report, combining its fifth and sixth reports, is due to the committee in 2018.

International Covenant on Economic, Social and Cultural Rights (ICESCR)

In February 2016, Australia submitted its Fifth Report under the Covenant on Economic, Social and Cultural Rights.


The Department of Foreign Affairs and Trade prepares reports under this covenant.

Convention on the Elimination of All Forms of Racial Discrimination (CERD)

In February 2016, Australia submitted its Combined 18-20th Report under the Convention on the Elimination of All Forms of Racial Discrimination.


The Department of Foreign Affairs and Trade prepares reports under this Convention.

Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)


Australia’s next report will be submitted to the committee in the coming months. The Department of the Prime Minister and Cabinet’s Office for Women prepares reports under this convention.

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AUSTRALIA’S UNIVERSAL PERIODIC REVIEW ON HUMAN RIGHTS

The Australian Human Rights Commission explains the UN review process

What is the UPR?

The Universal Periodic Review is a process undertaken by the United Nations Human Rights Council. It involves review of the human rights records of all 192 UN member states once every four years.

The UPR is an opportunity for Australia to:

- Take stock of how well we are protecting the human rights of all people in Australia;
- Inform the international community of the human rights situation in Australia; and
- Engage with other countries about specified steps Australia will take to improve the enjoyment of human rights in Australia.

Every country which is a member of the UN has their human rights record reviewed under the UPR. Review under the UPR does not depend on a country being a party to a particular human rights treaty.

The UPR is a peer review process. Recommendations on actions Australia should take are made by individual governments of other states. They are not made by the UN or the Human Rights Council as a whole.

Recommendations made by governments of countries with which Australians would choose to compare ourselves (for example the US, Canada, UK, New Zealand or European Community members) are particularly important as they avoid the criticism that they are without credibility because they have been made by countries with questionable human rights records.

Australia has undergone two reviews (see below). Australia’s third cycle review is scheduled for the 37th Session of the UPR Working Group in October-November 2020.

Where can I find more information on the UPR?


See also the main UN page on the UPR (www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx) for information including:

- Basic facts on the UPR
- Participation by non-government organisations and National Human Rights Institutions.

Second cycle of the UPR

Australia’s review under the second cycle of the UPR took place on 9 November 2015. The Australian Human Rights Commission transmitted a submission to the UPR Working Group on 22 March 2015. The Australian NGO Coalition also transmitted a submission. The Australian Government Report to the Second UPR was submitted in July 2015.

The UPR review was based on the Government report together with the following information:

- Information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents, compiled in a report prepared by the OHCHR
- Information provided by the Australian Human Rights Commission submission and the Australian NGO Coalition submission and other relevant stakeholders to the Universal Periodic Review, which was summarised by the OHCHR in a document.

110 countries spoke at the review and provided 291 recommendations. The Australian Government provided Australia’s response to the Report of the Working Group on the UPR at the 31st Regular Session Human Rights Council (17 March 2016). 150 recommendations were accepted, 50 were noted to consider further and 90 were noted.

First cycle of the UPR

Australia appeared before the United Nations Human Rights Council’s Working Group on the UPR on 27 January 2011. 53 countries asked Australia about its human rights record and made 145 recommendations. These covered a wide range of human rights issues including the treatment of asylum seekers, Aboriginal and Torres Strait Islander peoples, multiculturalism and racism, and the status of Australia’s obligations under international human rights law. Over 90 per cent of recommendations were accepted in full or in part by the Australian Government. Australia also made a number of voluntary commitments during the dialogue.

Annual UPR progress reports

The Australian Human Rights Commission reported annually on the status of implementation of the first cycle UPR recommendations. These reports were prepared on behalf of the Australian Council of Human Rights Agencies (ACHRA), a body that brings together all Commonwealth, State and Territory anti-discrimination and human rights bodies. The reports were an annual reflection on Australia’s progress in addressing commitments that the Government made to protect human rights from the 1st cycle review, as well as means of identifying emerging and ongoing concerns. Each report was lodged with the UN Human Rights Council as part of its ongoing monitoring of Australia’s UPR implementation.
Summary of Universal Periodic Review recommendations and responses

The Australian Government accepted in full or in part over 90 per cent of recommendations made by other governments in Australia’s first Universal Periodic Review process. The Australian Human Rights Commission will report regularly on progress in implementation of these commitments, which were subsequently examined at Australia’s next UPR appearance in 2016.

INTERNATIONAL OBLIGATIONS

Ratify OPCAT and establish a National Preventive Mechanism
(Recommendations 1, 2, 3, 4, 5, 6)
Response: Accepted. The Australian Government is working with States and Territories to take the necessary steps towards ratifying the Optional Protocol.

Ratify/consider ratifying Enforced Disappearances and and Migrant Workers Conventions
(Recommendations 7, 8, 9, 10)
Response: Accepted in part. Australia will consider signing and ratifying the Protection of All Persons from Enforced Disappearance (CED), but views existing protections in place for migrant workers as adequate and does not intend to become a party to the International Convention on the Rights of Migrant Workers (ICRMW).

Ratify/consider ratifying the ILO Indigenous and Tribal Peoples Convention (ILO 169)
(Recommendations 11, 12)
Response: Accepted in part. Australia will consider ratification.

Withdraw/consider withdrawing reservations
(Recommendations 13, 14, 15, 16)
Response: Accepted in part. Australia will systematically review its reservations to human rights treaties, having regard to whether reservations remain necessary.

DOMESTIC IMPLEMENTATION

Bring domestic law and practice into line with international obligations
(Recommendation 17)
Response: Accepted. Australian Government practice is to satisfy itself that legislation and policies necessary to implement a treaty are in place before Australia becomes bound by it.

Incorporate human rights obligations into domestic law
(Recommendations 18-21)
Response: Accepted in part. The Australian Government incorporates international obligations into domestic law to the extent considered necessary, noting that some obligations are reflected in policy. Measures introduced under Australia’s Human Rights Framework will require that a statement of compatibility with Australia’s human rights obligations is provided for all new federal legislation.

Introduce a Human Rights Act
(Recommendation 22)
Response: Rejected. The Australian Government considers that existing mechanisms, together with new requirements under Australia’s Human Rights Framework, provide for the protection and promotion of human rights. It does not intend to introduce a Human Rights Act.

Provide adequate resources for the Australian Human Rights Commission
(Recommendation 27)
Response: Accepted.

Follow up on implementation of recommendations by human rights mechanisms
(Recommendation 35)
Response: Accepted.

Adopt new National Human Rights Action Plan
(Recommendation 30)
Response: Accepted.

EQUALITY AND NON-DISCRIMINATION

Nationwide enforcement and implementation of discrimination law
(Recommendation 23)
Response: Accepted.

Address all prohibited grounds of discrimination in consolidated law
(Recommendations 42-45)
Response: Accepted.

Introduce national protection against discrimination based on sexual orientation
(Recommendations 66-68)
Response: Accepted.

Monitor racially-motivated violence
(Recommendation 57)
Response: Accepted.

Enhance human rights education in the school curriculum
(Recommendations 57, 58)
Response: Accepted.

Enhance measures to prevent discrimination against minorities and promote multiculturalism and social inclusion
(Recommendations 59-65)
Response: Accepted. Australia’s new multicultural policy...
was launched in February 2011. It includes a National Anti-Racism Partnership and Strategy, the establishment of the Australia Multicultural Council, a multicultural ambassadors’ program and establishment of a Multicultural Youth Sports Partnership Program.

**Relationship recognition**  
(Recommendation 69)  
Response: Accepted. The Australian Government will continue to support a nationally-consistent framework for relationship recognition that would need to be implemented by States and Territories.

**Amendment of Marriage Act to provide for and recognise same-sex marriages**  
(Recommendation 70)  
Response: Rejected. The Australian Government does not intend to amend the Marriage Act 1961. The Australian Government will continue to support a nationally-consistent framework for relationship recognition that would need to be implemented by States and Territories.

### CIVIL AND POLITICAL RIGHTS

**Prevent extradition where there is a danger of the death penalty**  
(Recommendation 34)  
Response: Accepted. The Australian Government considers that provisions of the Extradition Act 1988, regarding surrender where the offence for which extradition is sought is punishable by the death penalty, are consistent with Australia’s international obligations.

**Legislate to ensure humane treatment of prisoners**  
(Recommendation 71)  
Response: Accepted. States and Territories are responsible for the management and operation of prisons and consider that existing legislation and policies ensure the humane treatment of prisoners. States and Territories will continue to deliver corrective services in accordance with the Standard Guidelines for Corrections in Australia which comply with the UN Standard Minimum Rules for the Treatment of Prisoners.

**Prohibit all corporal punishment**  
(Recommendation 75)  
Response: Rejected. While Australia has programs in place to protect children against family violence, and laws against assault, it remains lawful for parents in all States and Territories to use reasonable corporal punishment to discipline their children.

**Ensure assistance for victims of violence**  
(Recommendation 82)  
Response: Accepted. The Australian, State and Territory governments will continue to provide services to victims of violence including counselling and, where appropriate, financial assistance through victims of crime compensation schemes.

**Work with countries in the region to deal with irregular migration and human trafficking bearing human rights in mind**  
(Recommendations 83-86)  
Response: Accept. Australia is committed to the Bali Process as the principal forum on people smuggling and trafficking in the region.

**Increase efforts to prosecute human trafficking offenders**  
(Recommendation 87)  
Response: Accepted. The Australian Government is reviewing its people trafficking and slavery offences to ensure that law enforcement has the best tools available to investigate and prosecute perpetrators.

**Ensure effective and independent investigation of police use of force and deaths in custody**  
(Recommendations 88-91)  
Response: Accepted. A range of oversight mechanisms exists to ensure scrutiny of police use of force, misconduct or police-related deaths in Australia. The Australian Government will continue to address indigenous incarceration and deaths in custody, including by funding prevention, diversion and rehabilitation programs. States and Territories will continue to implement programs aimed at preventing indigenous deaths in custody. All deaths in custody are independently investigated by State and Territory Coroners courts and recommendations are considered by State and Territory governments. Australia has a National Deaths in Custody Program to monitor all deaths.

**Address overrepresentation of indigenous people in custody**  
(Recommendations 90, 93)  
Response: Accepted. The Australian Government will continue to address over-representation of indigenous people in prison, including by funding indigenous-specific legal services (see Recommendation 92) and diversion and recidivism programs. States and Territories have a range of programs in place to address this issue.

**Increase legal services and interpreting for indigenous communities**  
(Recommendations 92-93)  
Response: Accepted. The Australian Government has
increased funding by 14.5% for indigenous-specific legal services over 2010-14. It will continue to work with States and Territories to build the capacity of indigenous language interpreter services.

**Investigate and redress allegations of torture in counter-terrorism measures**  
*(Recommendation 136)*

Response: Accepted. The Australian Government recently strengthened its legislative prohibition on torture. Statutory victims of crime compensation schemes operate in all States and Territories. Australia's legal system provides for individuals to challenge actions and decisions of government authorities. The Australian Government may also provide discretionary financial assistance.

**Ensure compatibility of anti-terrorism laws with human rights**  
*(Recommendations 137-140)*

Response: Accepted. The Australian Government has undertaken comprehensive independent and parliamentary committee reviews of national security and counter-terrorism legislation. In April 2011, the Government appointed a new National Security Monitor to review the operation, effectiveness and implications of Australia's counter-terrorism and national security legislation, and report to the Prime Minister and the Parliament.

**NEW AND EMERGING RIGHTS**

**Bring development assistance to 0.7% of GDP**  
*(Recommendation 135)*

Response: Accepted. The Australian Government has committed to increasing aid to 0.5% of Gross National Income by 2015-16. As economic and fiscal conditions permit, the Government will then progressively increase Australia's official development assistance until it reaches 0.7% of GNI.

**Rights-based approach to climate change policy**  
*(Recommendation 31)*

Response: Accepted in part. Australia is committed to taking action to address climate change in accordance with its international commitments. This will positively impact on the continued ability to enjoy human rights. Human rights impacts will be considered as part of policy approaches to address all impacts of climate change.

**RIGHTS OF THE CHILD**

**Establish a National Children’s Commissioner to monitor implementation of the CRC**  
*(Recommendations 28, 29)*

Response: Accepted in part. The Government is currently exploring a possible role for a national children’s rights commissioner.

**MIGRANTS, REFUGEES AND ASYLUM-SEEKERS**

**Honour obligations and consider implementing UNHCR and human rights body recommendations**  
*(Recommendations 38, 121, 122)*

Response: Accepted. The Australian Government is committed to providing protection to refugees consistent with its international obligations.

**Ensure the principle of non-refoulement is respected**  
*(Recommendations 124, 125)*

Response: Accepted. The Australian Government does not forcibly return persons where to do so would be in breach of non-refoulement obligations under the Refugees Convention or relevant international human rights treaties.

