

# LEGAL STUDIES

## Core (Part II): Human Rights

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### 1. The nature and development of human rights

- the definition of human rights
- developing recognition of human rights
  - the abolition of slavery
  - trade unionism and labour rights
  - universal suffrage
  - universal education
  - self-determination
  - environmental rights
  - peace rights
- formal statements of human rights
  - *Universal Declaration of Human Rights*
  - *International Covenant on Civil and Political Rights*
  - *International Covenant on Economic, Social and Cultural Rights*

### 2. Promoting and enforcing human rights

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| <p>In the international community:</p> <ul style