**Ensure the processing of asylum seekers’ claims in accordance with the UN Refugee Convention and that they are detained only when strictly necessary**  
*(Recommendation 123)*

Response: Accepted. Australian Government policy is that asylum seekers are only placed in immigration Commission and remove a range of industry-specific regulations. The Government considers that provisions of the *Fair Work Act 2009* in relation to collective bargaining and industrial action are consistent with Australia’s international obligations, and achieve the right balance between the interests of Australian employees, employers and their representatives.
detention if they fall within the following groups: unauthorised arrivals (for health, identity and security checks); unlawful non-citizens presenting unacceptable risks to the community; and unlawful non-citizens repeatedly refusing to comply with visa conditions.

Repeal mandatory detention under the Migration Act
(Recommendations 126, 132)
Response: Rejected. The Australian Government considers mandatory detention an essential component of strong border control, which manages risks to the community. Mandatory detention is based on unauthorised arrival and not on individuals seeking asylum. Immigration detention policy and the operation of detention facilities in Australia is subject to close scrutiny from both domestic and international bodies.

Limit detention to the shortest time reasonably necessary
(Recommendation 127)
Response: Accepted. Mandatory detention is based on unauthorised arrival and not on individuals seeking asylum. Indefinite or otherwise arbitrary detention is not acceptable and the length and conditions of detention are subject to regular review.

Ensure no children are held in detention on the basis of their migratory status and that special protection and assistance is provided to unaccompanied children
(Recommendation 129)
Response: Accepted in part. Since October 2010, the Australian Government has relocated significant numbers of unaccompanied minors and vulnerable family groups from immigration detention facilities into community-based accommodation, while their immigration status is resolved. In limited circumstances, children may still be accommodated in low-security facilities within the immigration detention network. The Government aims to relocate half of all children in immigration detention facilities to community-based accommodation by the end of June 2011.

Take efficient measures to improve the harsh conditions of custody centres, in particular for minorities, migrants and asylum seekers
(Recommendation 130)
Response: Accepted. Australian Government policy is that people in immigration detention are treated fairly and reasonably and that conditions of detention ensure their inherent dignity. Care is taken to ensure that people in immigration detention are not subjected to harsh conditions, are treated with respect and dignity and are provided with a safe and secure environment.

Consider alternatives to the detention of irregular migrants and asylum seekers, limit the length of detentions, ensure access to legal and health assistance and uphold its obligations under the Vienna Convention on Consular Relations
(Recommendation 131)
Response: Accepted in part. See Recommendations 126 and 132, 127 and 129. All persons in immigration detention have the right to request and receive consular access at any time without delay, and have access to appropriate health care commensurate with care available to the broader Australian community.

Ensure all irregular migrants have equal access to and protection under Australian law
(Recommendation 133)
Response: Rejected. There is some differentiation in the treatment of persons who arrive, or remain, in an irregular manner. Consistent with Australia’s international obligations, all refugee determinations are assessed against the Refugees Convention through a process that provides procedural fairness and access to independent merits and judicial review.

RIGHTS OF INDIGENOUS PEOPLES

Reform the Native Title Act 1993, amending strict requirements which can prevent the Aboriginal and Torres Strait Islander peoples from exercising the right to access and control their traditional lands and take part in cultural life
(Recommendation 102)
Response: Accepted in part. The Australian Government continually reviews the operation of the native title system through practical, considered and targeted reforms. Legislation provides for Indigenous Australians to access, and to perform cultural activities on, their traditional lands through statutory regimes and cultural heritage laws.

Institute a formal reconciliation process leading to an agreement with Aboriginal and Torres Strait Islander people
(Recommendation 103)
Response: Accepted in part. The Australian Government is committed to the process of reconciliation between Indigenous and other Australians, but does not intend to enter into a formal agreement. See Recommendation 110.

Continue the process of constitutional reform in order to better recognise the rights of indigenous peoples
(Recommendations 104, 105, 107)
Response: Accepted. The Australian Government is committed to pursuing recognition of Indigenous peoples in the Australian Constitution and has appointed an Expert Panel to develop options and lead a wide-ranging national public consultation and engagement program.

Take further steps to ensure the implementation of the Declaration on the Rights of Indigenous Peoples
(Recommendation 106)
Response: Accepted in part. The Australian Government supports promotion of and respect for the principles in the Declaration. The Australian Government has committed funding in support of the establishment and early operation of the National Congress of Australia’s First Peoples.
Include in its national norms recognition and adequate protection of the culture, values and spiritual and religious practices of indigenous peoples
(Recommendation 108)
Response: Accepted. Where appropriate in law and in policy, the Australian Government will continue to recognise and protect the culture and heritage of indigenous peoples.

Promote the inclusion and participation of indigenous peoples and Torres Strait Islanders in any process or decision-making that may affect their interests
(Recommendation 109)
Response: Accepted. The Australian Government recognises the importance of engaging in good faith consultation with indigenous peoples in relation to decisions that affect them. See Recommendation 110.

Strengthen efforts and take effective measures with the aim of ensuring enjoyment of all rights for indigenous people, including participation in decision-making bodies at all levels
(Recommendation 110)
Response: Accepted. The National Congress of Australia’s First Peoples will provide a central mechanism with which government, the corporate and community sectors can engage and partner on reform initiatives.

Ensure that its legislation allows for processes of consultations in all actions affecting indigenous peoples
(Recommendation 111)
Response: Accepted. The Australian Government recognises the importance of engaging in good faith consultation with indigenous peoples in relation to decisions that affect them. No legislative barriers to consultation have been identified.

Carry out, in consultation with the communities concerned, a comprehensive assessment of the effectiveness of actions and strategies aimed at improving socio-economic conditions of indigenous peoples, and if necessary correct these actions
(Recommendation 118)
Response: Accepted. The Council of Australian Governments Reform Council will provide a comprehensive report each year on progress against relevant targets.

RIGHTS OF PERSONS WITH DISABILITIES

Prohibit non-therapeutic sterilisation without consent
(Recommendation 39)
Response: Accepted in part. The Australian Government considers the ‘best interests’ test as articulated and applied in Australia is consistent with Australia’s international obligations. In response to concerns raised internationally and domestically, the Attorney-General intends to initiate further discussions with State and Territory counterparts.

Implement National Disability Strategy
(Recommendations 40, 41)
Response: Accepted.

RIGHTS OF WOMEN

Intensify efforts against gender discrimination
(Recommendations 47-54)
Response: Accepted.

Strengthen the Sex Discrimination Act
(Recommendation 52)
Response: Accepted. Legislation to strengthen the Sex Discrimination Act 1984 was passed in May 2011.

Adopt targets of 40 per cent representation of women on public and private sector boards
(Recommendation 55)
Response: Accepted in part. The Australian Government has committed to achieving 40% representation of women on public sector boards and will continue to work with the private sector to achieve gender balance in private sector leadership ranks and forums.

Effective measures against violence against women
(Recommendations 72-81)
Response: Accepted. The National Plan for Violence Against Women and their Children is a 12-year agreement between Australian, State and Territory governments, including an outcome that ‘Indigenous Communities are Strengthened’.

Security for women and children
(Recommendations 73, 74)
Response: Accepted. States and Territories have in place legislation to criminalise violent conduct and sexual assault together with mechanisms to prosecute and punish perpetrators. The Australian Government has introduced legislation to prioritise the safety of children in family law proceedings and communicate that family violence and child abuse are unacceptable.

Monitor pay equity and establish a comprehensive child care strategy
(Recommendation 99)
Response: Accepted in part. The Australian Government will continue to progress policies to redress gender pay inequity and implement early childhood education and care reforms.

OTHER

Continue to share human rights experience regionally and internationally
(Recommendation 141)
Response: Accepted.

Continue consultation with civil society in a follow-up to Australia’s UPR
(Recommendation 143)
Response: Accepted.
AUSTRALIA FAILS TO ADDRESS SERIOUS CONCERNS IN MAJOR UN REVIEW

The Australian Government’s response overnight at the UN in Geneva to a major review of its human rights record has failed to address the serious concerns raised by the international community, reports the Human Rights Law Centre.

The Human Rights Law Centre’s Director of Advocacy and Litigation, Anna Brown, said Australia’s punitive refugee policies, treatment of Aboriginal people and erosion of basic democratic freedoms were damaging Australia’s reputation ahead of its bid for a spot on the Human Rights Council – the body which conducted the 4-yearly review.

“The positives have once again been overshadowed by the Australian Government’s failure to take seriously the chorus of international criticism about the way we treat people seeking asylum,” said Ms Brown.

Australia accepted 150 of a total of 290 recommendations made by its peers in the international community at its four-yearly review by the UN’s Human Rights Council, the body that Australia is seeking election to in 2018.

However, the majority of these were on the basis of “existing law, policy and action” with only two notable new announcements – a consultation on business and human rights and removing a longstanding reservation to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) on women in the military. In its remarks to the Council overnight, Australia also highlighted the recent appointment of Philip Ruddock as Australia’s inaugural Special Envoy on Human Rights and other positive initiatives to address gender equality and family violence.

The HRLC and the National Association of Community Legal Centres (NACLC) are coordinating a coalition of nearly 200 organisations which prepared materials for UN member states and briefed representatives from various countries in Geneva ahead of the review. NACLC’s Director of Policy, Amanda Alford, welcomed the positive commitments made by Australia throughout the UPR process.

“We welcome the voluntary commitments made by Australia, particularly in relation to a public and accessible monitoring mechanism for recommendations made as part of the UPR. We hope it will help improve the extremely low implementation rate from Australia’s last UPR, which was 10%, but we need more information about what these commitments mean in reality and what steps the Government will take to implement them.”

Asylum seeker and refugee issues

A large focus of the recommendations made back in November 2015 was Australia’s treatment of asylum seekers and refugees. The Refugee Council of Australia’s CEO Paul Power said that Australia has brushed off criticism from over 60 countries of its brutal policies and practice in its treatment of people seeking asylum.

“Australia’s treatment of people seeking safety and protection are a source of strong international condemnation, yet Australia has ignored the comments and recommendations from its peers, including many of our closest allies. Australia must do much better in order to restore its reputation as a good international citizen and a champion of human rights,” said Mr Power.

Aboriginal and Torres Strait Islander peoples

Australia’s record on indigenous peoples was also a significant focus of the review, including widespread concern on over-imprisonment, gaps in health outcomes and community services, and urging of progress on constitutional recognition. The National Congress of Australia’s First Peoples CEO Mr Geoff Scott, said that Congress was disappointed with the lack of genuine effort exhibited by the Australian Government to rectify the deprivation, poverty and disenfranchisement of Aboriginal and Torres Strait Islander Peoples.
“The Australian Government has neglected the principles of the UPR and shown a general disregard and contempt for improving human rights through this peer review process,” said Mr Scott.

“In contrast to the Australian Government’s stated commitments during this review, the Australian Government actively refuses to engage with the representatives of Aboriginal and Torres Strait Islander peoples and have defunded us,” added Mr Scott.

“For the UPR to be meaningful the process must be able to identify our legitimate concerns and have the ability to seek remedy for these continuing injustices,” added Mr Scott.

Over-imprisonment and conditions of detention
Cheryl Axleby, Deputy Chairperson of National Aboriginal and Torres Strait Islander Legal Services (NATSI LS), also expressed concern about the continuing failure to deal with the issue of over-imprisonment of Aboriginal and Torres Strait Islander peoples.

“We are greatly concerned that the situation for Aboriginal and Torres Strait Islander peoples continues to deteriorate – nowhere is this more obvious than in the catastrophic overrepresentation of our peoples in prisons,” said Ms Axleby.

“Leadership on this issue would include ratification of the Optional Protocol on the Convention against Torture, which would help safeguard the rights of people in prison,” added Ms Axleby.

Lesbian, gay, bisexual, transgender and intersex people
NGOs had previously welcomed the Australian Government’s commitment (made in the course of the UPR appearance in November) to removing exemptions for Australian State and Territory laws from the operation of Australia’s national anti-discrimination laws. The Victorian Gay & Lesbian Rights Lobby’s Co-Convener Sean Mulcahy said that States and Territories should take heed of this strong commitment and work to end laws that discriminate against LGBTI people immediately.

“We are thrilled that Australia has recognised families in all their diversity, including families headed by same-sex couples and LGBTI people. We hope this heralds a commitment by the Government to protecting and advancing the rights of rainbow families in national law,” said Mr Mulcahy.

“We are disappointed that the Government still
insists on an unnecessary and harmful marriage plebiscite, and continue to call on the Government to allow a free vote on marriage equality within the Australian Parliament,” added Mr Mulcahy.

**People with disability**

The UPR Disability Coordination Group commended Australia’s voluntary commitment to improve the criminal justice system for people with disability who are detained indefinitely without conviction. The Group also welcomes consideration of progressing supported decision-making measures and the recommendations from the Senate Inquiry into violence, abuse and neglect of people with disability.

“This consideration must lead to action, and we urge the Government to adopt National Decision-Making Principles and Guidelines and to implement the recommendations from the Senate Inquiry, in particular the recommendation to conduct a Royal Commission into violence, abuse and neglect against people with disability,” said Ms Therese Sands, spokesperson for the UPR Disability Coordination Group.

However, Ms Sands said the disability sector remained deeply concerned that Australia would not consider further action on the prohibition of forced sterilisation, despite numerous recommendations over the past decade to do so from UN bodies and the international community.

**Women**

Women’s groups welcomed the removal of Australia’s reservation to the Convention on the Elimination of All Forms of Discrimination Against Women relating to the service of women in the military and action on gender equality and violence.

“We applaud the Australian government’s leadership in identifying gender inequality as a root cause of domestic violence and sexual assault, and we welcome the recent Women’s Safety Package,” said Merrindahl Andrews, Program Manager of the Australian Women Against Violence Alliance.

“However, there is an urgent need for additional and sustainable resourcing for the full range of programs and services that can support women and children, together with concerted efforts to empower women economically and give women accessible legal options,” added Ms Andrews.

**Business and human rights**

The Human Rights Law Centre’s Director of Advocacy and Campaigns, Rachel Ball, welcomed the Government’s commitment to undertake a consultation on the implementation of the UN Guiding Principles on Business and Human Rights.

“The consultation is an important first step towards a National Action Plan on Business and Human Rights which will enable Australia to better protect against adverse corporate human rights impacts and to provide remedies for those whose rights have been violated due to business-related activities,” said Ms Ball.

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**Anti-discrimination reform and access to justice**

While Australia accepted recommendations to introduce measures to combat discrimination, community legal centres remain critical of the adequacy of Australia’s discrimination laws and funding for legal services.

“The patchwork of discrimination laws isn’t enough to ensure that equality and a fair go for all exists in Australia. With the cuts in funding to community legal centres, over a third of all funding from July 2017 is being cut, the most disadvantaged people’s ability to make their legal rights real will be severely affected,” said Kingsford Legal Centre’s Director Dr Anna Cody.

What Australia needs to do to fix its human rights record: Universal Periodic Review

The Human Rights Council of Australia summarises the nation’s human rights commitments and recommendations

You wouldn’t know it but earlier this year Australia’s human rights record was pored over by its peers (other countries) in the UN Human Rights Council.

Every few years countries have to report on their human rights performance at part of a process called “Universal Periodic Review”. Here are some of the things Australia committed to in the cause of human rights at this year’s Universal Periodic Review:

• To holding a referendum to recognise Aboriginal and Torres Strait Islander Australians in the Australian Constitution in the next term of Parliament.
• To resettling 12,000 refugees fleeing conflict in the Syrian Arab Republic and Iraq and providing humanitarian support to more than 240,000 Syrian and Iraqi people who have been forced to flee their homes or seek refuge in neighbouring countries.
• A $100 million package of measures announced on 24 September 2015 to address family violence including $21 million for specific measures to help indigenous women and communities.
• To improving the way the criminal justice system treats people with cognitive disability who are unfit to plead or found not guilty by reason of mental impairment.
• To taking further steps to strengthen advocacy for the worldwide abolition of the death penalty.
• To promoting and protecting the rights of older people internationally by modelling and advocating better use of existing United Nations human rights reporting mechanisms.
• To take steps to end unlawful discrimination on the grounds of sexual orientation, gender identity and intersex status (meaning removing exemptions for Australian State and Territory laws from the implementation of national anti-discrimination laws from 31 July 2016).
• To supporting the protection and promotion of human rights through its foreign aid programme by promoting prosperity, reducing poverty and enhancing stability.
• To work with the Australian Human Rights Commission, to develop a public and accessible process for monitoring progress against Universal Periodic Review recommendations. This will include a periodic statement on progress against the recommendations on behalf of the Government. Australia will also designate a standing national mechanism to strengthen its overall engagement with United Nations human rights reporting.

There were 175 recommendations made to Australia – given the above is a short list – most of them didn’t make it into Australia’s commitments.

• A long list of states recommended Australia ratify or accelerate steps towards ratifying the Optional Protocol to the Convention Against Torture. This protocol provides international inspection of places of detention to foster the prevention of torture (Ghana, Peru, Ukraine, Serbia, Estonia, Georgia, Italy, Lithuania, Luxembourg, Montenegro, Paraguay, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Albania, Azerbaijan, Benin, France, Republic of Moldova, Denmark, Czech Republic, New Zealand, Chile, Hungary, Sweden, Mozambique, Philippines).
• States also recommended that Australia ratify the Optional Protocol to the Convention on Economic and Social Cultural Rights. This optional protocol establishes a mechanism for individual complaints if these rights are violated (Italy, Portugal, Uruguay, Albania).
• And the Optional Protocol to the Convention on the Rights of the Child.
• The Convention on the Rights of Migrant Workers and their Families (Ratification that the HRCA has repeatedly called for).
• Fully incorporate its international human rights obligations into domestic law by introducing a comprehensive judicially enforceable federal Human Rights Act (Indonesia, Iceland, Turkey, Canada).
• Many states called on Australia to improve its human rights record in respect of indigenous rights.
• Many addressed Australia’s treatment of asylum seekers. Among these were calls for the release of all children in detention and ensuring refugee advocates have access to those in detention. Some called on Australia to cease its practice of offshore detention and to comply with Australia’s obligations towards asylum seekers.

Australia’s full report card at the Universal Periodic Review can be found at: www.upr-info.org

Australia’s responses to recommendations from the Universal Periodic Review are found on pages 20-24 of this book.

The Universal Periodic Review and human rights progress: a case study from Australia

The UPR has received mixed reviews about its effectiveness as a mechanism to achieve positive human rights change. However, the case study of Australia demonstrates the capacity of the UPR to open space for dialogue and facilitate positive, albeit modest, human rights progress and monitoring, writes Anna Brown.

On a four-year cycle the UN Human Rights Council examines every country’s human rights record in a process known as the Universal Periodic Review (UPR). Countries question States under review about their human rights record and make recommendations on how they can improve. As to its effectiveness as a mechanism for achieving positive human rights change, the UPR has received mixed reviews. However, the case study of Australia demonstrates the capacity of the UPR to facilitate positive, albeit modest, human rights progress.

THE FIRST-CYCLE REVIEW: PROMISE STYMIED BY LACK OF POLITICAL WILL

In Australia’s first cycle UPR in 2011 a record number of recommendations (90 per cent) were accepted in whole or in part and NGOs welcomed Australia’s commitment to translate them into concrete action. A number of positive steps resulted from the review, including the establishment of a new Children’s Commissioner, the creation of the National Disability Insurance Scheme, and the development of new federal discrimination protections for lesbian, gay, bisexual, transgender and intersex (LGBTI) people.

However, a change of government revealed the fragility of Australia’s commitment to implementation. Under a newly elected Coalition Government progress on many recommendations stalled and new areas of regression emerged, such as an increasingly cruel and punitive treatment of asylum seekers. There were no longer any public reports on progress on implementation by the Government and the status of the former Government’s National Human Rights Action Plan, the vehicle intended to drive and monitor implementation of the UPR recommendations, was unclear. By the time Australia’s second cycle review took place in November 2015, the Australian Human Rights Commission assessed that only 10 per cent of the 2011 recommendations had been fully implemented.

This lack of progress coupled with regression in key areas and remarks from the former Prime Minister Tony Abbott and senior government ministers in early 2015 that evidenced increasing hostility towards the UN meant that civil society was not overly optimistic about the potential of Australia’s second-cycle UPR to achieve positive human rights change.

PREPARING FOR THE SECOND-CYCLE REVIEW: OPENING SPACE FOR DIALOGUE

Australia’s second-cycle review took place in late 2015 and, while still early days, at this point it is clear that this review provided an opportunity for NGOs to open up dialogue with the Government on human rights issues and resulted in modest positive outcomes.

After coming into power, the Coalition Government reduced funding to community organisations and restricted the ability of community legal centres to use federal funding to advocate on policy issues. Relationships between the sector and the Government were strained. The UPR therefore provided civil society with a common language or reference point to open up discussion with the Government and the broader community on progressive human rights issues.

The Australian NGO Coalition, representing nearly 200 NGOs across Australia, was able to use the UPR as the basis to secure a meeting with the Attorney-General to discuss human rights issues in Australia ahead of the review. Following this meeting, the Attorney-General’s Department and the Government more broadly continued to engage positively and constructively with civil society throughout the UPR, in both Canberra and in Geneva. Officials responded to NGO perspectives and concerns respectfully and in good faith; by way of example, the Government adopted civil society suggestions regarding potential voluntary commitments to be made in the course of the formal review.
THE SECOND-CYCLE REVIEW OUTCOMES: MODEST COMMITMENTS, BUT IMPORTANT MECHANISMS

During its appearance in November 2015, Australia was questioned by 107 countries and 291 recommendations were made across a range of issues. An overwhelming focus of the review was Australia’s harsh treatment of asylum seekers, with over 60 recommendations criticising Australia’s policies in this area. Unfortunately this chorus of criticism was met with shallow justification by Australia. In its opening remarks the Australian Government acknowledged the challenges the country faced in a number of areas but stated that its ‘strong’ policies on asylum seekers and migration had built public confidence and saved lives as sea.

However, despite the continuing blight of Australia’s myopic approach to asylum seekers and refugees, in other areas the UPR has been able to act as a driver for positive reform.

The UPR provided the impetus for the Government to make a number of modest positive commitments, including:

• Work towards a National Action Plan on business and human rights
• The withdrawal of its reservation to CEDAW, and
• A commitment to close a loophole in federal discrimination protections for LGBTI people that allowed States and Territories to continue to discriminate on the basis of sexual orientation, gender identity and intersex status.

The UPR provided a much needed impetus to pick up the national conversation on ratification of the Optional Protocol of the Convention against Torture. After inter-governmental discussions some years ago had led to some progress with States and Territories but failed to achieve consensus on ratification, political momentum on this issue had reached a standstill. The UPR provided a political imperative to re-start these conversations and, at the time of writing, the federal government supports ratification with only a small number of States left to come on board. Without the external driver of the UPR, civil society calls for reform on this issue may have continued to fall on deaf ears for years to come.

The most recent UPR has also led to some significant institutional reforms to improve Australia’s engagement with UN human rights mechanisms. During its UPR appearance, Australia committed to creating a standing mechanism to monitor the implementation of UN recommendations, a much needed measure to facilitate greater accountability and advance positive national reform. In addition, Australia has taken steps to ensure the introduction of a monitoring mechanism specifically for the second-cycle UPR recommendations. Bipartisan support for the UPR process, demonstrated by the inclusion of opposition parliamentarians in Australia’s delegation last November, is a promising sign of continued political commitment to implement recommendations, regardless of the outcome of this year’s federal election.

Overall, while the gains may have been modest, and while setbacks remain, the second-cycle UPR provided an opportunity to open up dialogue between the Government and civil society on progressive human rights reform. In this way, the UPR has been and will continue to be a force for positive change and greater accountability in Australia.

Anna Brown is Director of Advocacy and Strategic Litigation at the Human Rights Law Centre.

This article was first published by the International Service for Human Rights.

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Australian government must re-build trust of civil society – UN human rights expert

A REPORT FROM THE UNITED NATIONS INFORMATION CENTRE IN CANBERRA

United Nations independent expert Michel Forst today called on the Government of Australia to urgently dispel civil society’s growing concerns about the combined ‘chilling effect’ of its recent laws, policies and actions constraining the rights of human rights defenders.

“I was astonished to observe mounting evidence of a range of cumulative measures that have concurrently levied enormous pressure on Australian civil society,” said the UN Special Rapporteur on the situation of human rights defenders at the end of his first fact finding visit to the country.

Recognising Australia’s traditional safeguards of constitutional democracy, rule of law and free media, Mr Forst noted that his initial expectation from his official visit was to “encounter only laudable implementation of the State’s obligations under international human rights laws, aimed at ensuring a safe and enabling environment for human rights defenders.”

Instead, the expert found a number of detrimental measures which include a growing body of statutory laws, both at the federal and State levels, constraining the rights of defenders. “They have ranged from intensifying secrecy laws to proliferating anti-protest laws, from the stifling Border Force Act to the ‘Standing’ bill shrinking environmental access to courts,” Mr Forst specified.

“Those laws have not only accentuated the disparity between Government’s declared commitments at the international forums and their implementation within the country,” he noted. “They have also aggravated the situation following the drastic defunding of peak bodies by the Government, following their advocacy or litigation on such topical issues as immigration, security, environment and land rights protection.”

In his preliminary observations, the expert noted that Community Legal Centres are facing nearly one third of their budget cut nationally, and that Environmental Defenders Offices and the National Congress of Australia’s First Peoples have completely been defunded by the Federal Government. And those that continue receiving funds have to abide by the so-called ‘gagging’ clauses in their funding agreements, instructing them against ‘lobbying’ the Governments or to ‘engage in public campaigns’.

“In addition, I was astounded to observe what has become frequent public vilification of rights defenders by senior government officials, in a seeming attempt to discredit, intimidate and discourage them from their legitimate work. The media and business actors have contributed to stigmatisation,” the Special Rapporteur warned. “Environmentalists, whistleblowers, trade unionists and individuals like doctors, lawyers protecting the rights of refugees have borne the brunt of the verbal attacks.”

“Even the president of the Australian Human Rights Commission, Professor Gillian Triggs, faced Government’s intimidation and public questioning her integrity, impartiality and judgement, after the Commission’s inquiry into the child harm in immigration detention,” the expert said.

Mr Forst noted that “the Australian Government has historically made commendable efforts in pursuit of its human rights obligations, so it is unfortunate that the combination of the detrimental laws and practices by the Government has recently instilled a ‘chilling effect’ on the Australian civil society.”

“This situation can be reversed and improved. The Government should start re-building confidence of human rights defenders,” he said. “For that purpose, I urge the Government to consider adopting a national action plan on human rights, through meaningful consultation with civil society.”

The UN Special Rapporteur expressed his readiness for further constructive dialogue to identify ways to help ensure enabling environment for human rights defenders in Australia.

During his two-week visit, at the invitation of the Government, the expert met with vast range of federal and State officials, members of the parliament and judiciary, statutory bodies, as well as human rights defenders and representatives of civil society, media and business.
Woefully inadequate in protecting basic universal standards of human rights

Australian Lawyers for Human Rights has given the federal government a score of “F” for its dire performance in protecting human rights in the past year.

The federal government was identified as the poorest performer of federal, State and Territory governments for the year. “Woefully inadequate” is the politest way ALHR can describe the federal government’s performance in protecting human rights in 2016,” ALHR President Benedict Coyne said.

The federal government’s ongoing failure to properly implement its outstanding human rights obligations to the international community and to its own citizens was again put on show in Geneva in March 2016 during the Australian Government’s response to the Report of the Working Group on the UPR at the 31st Regular Session Human Rights Council. Australia’s second Universal Periodic Review (UPR) was held in November 2015. 110 countries spoke at the review and provided 291 recommendations, many concerned with indigenous rights, asylum seeker rights, women and children’s rights and the rights of the homeless and mentally ill. The Australian Government accepted 150 of those recommendations, 50 were noted to consider further and 90 were noted.

However, as at April 2015, 90% of the accepted recommendations from Australia’s first UPR in January 2011 still remained outstanding or only partially implemented. The most efficient way to resolve Australia’s recalcitrance at international law would be for the federal government to introduce a federal Human Rights Act.

“The protection of human rights is at a low point in Australia. The federal government has all too often failed to respond to policy challenges in a manner consistent with respect for human rights. Indeed, this year we have seen serious human rights violations in respect of the treatment of people seeking asylum, unprecedented national security measures, an ongoing crisis in protecting the rights of Indigenous Australians, a failure to realise marriage equality for LGBTI Australians and an increasing normalisation of hate speech.

“There are further concerns about increasing incursions on Australian citizens’ traditional freedoms as the federal government continues to ramp up the demolishing of democratic principles through its counter-terrorism and national security legislating including giving the executive the arbitrary power to remove citizenships and its proposal allowing the monitoring and strict conditions of movement of children as young as 14,” Mr Coyne continued.

“The Turnbull Government has been utterly negligent and lackadaisical in attempting to remedy the cruel and inhumane situations on Manus Island and Nauru, notwithstanding that in April 2016 the Supreme Court of PNG found the Manus Island camp breached fundamental human rights. The Turnbull Government is yet to cement a solution for the refugees and asylum seekers on Manus Island and Nauru.
The evidence is clear that offshore processing arrangements are inadequate and the conditions in the processing centres breach Australia's international obligations. “We are also no closer to a federal Human Rights Act,” stressed Mr Coyne. It is clear we now live in a period where we cannot rely on our government to respect the rule of law, natural justice, procedural fairness or long established universal standards human rights. Ironically, it was Australia who helped lead the way in establishing the UN and drafting the *Universal Declaration of Human Rights*, but sadly we have strayed very far from such a proud place. An Australian Human Rights Act would protect those who are most vulnerable when governments choose to turn their backs on long established legal principles that, until recent years, have been a curb on the excesses of government.

The Northern Territory and Tasmania were the poorest-performing State and Territory governments. The Northern Territory was marked down heavily for its widespread crisis in indigenous youth detention culminating in the Don Dale scandal as well as the paperless arrest laws which are blowing millions in taxpayers' dollars enhancing an intergenerational problems rather than attempting to solve it. ALHR called on the new Government to act swiftly to ensure children’s rights are protected in light of the harrowing evidence of the abuse of children in the Don Dale Youth Detention Centre.

Tasmania was marked down heavily for introducing the *Anti-Discrimination Amendment Bill 2016* that it’s feared will now allow hate speech against sections of the community, including LGBTI Australians.

New South Wales, Western Australia and South Australia also failed their human rights evaluations for 2016 with each government awarded a score of D. WA in particular was called out for its globally unprecedented rate of imprisoning indigenous adults and children. Queensland scored a C+ for its proactive legislative measures to remove 17-year-olds from adult prisons, abolish the archaic “gay panic” defence, and the Palaszczuk Government’s commitment to introducing a Human Rights Act in the new year. However, Queensland was marked down for the youth

**OVERALL GRADES FOR HUMAN RIGHTS PERFORMANCE (2016)**

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Issues in Society | Volume 429

Human Rights in Australia
detention crisis revealed on the back of the NT Don Dale scandal.

Despite retrograde moves later this year to transfer children to adult prisons, the Victorian Government had made some significant steps in improving human rights this year and was awarded a grade of C+. The ACT Government was awarded a grade of B for 2016.

“ALHR calls on all Australian governments to start taking seriously the importance of basic universally accepted standards human rights. We are a world leader in many ways and we were once a world leader in advocating for universal human rights. We must strive to return to such an important place in international relations.

“Perhaps then, Foreign Minister Julie Bishop could authentically advocate for candidacy on the UN Human Rights Council. However, as it stands currently, Australia's performance is simply not good enough! We can do much better and we have all the answers, know-how and resources to do so,” said Mr Coyne.

According to the latest global report from rights watchdog Human Rights Watch, the Australian government has a double standard when criticising other countries. The 687-page annual report reviewed more than 90 countries, noting Australia’s reputation has been damaged by the following human rights concerns:

Asylum seekers and refugees
Australia’s harsh asylum seeker policy and controversial offshore detention of asylum seekers and refugees on Manus Island and Nauru has drawn the most criticism internationally, particularly by the United Nations.

Indigenous rights
Indigenous Australians are greatly overrepresented in the criminal justice system: indigenous adults are 13 times more likely to be imprisoned than their non-indigenous counterparts; indigenous women are the nation’s fastest growing prisoner demographic; the indigenous juvenile detention rate is 24 times the rate of non-indigenous youth.

Children’s rights
There is a clear failure to protect children in detention. The exposure of children to teargas, hooding, shackling, and stripping at the Don Dale youth detention facility prompted a Royal Commission into child protection and youth detention in the Northern Territory, and a further review is being conducted in Queensland youth detention facilities.

Counter-terrorism laws
Since 2014, the Australian government has introduced a raft of counter-terrorism laws in response to domestic threats. These laws are considered overly broad in their application, and include the introduction of a bill with the option to renew post-sentence detention for periods of up to three years, raising concerns about arbitrary and indefinite detention using low standards of proof and secret evidence. A second controversial bill also extended control orders to 14-year-olds.

Disability rights
A senate committee inquiry found in November 2015 that violence, abuse, and neglect of people with disabilities in residential and institutional settings is widespread, systematic and takes many forms. Issues include women and girls being exposed to sexual violence, with some facing coerced sterilisation and forced psychiatric interventions. People with disabilities are also over-represented in prisons and in the criminal justice system.

Foreign policy
Australia has been criticised for selectively raising human rights concerns in other countries, and avoiding publicly raising human rights concerns about countries with which it has significant trade relations, or works with closely in connection with the interdiction of asylum seekers and refugees.

Australia’s record criticised in latest global human rights report

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Australia has adopted a Janus-faced approach to the protection of human rights. One face looks to the international sphere and champions human rights principles. The other face looks internally, resisting the application of these principles domestically, write Hilary Charlesworth and Gillian Triggs.

The international human rights system provides a range of mechanisms to monitor the implementation by states of their treaty obligations. How have these mechanisms assessed Australia’s human rights record?

Australia’s periodic reports to human rights treaty bodies have prompted a consistent catalogue of concerns in the treaty bodies’ concluding observations. These include the disadvantaged situation of Australia’s indigenous peoples, the treatment of asylum seekers, the reach of counter-terrorism legislation, excessive use of force by police, the rights of prisoners, and high rates of homelessness. The reporting mechanism has not, however, proved a strong form of regulation of Australia’s human rights performance. On one occasion, indeed, it led to a rupture in Australia’s relationship with the international human rights system.

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Racial Discrimination

In 2000, the concluding observations to the UN’s Committee on the Elimination of Racial Discrimination report on Australia lauded many legislative and policy measures designed to reduce the incidence of racial discrimination in Australia; but they also expressed concern about a range of forms of discrimination against Aboriginal and Torres Strait Islander peoples. The Commonwealth government rejected the committee’s views, calling them “an unbalanced and wide-ranging attack that intrudes unreasonably into Australia’s domestic affairs”.

As a result of this incident, the government decided to reduce its engagement with the human rights treaty bodies. While there has since been some rapprochement between Australia and the UN treaty bodies, their concluding observations have had little impact on Australian policy and law.

Unlike the system of periodic reports, which applies to all treaty parties, states have an option to accept the possibility of the treaty bodies considering complaints from individuals alleging that the state has breached the terms of the treaty, if all local remedies have been exhausted.

Legislative Change

This has led to a number of international decisions on Australia’s human rights record. The first, and perhaps best known, was that of the UN Human Rights Committee in 1992 declaring Tasmanian laws that criminalised male homosexuality to be inconsistent with human rights. The Commonwealth government then legislated to override the relevant provision of the Criminal Code Act 1924 (Tas).

This first case is, so far, the high-water mark of Australia’s engagement with the views of the UN treaty bodies. As at March 2016, the UN Human Rights Committee had considered 75 claims concerning Australia, 31 of which were upheld by the committee. Australia’s violations of human rights have been found to include the mistreatment of children in immigration detention, the inhumane treatment of prisoners, the denial of the right to family life, and undue trial delay.

A standard Australian response to the views of the human rights treaty bodies is to note first that the committees are not courts and that their views are non-binding, and to then simply reject the relevant committee’s views on the application of the law. Sometimes Australia will explicitly invoke its sovereignty as a reason to reject the committee findings. This combative approach is at odds with Australia’s formal recognition of the competence of the treaty bodies.

Australia’s stance towards other forms of international human rights scrutiny is mixed. In 2009, it signed the Optional Protocol to the Convention against Torture, which would allow inspection of places of detention by the UN Subcommittee on the Prevention of Torture, but has not yet ratified it.

In 2008, Australia issued a standing invitation to the thematic Special Procedures of the UN Human Rights Council. Several special rapporteurs have visited Australia and made extensive reports on gaps in human rights protection. In the case of a planned visit by the special rapporteur for migration in 2015, the Australian government refused to facilitate access to the asylum seeker detention centres on Nauru and Manus Island and would not guarantee that individuals who would provide information about the centres to the special rapporteur would be protected from prosecution. In
light of this stance, the Special Rapporteur, François Crépeau, cancelled his visit.

The reporting mechanism has not, however, proved a strong form of regulation of Australia’s human rights performance.

**FUTURE PROSPECTS**

It may be that human rights will be more fully implemented at the State and Territory level rather than the federal level over the next decade. Indeed, the Queensland government established a parliamentary inquiry into a bill of rights in 2015.

A challenge for the protection of human rights in Australia is the expansion of executive discretion and the diminution of judicial independence. Over recent years, successive Australian parliaments have granted the executive branch wide discretionary powers that encroach upon fundamental rights and freedoms. Among these are administrative powers to detain indefinitely various classes of persons, including refugees and asylum seekers, those who have received adverse security assessments, and those with cognitive disabilities or who are found unfit to plead. (Indigenous Australians are over-represented in the two latter groups.)

Counter-terrorism laws have been extended to permit administrative detention without trial or supervision by an independent judicial body. Control orders, for example, restrict liberty in the absence of a criminal conviction or charge. New secrecy laws impose prison sentences for the disclosure of certain information relating to intelligence operations.

Such laws have a direct impact on freedom of expression, especially for human rights defenders and journalists. Viewed together, these examples suggest an overreach of power within the executive branch of government, a declining willingness of parliaments to defend core freedoms, and the exclusion of judges from interpreting laws according to common law principles or the presumption that parliament intends to comply with international law.

A more positive indication of Australia’s future commitment to human rights has been the decision to seek election to the UN Human Rights Council (UNHRC) for the period 2018-20. Australia has announced a “principled and pragmatic approach” to human rights based on five pillars: gender equality, good governance, freedom of expression, the rights of indigenous peoples, and a strong national human rights institution.

While Australia’s campaign to join the UNHRC has an international focus, particularly on improving human rights in the Indo-Pacific region, the bid will inevitably attract scrutiny of Australia’s own human rights record. Were Australia to be elected to the council, it may provide an impetus to improve Australia’s engagement with the international human rights regime and to translate its treaty obligations into enforceable national laws.

**Professor Hilary Charlesworth** is a Melbourne Laureate Professor at Melbourne Law School and a Distinguished Professor at the Australian National University. **Emeritus Professor Gillian Triggs** is past president of the Australian Human Rights Commission.

This is an abridged version of Charlesworth and Triggs’, *Australia and the International Protection of Human Rights*, in *International Law in Australia* 3rd Edition (Thomson Reuters, 2016). *International Law in Australia*, 3rd Edition, edited by Don Rothwell and Emily Crawford, is a publication of the Australian Institute of International Affairs.
Australia to face human rights scrutiny in week of UN Human Rights Council vote

During the same week that Australia is expected to be granted a seat on the United Nations Human Rights Council, an expert UN Committee will grill the Australian Government over its own human rights record. A report from the Human Rights Law Centre

A coalition of Australian NGOs is in Geneva to brief the UN Human Rights Committee – the panel of independent human rights experts tasked with assessing Australia’s adherence to the International Covenant on Civil and Political Rights (ICCPR). The delegation will present a report endorsed by 56 Australian NGOs.

During Australia’s last review, in 2009, Committee members raised concerns about the Australian Government’s policies on Aboriginal and Torres Strait Islander people’s rights, its cruel treatment of people seeking asylum, its use of national security laws to erode basic civil liberties, and police information sharing practices on cases that involved the death penalty overseas.

The NGO report sets out how Australia has not made sufficient progress towards implementing many of its obligations and has instead gone backwards in a number of areas.

Australia was once considered a world leader when it came to promoting some of the key rights that underpin successful democracy – access to voting, the right to peacefully protest and for workers to stand together in union. Australian governments are now eroding these foundations of our democracy. Civil society groups are being silenced, peaceful protest is being criminalised and workers are being stripped of the right to take industrial action. These backwards steps are being noticed at the UN.

BACKGROUND

The ICCPR is a core UN human rights treaty that sets out how nations should uphold the civil and political rights outlined in the Universal Declaration of Human Rights. When countries sign up to the treaty, they commit to being periodically reviewed by the UN Human Rights Committee.

Members of the NGO coalition will brief the Committee in Geneva and the Australian Government’s delegation will appear in a formal session before the Committee on Wednesday and Thursday.

QUOTES FROM COALITION PARTNERS

Emily Howie, Director of Legal Advocacy,
Human Rights Law Centre:
“The worrying decline in Australian democracy will be put under the spotlight by the UN this week. It’s simply not good enough that we have anti-protest laws that are stopping people from standing together and speaking up on issues they care about or that Australian governments are seeking to silence civil society groups who speak out. We will also highlight how press freedom is threatened by metadata retention laws that jeopardise journalists’ ability to keep sources confidential.

After 4 years of fear and violence and deaths, the Australian Government is expected to face strong condemnation and calls from the Committee to immediately evacuate the over 2,000 men, women and children still held on Manus Island and Nauru to safety in Australia. We also expect that the Committee will make strong recommendations about other worrying practices across the board. For example, we expect the Committee will admonish Australia for harming rather than helping children locked away in youth jails. It’s likely the Committee will also make a strong recommendation that Australia should update its laws so that children under 12 years are not caught up in the quicksand of the criminal justice system.”

Dr Jackie Huggins, Co-chair of the National Congress of Australia’s First Peoples:
“The Australian Government’s relationship with Aboriginal and Torres Strait Islander peoples has been sorely strained in recent years. Severe budget cuts and administrative restructuring have led to a reduction of services and almost all government Closing the Gap targets in health, education and employment are not being met.

The Australian Government supports the UN Declaration on the Rights of Indigenous Peoples in international forums, but it needs to show a corresponding commitment in the domestic context. As the representative body of Aboriginal and Torres Strait Islander Australians, we have commenced work with the Australian Government to start resetting relations, so that all Australians may take pride in our heritage.”

Rod Little, Co-chair of the National Congress of Australia’s First Peoples:
“There is a crisis in indigenous affairs in this country, the details of which are outlined in the recent report on
Paul Power, Chief Executive Officer of the Refugee Council of Australia:
“Australia’s human rights record is on shaky ground when it comes to their ongoing treatment of refugees and people seeking asylum. Their militarised and discriminatory approach to people arriving by boat sees recognised refugees locked up indefinitely in conditions amounting to torture. This has led to multiple deaths and the largest human rights class action settlement in history.

Successive Australian governments have taken a punitive approach to those onshore, with indefinite mandatory detention, temporary protection, and a lack of access to citizenship and family reunion amounting to a system designed to break people who have come to seek our safety. All of this has drawn condemnation from a myriad of international and national human rights bodies, who have rightly called for an end to this cruelty.”

Amy Frew, Lawyer, Human Rights Law Centre:
“The Australian Government will face tough questioning about its ongoing cruelty to the 2,000 men, women and children it has held for more than four years in danger and limbo on remote islands in the Pacific.

We expect strong condemnation from the Committee for Australia’s cruel deterrence regime which has seen thousands of lives destroyed – families ripped apart forever, sexual assaults, violence and deaths. These are serious violations that have gone on for far too long. We’re expecting the UN to call on Australia to immediately evacuate these 2,000 men, women and children from Manus and Nauru to safety in Australia, and allow those already in Australia to remain rebuilding their lives in safety.”

Helen Dalley-Fisher, Program Manager, Equality Rights Alliance:
“This is a critical time for women’s equality and human rights both in Australia and worldwide. We are looking to the Australian Government to make good on their excellent international commitments by taking concrete steps to address human rights violations against Aboriginal and Torres Strait Islander women, women with disability, women who are seeking asylum and a range of other vulnerable or marginalised women within Australia.”

Ngila Bevan, representing the Disabled People’s Organisations Australia:
“Australia is failing to protect the human rights of people with disability. People with disability continue to experience multiple forms of violence including forced sterilisation, involuntary treatment, indefinite detention, seclusion, and restraint. It happens in schools, group homes, prisons, hospitals and in our communities. Meagre responses are failing to address the underlying issue that people with disability in Australia do not have full equality before the law. All people with disability have a right to make free, informed, and independent decisions about their lives and bodies. We will be strongly urging the UN Committee to join with other UN bodies in condemning Australia’s inaction and making strong recommendations for reform.”

Anna Cody, Director at the Kingsford Legal Centre:
“Australia’s human rights record highlights the need for greater legal protection for minorities. Disturbing reports of discrimination and harassment against groups including Aboriginal and Torres Strait Islander peoples, refugees, women, ethnic minorities, people with disability and LGBTI people demonstrate the need for a comprehensive Equality Act and a national human rights act to ensure everyone’s fundamental rights are protected in Australia.”

Andrea Maksimovic, Assoc. Director of International and Civil Society, Australian Council of Trade Unions: “The Australian Government must roll back many of the changes they have made to our civil and political rights, changes which endanger Australia’s democratic reputation and are perilously leading us down the road to authoritarianism. The unprecedented attacks on the rights of workers to organise and the independence of trade unions will threaten the Government’s moral high ground on the UN Human Rights Council.”

Anna Brown, Director of Legal Advocacy, Human Rights Law Centre: “While there has been some welcome progress in recent years, lesbian, gay, bisexual, trans and intersex people continue to face high levels of discrimination, violence and harassment, including discrimination entrenched in laws such as the Marriage Act.

In many parts of Australia, trans and gender diverse people face enormous barriers, including a requirement for surgery to access a birth certificate reflecting the gender they live as, and, alarmingly, intersex children can still be subjected to medically unnecessary surgeries without their consent.”
Developments since Australia’s fifth review under the ICCPR

Overview extract from an Australian NGO Coalition report submitted to the United Nations Human Rights Committee

Australia has not progressed significantly towards implementing its obligations under the ICCPR since the last periodic review. In its Concluding Observations made after the fifth periodic review, dated 7 May 2009, the Committee made 20 recommendations on principal subjects of concern. Since that time, Australia has taken a number of steps towards the realisation of ICCPR rights and the promotion of human rights generally, including:

- Establishing a Joint Parliamentary Committee on Human Rights to scrutinise federal legislation for its compatibility with the seven core international human rights treaties
- Establishing the National Congress of Australia’s First Peoples as an indigenous representative body in 2010
- Acceding to the Optional Protocol to the Convention on the Rights of Persons with Disabilities in August 2009
- Ensuring federal protection against discrimination on the new grounds of “sexual orientation”, “gender identity”, “intersex status” and “marital and relationship status” through the Sex Discrimination (Sexual Orientation, Gender Identity and Intersex Status) Amendment Act 2013 (Cth)
- Gradually working towards reform of the Constitution in consultation with Aboriginal peoples, and
- Committing to ratify the Optional Protocol to the Convention against Torture in 2017.

However, Australia has not taken steps towards progressing many of the recommendations in the Concluding Observations. In particular, Australia has not:

- Enacted comprehensive legislation to give effect to the ICCPR
- Withdrew its reservations to the ICCPR
- Established appropriate procedures to implement the views of the Committee
- Amended counter-terrorism legislation to conform with ICCPR rights
- Enacted a law to comprehensively protect the right to equality and non-discrimination
- Enacted a law to protect against hate speech based on religion
- Properly resourced the new indigenous representative body, the National Congress of Australia’s First Peoples, or
- Provided comprehensive reparations to members of the Stolen Generations.

Further, in some areas Australia has clearly gone backwards.

- Australia has maintained a system of mandatory indefinite detention of asylum seekers that arrive by boat and houses new arrivals in cruel, inhuman and degrading conditions in offshore detention facilities in Papua New Guinea and Nauru
- Australia has instituted a policy of boat turn-backs that violates Australia’s non-refoulement obligations
- Alarming reports have emerged of brutality against children held in youth detention in States and Territories across Australia; triggering a Royal Commission in the Northern Territory and widespread public concern and criticism
- Australian Federal Police continue to share information with foreign counterparts that could lead to the imposition of the death penalty, and which in fact led to the execution of two Australians, Andrew Chan and Myuran Sukumaran, by Indonesia in April 2015
- Australia has created more criminal offences under counter-terrorism legislation that unreasonably restricts rights
- Australian police have been given greater powers to lock up Aboriginal and Torres Strait Islander people without charge
- Prisons in Australia are increasingly overcrowded
- Australia has introduced the most extreme metadata retention laws among its allies, requiring all metadata to be kept by telecommunications service providers for two years, which can be accessed by law enforcement without a warrant or any independent authorisation.

Australia’s Human Rights Council election comes with a challenge to improve its domestic record

Australia’s campaign for a seat on the Human Rights Council has opened it to further scrutiny of its record on such issues, write Amy Maguire and Georgia Monaghan

Australia has been elected to a seat on the United Nations Human Rights Council. It will serve on the council from 2018 to 2020.

The announcement overnight formalised an assumed result: Australia and Spain were the only two countries seeking election to the two available seats for the Western Europe and Others group. Most of the other newly-elected council members similarly ran uncontested.

However, all campaigning countries required the support of a majority of voting countries to ensure their election. Australia received 176 votes and Spain 180 – both survived grilling by an expert committee.

**How did Australia present itself as a candidate?**

Foreign Minister Julie Bishop led Australia’s campaign, which had a particular focus on freedoms, free speech, and equality.

The “five pillars” of Australia’s bid were:

- Gender equality
- Good governance
- Freedom of expression
- The rights of indigenous peoples
- Strong national human rights institutions and capacity building.

Australia’s campaign opened it to further scrutiny of its human rights record. Human rights organisations in Australia and overseas have been lobbying to ensure that Australia’s practices are well publicised and subject to oversight and critique.

Australia presented itself as a “pragmatic and principled” candidate for the council position. Bishop cited Australia’s “strong track record for human rights” as well as its active and practical involvement in international affairs.

Such active and practical involvement can be seen in Australia’s advocacy for the abolition of the death penalty, as in the case of Myuran Sukumaran and Andrew Chan. Furthering global advocacy for death penalty abolition is one of Australia’s primary pledges as a new council member.

Australia’s involvement in multiple UN treaties and its anticipated adoption of the Optional Protocol to the Convention against Torture were also cited as evidence of its worthiness for election.

**Australia’s bid and opportunities for human rights advocacy**

However, Australia’s campaign opened it to further scrutiny of its human rights record. Human rights organisations in Australia and overseas have been lobbying to ensure that Australia’s practices are well publicised and subject to oversight and critique.

In December 2016, Bishop sought to pre-empt such criticism, claiming “no country is perfect”. Bishop pledged to be “honest and open” about Australia’s human rights record during the campaign. Yet the campaign’s pledges failed to acknowledge Australia’s human rights abuses. As such, Australia remains open to accusations of hypocrisy on human rights.

Australia’s human rights track record is more chequered than it would claim. The UN has condemned Australia for its asylum seeker policies and treatment of indigenous peoples.

Bishop frequently praised Australia for its success in building a multicultural society and valuing the diverse background of migrant settlers. Yet asylum seekers arriving by boat continue to be dehumanised.
Another key area of human rights controversy is the current postal plebiscite to survey public opinion on marriage equality. Australia’s council bid promised the protection of LGBTQI rights. But as was forewarned, the plebiscite campaign has exposed LGBTQI people to harmful fear campaigning and social exclusion.

It is incongruous for a claimed champion of human rights to put the rights of a minority group to a popular vote, potentially in an effort to prevent that group from gaining marriage equality.

Australia strikes a similarly dissonant note in relation to its treatment of indigenous people. A key pledge of the council bid was the recognition of Indigenous Australians in the Constitution. However, a constitutional convention rejected the form of “recognition” the government-sponsored Recognise campaign had promoted.

The Recognise campaign has since been abandoned, and the future of the proposed referendum is unclear. The Australian government is yet to embrace the Referendum Council’s proposals for treaty, truth-telling and a First Nations Voice.

FRANCE’S WITHDRAWAL WAS A LOSS TO THE ELECTION CAMPAIGN

Given Australia’s record, France’s withdrawal as a third candidate for the two available seats was unfortunate. The lack of competition reduced pressure on Australia to extend its human rights commitments.

The weight of international disapproval of Australia’s practice in relation to refugees, in particular, could well have weakened the bid had France stayed in the race.

No doubt this was also true for Spain. The recent Catalan independence referendum exposed Spain’s problematic record in relation to self-determination and political rights for minority groups.

IN INTERESTING COMPANY

The UN’s orientation is to promote inclusion rather than marginalisation of member countries on international bodies. The UN is committed to universal values and obligations, and seeks to enforce these through universal involvement in its processes.

Australia’s human rights track record is more chequered than it would claim. The UN has condemned Australia for its asylum seeker policies and treatment of indigenous peoples.

It is undoubtedly difficult to countenance egregious human rights violators participating in human rights processes. But it is at least arguable that their involvement promotes the progressive realisation of human rights more effectively than their marginalisation would.

However, in some cases, it may be that a country’s membership should be postponed until it can show improvement in a deplorable record. Leading up to the election, Human Rights Watch campaigned against promoting the Democratic Republic of the Congo to the council due to its grave human rights violations.

Australia ... aspires to be an exemplary member of the council. And its election should act as impetus for progressive gains in its human rights performance.

Meanwhile, the US warned it may withdraw if the council continued to elect countries responsible for gross abuses.

Australia is not in this category. It aspires to be an exemplary member of the council. And its election should act as impetus for progressive gains in its human rights performance.

THE VALUE OF AUSTRALIA’S ELECTION FOR HUMAN RIGHTS

Human rights advocates will take the opportunity to draw attention to any gaps between Australia’s international legal obligations and its domestic practices.

Bishop was right to highlight the value of Australia becoming the first Pacific country to join the council. Strong diplomatic and trade relationships will hopefully enable Australia to influence human rights development in its region. It is the only place without a regional human rights treaty or institution.

An important focus in this context will be Australia’s advocacy for the abolition of capital punishment. Allied to that concern for the right to life, perhaps Australia might also consider lobbying other countries – notably the US – for gun laws that prioritise human life and wellbeing.

Australia could substantially increase the legitimacy of such efforts, though, by working to build adequate domestic human rights architecture. Without federal human rights legislation, Australia cannot demonstrate
the social and legal value of building human rights protections into law.

Australia’s election also calls for a renewal of political commitment to the value of international human rights review processes. Recent years have seen expressions of frustration, dismissal and poor faith that undermine Australia’s strong record of commitment to international human rights treaties.

Nowhere was this troubling attitude toward human rights protection more clear than in efforts to tarnish the reputation and work of former Human Rights Commission president Gillian Triggs.

Such mixed messages sit poorly with Australia’s continued efforts to review the practices of other countries – particularly now that it has an official role on the Human Rights Council.

Human rights advocates will take the opportunity to draw attention to any gaps between Australia’s international legal obligations and its domestic practices.

Australia has claimed leadership in the areas of gender equality, good governance, freedom of expression, the rights of indigenous people, and strong national human rights institutions.

Imperfect performance in these areas indicates key targets for immediate focus – for example through human-rights-informed approaches to gendered violence, and concern for limitations on the freedom to express views about politically sensitive matters.

Considerable progress will be required on the rights of indigenous people for Australia to claim success on that key pillar of its council campaign. The federal government could look to progress on a treaty in Victoria as evidence that such a conversation can be inclusive and productive.

Importantly, Australia must also be held accountable in the key area its bid sought to avoid: the treatment of asylum seekers and refugees. Its election provides an ideal opportunity for Australia to show leadership and commitment to durable regional and global responses to refugee flows.

DISCLOSURE STATEMENT
Amy Maguire is Co-Chair of the Indigenous Rights Subcommittee of Australian Lawyers for Human Rights and a member of Amnesty International.
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UN slams Australia’s human rights record

Concerns regarding Australia’s human rights performance in the latest United Nations review outweighed improvements, report Anna Cody and Maria Nawaz

Last night, the United Nations Human Rights Committee released its recommendations from its review of Australia’s compliance with a key human rights treaty, the *International Covenant on Civil and Political Rights*.

The committee harshly criticised Australia for failures in key areas. These included the treatment of refugees, indigenous rights and inadequate protection of human rights, including the lack of a national Human Rights Act.

**What is the UN Human Rights Committee?**
This is the treaty body for the *International Covenant on Civil and Political Rights*. The committee is made up of 18 independent human rights experts. Its key functions are to:
- Monitor and review state parties’ compliance with the treaty; and
- Decide complaints made by individuals against state parties.

The committee harshly criticised Australia for failures in key areas. These included the treatment of refugees, indigenous rights and inadequate protection of human rights, including the lack of a national Human Rights Act.

**What did the committee say about Australia’s human rights record?**
The committee noted areas in which Australia’s record had improved. These included the establishment of the Parliamentary Joint Committee on Human Rights and the introduction of protections against discrimination on the grounds of sexual orientation, gender identity and intersex status.

The committee also commended Australia for its commitment to ratifying the *Optional Protocol on the Convention against Torture*.

However, concerns far outweighed improvements in human rights.

**The rights of refugees**
The committee widely criticised Australia’s refugee policy for breaching Australia’s human rights obligations under the Convention.

It raised concerns about refoulement (the forcible return of refugees to their home countries), mandatory detention, Operation Sovereign Borders and offshore detention. This includes the recent closure of the Manus Island Regional Processing Centre.

The committee urged Australia to end offshore processing and bring the men on Manus to Australia or another safe country. It emphasised the need for detention to be used to assess individual risk, not as a general deterrent. It also found that Australia has “effective control” over the detention centres on Nauru and Manus Island.

**The rights of indigenous people**
The committee expressed concern about disproportionately high (27%) indigenous incarceration rates. It recommended that measures such as mandatory sentencing and imprisonment for not paying fines be repealed.

The committee further recommended that Australia provide adequate funding to the National Congress of Australia’s First Peoples, and consider constitutional change to reflect the special status and fully protect the equal rights of Aboriginal and Torres Strait Islander peoples.

As it has done before, the committee urged Australia to establish a national reparations scheme for members of the Stolen Generation.

**The rights of lesbian, gay, bisexual, transgender and intersex people**
The committee roundly criticised unnecessary medical interventions on intersex people, particularly intersex infants and children. It recommended that the requirement for Family Court authorisation for second-stage hormone treatment for young people diagnosed with gender dysphoria be removed.

Barriers to gender and sex recognition on documents were also criticised.

The committee took a strong stance on the same-sex marriage postal survey. It stated that:

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resort[ing] to public opinion polls to facilitate upholding rights under the Covenant in general, and equality and non-discrimination of minority groups in particular, is not an acceptable decision-making method.

The committee recommended that the Marriage Act be amended, regardless of the outcome of the postal survey.

The rights of women
The committee noted the endemic nature of violence against women, and the disproportionate impact this has on indigenous women and women with a disability. It recommended that Australia increase its efforts to prevent all forms of violence against women.

The committee again raised concerns about the involuntary sterilisation of women and girls with intellectual and cognitive disability, and recommended that Australia abolish this practice.

The human rights framework
As in previous reviews, the committee recommended that Australia introduce a comprehensive national Human Rights Act to give effect to the human rights protections in the covenant.

It also recommended that federal anti-discrimination laws be strengthened to ensure effective protection against all forms of discrimination. It specifically noted the lack of federal protection against discrimination on the basis of religion.

The committee criticised previous attacks by politicians on the Australian Human Rights Commission and recommended that Australia respect the independence of that body.

Where to from here?
The release of these recommendations comes at a crucial time for Australia, which last month won a seat on the UN Human Rights Council.

The council is responsible for strengthening the promotion and protection of human rights, and for addressing human rights violations around the world.

Council members must demonstrate their willingness to improve their domestic human rights situation. To claim legitimacy in human rights on the world stage, Australia needs to demonstrate a genuine commitment to human rights at home.

Under the committee’s follow-up procedure, Australia must explain how it will implement selected recommendations within 12 months. The committee’s selected recommendations focus on Australia’s treatment of refugees.

Australia was criticised at the review for a history of “chronic non-compliance” with committee recommendations. The challenge for Australia will be to engage positively with the recommendations and urgently implement substantive change to promote and protect human rights.

A good starting point would be a national Human Rights Act, to fully incorporate Australia’s international human rights obligations into law. Furthermore, Australia should reconsider its response to the Referendum Council’s recommendation of an indigenous voice to parliament.

DISCLOSURE STATEMENT
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How a charter of rights could protect Australians’ fundamental freedoms

Australia’s record of human rights protection in areas such as indigenous people, asylum seekers and freedom of speech are perennial topics of debate. The focus of these discussions is now shifting to whether Australia can take steps to establish a stronger legal framework for protecting human rights, according to George Williams and Daniel Reynolds.

One reason for this is Australia is in the final stages of defending its record in a bid to secure a seat on the UN Human Rights Council. Another is that Australia’s recent experience on human rights is beset with deep flaws and inconsistencies.

MATTERS OF CONCERN
Concerns have been raised about whether human rights are adequately protected in the wake of reports of mistreatment of juvenile detainees in the Northern Territory, the endemic issue of elder abuse, and the startling prevalence of modern slavery in Australia.

Each of these issues has prompted federal inquiries. And there are still many more human rights issues that have not moved the government to act. These include the treatment of asylum seekers at regional processing centres, and the inexplicable jailing, sometimes for up to ten years, of people charged with crimes for which they are deemed unfit to stand trial because they suffer from mental illness.

The outgoing president of the Australian Human Rights Commission, Gillian Triggs, was right when she said Australia’s human rights record is “regressing on almost every front”.

Another disturbing trend is the speed with which Australian parliaments are enacting laws that diminish human rights.

In 2016, the chief justice of the New South Wales Supreme Court, Tom Bathurst, found 52 examples of laws in that State alone that impinged on the presumption of innocence.

In February this year, the Institute of Public Affairs think-tank identified 307 laws that infringed just four rights: the presumption of innocence, natural justice, the right to silence, and the privilege against self-incrimination.

Another 2016 study found 350 current laws that infringe democratic rights such as freedom of speech.

HOW A CHARTER MIGHT WORK
Against this backdrop, many argue the time has come for Australia to adopt a national charter of rights. Australia is the only democratic nation in the world without such a national law.

The idea has been gaining traction, particularly at the State and Territory level. The Queensland government recently announced it would enact a Human Rights Act, based on the ACT and Victorian models, which have been in force for 13 and 11 years respectively. There are also pushes for NSW and Tasmania to adopt such legislation.

These developments raise the questions: if a charter or Human Rights Act was to be enacted at the national level, what would it look like? And how would it protect human rights?

Our new book, *A Charter of Rights for Australia*, discusses what such a charter would look like at the national level, and explains how it could benefit Australians.

The starting point should not be a constitutionally entrenched bill of rights in the vein of the US Bill of Rights.

Instead, a charter of rights for Australia should be enacted by parliament as ordinary legislation. This would have the advantage of flexibility: future parliaments

Concerns have been raised about whether human rights are adequately protected in the wake of reports of mistreatment of juvenile detainees in the Northern Territory, the endemic issue of elder abuse, and the startling prevalence of modern slavery in Australia.
would be able to update the charter as needed to match changing community values and expectations.

A charter of rights in this form would not transfer sovereignty from parliament to the courts, and would not give courts the power to strike down laws.

Rather, following the models adopted in the ACT, Victoria and the UK, the courts’ role should be modest, limited to functions such as endeavouring to interpret legislation consistently with human rights, and identifying laws that breach human rights and which parliament should consider again.

This model puts the focus on improving human rights protection by way of parliament making good laws and government agencies applying those laws fairly.

One useful feature of the ACT and Victoria charters is that parliamentary committees scrutinise proposed laws for compatibility with human rights prior to being passed. For example, in 2014 alone, the ACT government moved almost 100 amendments to seven bills in response to comments and suggestions made by its human rights parliamentary committee.

The existence of a charter of rights can make it more likely that human rights concerns are raised – and fixed – before a law is passed.

The primary responsibility for ensuring human rights are protected under a charter should fall to the government, rather than the courts. The Australian Federal Police, for example, would have day-to-day responsibility for applying human rights in protecting the community from crime and safeguarding the rights of the accused.

This would mean that if the police chose to detain you as part of an anti-terrorism operation, it would be their responsibility to ensure you are treated humanely while detained. And the charter would provide for consequences should they fall short.

Finally, like instruments such as the Universal Declaration of Human Rights, a charter of rights could also have a symbolic force that would promote important values like freedom, community responsibility and cultural diversity.

One of the most important contributions a charter of rights can make is not the benefit it brings to the small number of people who succeed in invoking rights in court. Rather, its main value lies in how it can be used to educate, shape attitudes and bring hope and recognition to people who are otherwise powerless.

DISCLOSURE STATEMENT
The authors do not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and have disclosed no relevant affiliations beyond the academic appointment above.

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Against this backdrop, many argue the time has come for Australia to adopt a national charter of rights. Australia is the only democratic nation in the world without such a national law.
Arguments for and against a national charter of rights and responsibilities

THIS ESSAY WAS FIRST PUBLISHED BY THE AUSTRALIAN COLLABORATION

Australia is a signatory to the Universal Declaration of Human Rights and has ratified nearly all of the conventions that stem from it. The Declaration, and the covenants and conventions associated with it, articulate the fundamental human rights of all individuals. Human rights are the freedoms and protections to which all individuals are entitled.

Human rights are breached all over the world by governments and individuals. Australians are not exempt from these violations. Human rights protection in Australia, however, suffers, in that to give force to the covenants and conventions it has signed they must be incorporated into Australian legislation. Many of the most important have not. Furthermore, Australia, alone amongst English-speaking western countries, does not have a national bill or charter of rights. In this piece, the arguments for and against the introduction of such a charter are examined.

There are two basic types of bills or charters of rights; constitutionally entrenched bills of rights and legislated bills of rights. The former are bills that are incorporated into the constitutions of the countries concerned. The latter are bills that are established by legislation and thus can be changed by parliament without the need for constitutional amendment. Examples of each type are discussed below.

Constitutionally entrenched bills of rights

In the summer of 1787, delegates from the then 13 states convened in Philadelphia and drafted the Constitution of the United States of America. The first draft set up a system of checks and balances that included a strong executive branch, a representative legislature and a federal judiciary. Over the next few years, debate continued about the absence of any statement of individual rights in the Constitution. Finally, Thomas Jefferson’s arguments held sway. “A bill of rights”, he said, “is what the people are entitled to against every government on earth, general or particular, and what no just government should refuse, or rest on inference.” In 1791, a Bill of Rights, drafted by James Madison, was adopted and it, along with a further nine amendments, were incorporated into the Constitution.

The Canadian Charter of Rights and Freedoms is also a constitutionally entrenched bill of rights. It forms Part 1 of the Constitution Act of 1982. The Charter guarantees a range of rights and freedoms including fundamental freedoms, democratic rights, mobility rights, legal rights and equality rights. The Charter replaced a Bill of Rights enacted in 1960. The previous Bill of Rights was a federal statute limited in scope and without application to provincial laws. The Charter has greatly extended the range of rights protection in Canada. The Parliament retains the right to override the charter in some areas but this provision has been rarely used at national level.

Bills of human rights established by legislation

New Zealand has a Bill of Rights (1990) which is an ordinary Act of Parliament. Its provisions require that any new legislation must be reviewed to see whether it conflicts with the Bill. If it does, the Bill is given special weight in the interpretation of that conflict. The Bill also applies to the legislative, executive and judicial branches of government and prevents them from exercising their discretion in a way that is in conflict with the Bill. The Bill itself does not provide a means of resolving conflict; the courts in New Zealand hear and resolve claims of breaches of it.

Great Britain has the United Kingdom Human Rights Act (1998). This legislation enacted in domestic law the human rights obligations of the UK under the European Convention of Human Rights. Like the New Zealand Bill, it is an ordinary act of Parliament. The Act obliges public authorities to act in ways that do not conflict with the rights of individuals under the Convention. It requires new legislation to be compatible with the Convention rights, and existing legislation to be interpreted consistently with Convention rights where possible. It gives a joint parliamentary committee the responsibility for scrutinising bills to ensure that they are compatible with the Human Rights Act, and it gives courts the responsibility of making a declaration if they find a conflict between other legislation and the Human Rights Act. The Parliament is then responsible for resolving the conflict.

The UK Human Rights Act was subject to a review in 2006, which found that it had not altered the constitutional balance of power between the parliament, executive and the courts, but had been influential in improving policy and services to individuals. The review found that the Act had not had an impact on criminal law nor the government’s effort to prevent crime.

If a new national bill or rights were to be introduced in Australia should it be constitutionally entrenched or legislated?

There are several reasons why Australia might find it
ARGUMENTS AGAINST A NATIONAL CHARTER

Spenzer Zifcak and Alison King have listed arguments that have been raised against the adoption of a legislated national charter of rights in Australia. The arguments and their responses follow.

The human rights of Australians are perfectly well protected under the common law

Increasingly the body of statute law is expanding and in doing so it is replacing common law. Thus governments can pass legislation that infringes the common law human rights of Australians and visitors and those seeking to come to Australia with impunity. Discriminatory laws against indigenous people, anti-terror laws and immigration and asylum laws are some examples.

A charter would shift power to judges and away from elected representatives

A charter along the lines of a New Zealand or UK bill does ask the courts to interpret it. This is, however, the role of the courts in all legislation, including the Constitution. When there is conflict between a charter and other legislation it has to be referred back to Parliament. This maintains the existing balance of power between legislators and judges.

A charter would only benefit minorities and criminals

The values of the majority should include protecting minorities from discrimination. An important function of human rights legislation is to act as a guarantee that everyone will indeed enjoy fair and equal treatment.

In reference to criminal charges, Australia could probably expect implementation of a charter to be similar to the experience in Great Britain. In the period immediately following the introduction of a charter while individuals, lawyers and the courts are getting used to a new Act, its provisions might be used by lawyers in criminal cases. But once a set of precedents is established, use of a charter in this way would return to its proper place. The review of the British Human Rights Act found that it had not limited the power of the State to prosecute and prevent crime.

A charter would clog the courts with claims

Susan Harris Rimmer points out that lawyers will inevitably be involved in a charter. However, the content of the cases is what is important – each case a lawyer brings to court will involve someone whose human rights may have been violated. The role of the legal system is to adjudicate those claims. The experience of Great Britain is that there has only been a very small increase (two per cent) in cases considered by courts.

Australians don’t want a charter

Four independent inquiries have been held by State and Territory Governments in Australia in the past five years, and each has recommended the introduction of a human rights charter. The ACT held a deliberative poll of residents to discuss their Human Rights Act proposal. 58.6 per cent of residents supported it and only 38.4 per cent said they did not favour it. The Victorian inquiry, which preceded the introduction of that State’s Charter of Rights, received 2,524 public submissions, 84 per cent of which favoured the adoption of the charter.

An Amnesty International poll in February 2009 found 81 per cent of Australians favoured a national human rights charter. The 2009 National Human Rights Consultation reported that most of the submissions that it had received believed that human rights in Australia were inadequately protected and therefore needed to be supported by a national charter.

A random sample of 1,200 people, however, found that those surveyed gave little thought to human rights, thinking that these rights were adequately protected.

ARGUMENTS FOR A NATIONAL CHARTER

After considering the objections listed above, Zifcak and King contend that there are five core arguments in support of a charter.

A charter would improve the quality and accountability of government

A charter that clearly outlines responsibilities of Ministers, Governments, Departments and courts would help those bodies value the rights of Australians. The British experience has been that their Act has benefited the development and application of Government policy, as it has focused attention on the end result of the policy; the experience of the individual.

A charter would consolidate and strengthen human rights protections for all Australians

Currently, Australia is a signatory to many important international instruments to protect human rights. A national charter would bring together all of the human rights legislation that is currently scattered across a number of Acts. A national charter would also consolidate the human rights principles that are currently spread across various judgments and court cases.
international agreements on human rights but their enforcement in Australia has been limited. Individuals mostly rely for fair treatment on the practices of the executive and on common law provisions which can be fragile and inconsistent. Zifcak and King point out that the principles of ministerial accountability have weakened and that the power of the executive has greatly increased in recent decades. These constraints make remedying human rights breaches difficult in the absence of a charter.

A charter would encourage social inclusion
The Rudd and Gillard governments have acknowledged the need for human rights in their social inclusion policies through their emphasis on ‘fairness’. A charter is an essential foundation for resolving questions of fairness, especially since those who experience unfair treatment are least able or likely to take action to remedy it.

A charter would improve Australia’s international reputation
While the views of Australia’s human rights record have generally been fairly positive, there has been some sharp criticism in recent years from United Nations Human Rights Treaty Committees for breaching rights Australia has agreed to uphold. Australia, however, recently secured a seat on the United Nations Security Council, even while being the only English-speaking western democracy without a constitutional or legislated charter of rights.

A charter would provide the opportunity for a single response to past and current human rights violations in Australia
In the case of Behrooz, the High Court was forced to find that the imprisonment of asylum seekers for long periods of time was legal, no matter how bad the conditions of their detention. In the case of Woolley, the court could not order release of children in detention because domestic law did not recognise the children’s human rights. In its Northern Territory Intervention, the Federal Government suspended provisions of the Racial Discrimination Act to apply certain rules to indigenous communities that do not apply to non-indigenous people.

Recommendations of the National Human Rights Consultation
After considering these and other arguments, the National Human Rights Consultation, an inquiry established by the Rudd Government, recommended that Australia should adopt a federal Human Rights Act and that the Act should be based on the dialogue model.

The Consultation Committee found strong public support for a Charter in each of its three main forms of public consultation: the submissions to the National Human Rights Consultation, the vast majority of which supported the introduction of an Act or Charter; its community roundtable process; and the national public opinion polls commissioned both by Amnesty International and by the Committee itself.

Government response to the recommendations of the National Human Rights Consultation
In April 2010, the Attorney-General announced the ‘Human Rights Framework’, the Federal Government’s response to the Consultation. This framework does not include a charter of rights. In launching the Government response, the then Attorney-General Robert McClelland said that a legislative charter of rights was not included in the government’s human rights framework “as the government believes that the enhancement of human rights should be done in a way that, as far as possible, unites rather than divides our community.”

The Chair of the Committee of the National Human Rights Consultation, Father Frank Brennan, has taken issue with the idea that a charter would be divisive. He has pointed out that the calls for a Charter or Act to protect rights came from the public in submissions and consultation. Brennan has also noted that education and an optional parliamentary review are unlikely to provide adequate protection of the human rights of Australians.

The Australia’s Human Rights Framework is a package of measures to strengthen understanding and respect for human rights and a new National Human Rights Action Plan. It includes education programs for the better understanding of human rights, the establishment of a new Parliamentary Joint Committee on Human Rights to provide greater scrutiny of legislation, and the combination of existing federal anti-discrimination laws into a single Act.

treaties to which Australia is a party. The Act also establishes a Parliamentary Joint Committee on Human Rights.

**Human rights and anti-discrimination**

As part of Australia’s Human Rights Framework, the Gillard Government, in 2012, sought to consolidate four existing pieces of Federal anti-discrimination legislation into a single act with the Human Rights and Anti-Discrimination Bill 2012. The consolidated Act was intended to replace the fragmented and particularistic exceptions to unlawful discrimination for religious organisations that currently exist in the Sex Discrimination Act, Disability Discrimination Act and Age Discrimination Act with a single, more general, although very wide, exception. The result was to be one Act with sexuality and gender written into it, making the laws more consistent and less complex.

Even though the Bill was the outcome of two-and-a-half years of consultation by Government, it was put on hold. The drafters ran into problems with one clause, 19(2)(b), the “offend, insult or intimidate” clause, which had been the subject of most of the public debate – along with exemptions for religious groups, and led to many accusations that a bill supposedly designed to “consolidate” federal anti-discrimination laws was going to far and needed to be reined in. This debate, around the issues of striking an appropriate balance between religious freedom and principles of equality and non-discrimination, is similar to the previous debate about free speech versus discrimination.

The Human Rights Framework was due for review in 2014.

**SOURCES**


WORKSHEETS AND ACTIVITIES

The Exploring Issues section comprises a range of ready-to-use worksheets featuring activities which relate to facts and views raised in this book.

The exercises presented in these worksheets are suitable for use by students at middle secondary school level and beyond. Some of the activities may be explored either individually or as a group.

As the information in this book is compiled from a number of different sources, readers are prompted to consider the origin of the text and to critically evaluate the questions presented.

Is the information cited from a primary or secondary source? Are you being presented with facts or opinions?

Is there any evidence of a particular bias or agenda? What are your own views after having explored the issues?

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Brainstorm, individually or as a group, to find out what you know about human rights in Australia.

1. What are human rights, and what are some examples?

   _____________________________________________________________
   _____________________________________________________________
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2. What is the role of the United Nations in relation to the establishment, promotion and protection of human rights globally?

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3. What is the *Universal Declaration of Human Rights* and why was it created?

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4. What is a Universal Periodic Review and how often does it apply to Australia?

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Complete the following activity on a separate sheet of paper if more space is required.

1. Explain the process of how states commit to international human rights treaties.

2. Explain how the United Nations system promotes and protects human rights through the functions of Charter Bodies and Treaty Bodies.

3. Explain the role of the Australian Human Rights Commission in relation to the promotion and protection of human rights in Australia.
Complete the following activity on a separate sheet of paper if more space is required.

“Australia’s record of human rights protection in areas such as indigenous people, asylum seekers and freedom of speech are perennial topics of debate. The focus of these discussions is now shifting to whether Australia can take steps to establish a stronger legal framework for protecting human rights ... many argue the time has come for Australia to adopt a national charter of rights. Australia is the only democratic nation in the world without such a national law.”

Williams, G and Reynolds, D, How a charter of rights could protect Australians’ fundamental freedom.

Divide into two groups of people (one group ‘for’, one group ‘against’), compile and then discuss your arguments for and against the introduction of a national charter of rights in Australia. You may choose to expand your arguments by citing opinions expressed in this book.

1. ARGUMENTS FOR AN AUSTRALIAN CHARTER OF RIGHTS

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2. ARGUMENTS AGAINST AN AUSTRALIAN CHARTER OF RIGHTS

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Complete the following activity on a separate sheet of paper if more space is required.

Australia’s election to the UN Human Rights Council calls for a renewal of political commitment to the value of international human rights review processes. Recent years have seen expressions of frustration, dismissal and poor faith that undermine Australia’s strong record of commitment to international human rights treaties.


Form into groups of two or more people and research one of the following topics. Explore Australia’s existing human rights record in relation to your chosen group/issue, and discuss with the rest of the class options for how current approaches to these could be improved within a human rights framework.

1. Aboriginal and Torres Strait Islander peoples

2. Asylum seekers and refugees

3. Children’s rights

4. Counter-terrorism laws

5. Over-imprisonment and conditions of detention

6. Lesbian, gay, bisexual, transgender, queer and intersex (LBGQTI) people

7. People with disability

8. People living in poverty
Complete the following multiple choice questionnaire by circling or matching your preferred responses.

1. The International Bill of Human Rights is made up of which of the following five (5) United Nations conventions?
   a. Convention on the Rights of the Child
   b. Universal Declaration of Human Rights
   c. United Nations Convention against Corruption
   d. International Covenant on Civil and Political Rights
   e. International Covenant on Economic, Social and Cultural Rights
   f. Optional Protocol to the International Covenant on Civil and Political Rights
   g. Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

2. Australia is a party to which seven (7) of the following key international human rights treaties?
   a. International Covenant on Civil and Political Rights
   b. International Covenant on Economic, Social and Cultural Rights
   c. Convention on the Rights of the Child
   d. Convention on the Prevention of Homelessness
   e. Convention on the Elimination of All Forms of Discrimination against Women
   f. Convention on the Rights of Persons with Disabilities
   g. Convention on Cruelty to Animals
   h. Convention on the Elimination of All Forms of Racial Discrimination
   i. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

3. Human rights are often defined in different ways. Which of the following definitions do NOT refer to human rights? (Circle all that apply)
   a. The recognition and respect of people’s dignity.
   b. A set of moral and legal guidelines that promote and protect a recognition of our values, our identity and ability to ensure an adequate standard of living.
   c. Standards of equality determined by a combination of popular vote and government legislation.
   d. The basic standards by which we can identify and measure inequality and fairness.
   e. Those rights associated with the Universal Declaration of Human Rights.

4. Respond to the following statements by circling either ‘True’ or ‘False’:
   a. The Universal Declaration of Human Rights was adopted by the United Nations General Assembly in 1949. True / False
   b. The Commonwealth Government has the responsibility for ensuring Australia’s observance of internationally-recognised human rights. True / False
   c. The Australian Government has committed to adopting a Human Rights Act. True / False
   d. Australia’s State governments have the responsibility to make and administer many of the laws that are relevant to human rights observance. True / False
   e. Australia has never been elected to membership of the United Nations Human Rights Council. True / False

MULTIPLE CHOICE ANSWERS

1 = b, d, e, f, g; 2 = a, b, c, e, f, h, i; 3 = c, f; 4 – a = F (1948), b = T, c = F, d = T, e = F (Australia was elected to the Human Rights Council for 2018-2020).
Human rights are the basic freedoms and protections that belong to every single one of us. All human beings are born with equal, inalienable rights and fundamental freedoms (Amnesty International Australia, Understanding human rights: free and equal). (p.1)

Human rights are based on dignity, equality and mutual respect – regardless of your nationality, your religion or your beliefs. Your rights are about being treated fairly and treating others fairly, and having the ability to make choices about your own life. These basic human rights are: Universal: they belong to all of us – everybody in the world; Inalienable: they cannot be taken away from us; Indivisible and interdependent: governments should not be able to pick and choose which rights are respected (ibid). (p.1)

There are 30 articles in the Declaration of Human Rights – 30 rights of everyone on this planet. The articles include the right to asylum, the right to freedom from torture, the right to free speech and the right to education (ibid). (p.1)

One of the purposes of the United Nations is to promote and encourage respect for human rights through international co-operation. There are currently 192 member States in the UN. Each has one vote in the United Nation’s parliament, the General Assembly (Australian Human Rights Commission (AHRC), The International Bill of Rights). (p.8)


In the case of major human rights treaties, the obligations of State Parties include regular reporting to and scrutiny by, UN human rights bodies. If a State fails to comply with the terms of the treaty, that country will be in breach of international law (AHRC, How states commit to human rights treaties). (p.10)

Each State must create legislation that incorporates the articles of Conventions that have been ratified. This process can differ according to each State’s legal system (ibid). (p.10)

The United Nations (UN) system has two main types of bodies to promote and protect human rights: Charter Bodies and Treaty Bodies (AHRC, Promoting and protecting human rights in the UN system). (p.11)

Some groups in Australia are particularly vulnerable to human rights abuses. They include: Aboriginal and Torres Strait Islander people, asylum seekers, migrants from non-English speaking backgrounds, those living in poverty, people with a disability, and other groups (AHRC, Human rights in Australia). (p.13)

In order to ensure that the human rights standards contained in international treaties are observed and enforceable within Australia, the government must introduce them into domestic law. This process is known as ‘ratification’. Once international human rights standards are protected in national legislation, the Australian court system is able to ensure that they are protected and cannot be overruled by any State or Territory legislation that contradicts the treaty (ibid). (p.14)

In addition to the efforts of the Australian Government, the Australian Human Rights Commission is responsible for overseeing and reporting on the protection of human rights in Australia (ibid). (p.14)

Established in 2006, the Universal Periodic Review (UPR) is a mechanism of the United Nations Human Rights Council which reviews the human rights records of all 192 United Nations Member States (Law Council of Australia, Australia’s international human rights obligations). (p.16)

The Universal Periodic Review (UPR) is an opportunity for Australia to take stock of how well we are protecting the human rights of all people in Australia; inform the international community of the human rights situation in Australia; and engage with other countries about specified steps Australia will take to improve the enjoyment of human rights in Australia (AHRC, Australia’s Universal Periodic Review on human rights). (p.19)

During the same week that Australia was granted a seat on the United Nations Human Rights Council, an expert UN Committee grilled the Australian Government over its own human rights record ... During Australia’s last review, in 2009, Committee members raised concerns about the Australian Government’s policies on Aboriginal and Torres Strait Islander peoples’ rights, its cruel treatment of people seeking asylum, its use of national security laws to erode basic civil liberties, and police information sharing practices on cases that involved the death penalty overseas (Human Rights Law Centre, Australia to face human rights scrutiny in week of UN Human Rights Council vote). (p.37)

Australia has been elected to a seat on the United Nations Human Rights Council. It will serve on the council from 2018 to 2020 (Maguire, A, and Monaghan, G, Australia’s Human Rights Council election comes with a challenge to improve its domestic record). (p.40)

Australia’s record of human rights protection in areas such as indigenous people, asylum seekers and freedom of speech are perennial topics of debate. The focus of these discussions is now shifting to whether Australia can take steps to establish a stronger legal framework for protecting human rights (Williams, G and Reynolds, D, How a charter of rights could protect Australians’ fundamental freedoms). (p.45)
Bill of rights
There are two types of bills of rights: constitutional and statutory. A constitutional bill of rights is incorporated into the Constitution itself; these rights they are therefore ‘entrenched’ and cannot be amended or removed by any government without the overwhelming approval of the people voting at a referendum to amend the Constitution. A statutory bill of rights, on the other hand, is like any other legislation government may enact. The rights contained in legislation, are not entrenched, and may be amended or repealed by any government.

Civil liberties
Civil liberties provide individuals with specific rights and freedoms e.g. the right to freedom of speech, association, religion, movement and assembly. Many modern states have a constitution, a bill of rights, or similar constitutional documents that enumerate and seek to guarantee civil liberties. Other states have enacted similar laws through a variety of legal means, including signing, ratifying or otherwise giving effect to key international rights conventions e.g. International Covenant on Civil and Political Rights.

Civil rights
Rights of citizens to equality and liberty, including freedom to worship, to think and express oneself, to vote, to take part in political life, and have access to information.

Collective rights
Rights of groups to protect their interests and identities.

Convention
A binding agreement between states. The term is used synonymously with ‘treaty’ and ‘covenant’, although conventions are stronger than ‘declarations’ because they are legally binding for governments that have signed them. When the UN General Assembly adopts a convention, it creates international norms and standards. Once a convention is adopted by the General Assembly, member states can then ratify the convention, promising to uphold it. Governments that violate the standards set forth in a convention can then be censured by the United Nations.

Covenant
A binding agreement between states, used synonymously with ‘convention’ and ‘treaty’. The major international human rights covenants are the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Cultural rights
Rights to preserve and enjoy one’s cultural identity and development.

Economic rights
Rights that concern the production, development, and management of material for the necessities of life.

Human rights
The rights people are entitled to simply because they are human beings, irrespective of their citizenship, nationality, race, ethnicity, language, sex, sexuality, or abilities. Human rights become enforceable when they are codified as conventions, covenants, or treaties, or as they become recognised as customary international law.

International Bill of Human Rights

Legal rights
Rights that are laid down in law and can be defended and brought before courts of law.

Moral rights
Rights that are based on general principles of fairness and justice and are often, but not always, based on religious beliefs. People sometimes feel they have a moral right even when they do not have a legal right, e.g. during the United States civil rights movement protesters demonstrated against laws enforcing racial segregation between blacks and whites at the same schools, on the grounds that these laws violated their moral rights.

Natural rights
Rights that belong to people simply because they are human beings.

Political rights
The rights of people to participate in the political life of their communities and society, such as voting for their government.

Protocol
A treaty that modifies another treaty (e.g. adding additional procedures or substantive provisions).

Social rights
Rights that give people security as they live and learn together, such as in families, schools and other institutions.

Treaty
A formal agreement between states that defines and modifies their mutual duties and obligations; used synonymously with ‘convention’. When conventions are adopted by the UN General Assembly, they create legally binding international obligations for the member states who have signed the treaty. When a national government ratifies a treaty, the articles of that treaty become part of its domestic legal obligations.

Universal Declaration of Human Rights
Adopted by the General Assembly 10 December 1948, the UDHR is the primary United Nations document establishing human rights standards and norms. Although intended to be non-binding, over time its provisions have become so respected by states that it is regarded as customary international law.
**Websites with further information on the topic**

ACT Human Rights Commission  www.hrc.act.gov.au
Amnesty International Australia www.amnesty.org.au
Attorney-General’s Department www.ag.gov.au
Australian Human Rights Centre www.ahrcentre.org
Australian Human Rights Commission www.humanrights.gov.au
Australian Lawyers Alliance www.lawyersalliance.com.au
Australian Lawyers for Human Rights www.alhr.org.au
Castan Centre for Human Rights Law www.monash.edu/law/research/centres/castancentre
Civil Liberties Australia www.cla.asn.au
Human Rights Council of Australia www.hrca.org.au
Human Rights Law Resource Centre www.hrnc.org.au
Human Rights Watch www.hrw.org
Law Council of Australia www.lawcouncil.asn.au
New South Wales Council for Civil Liberties www.nswcl.org.au
Right Now www.rightnow.org.au

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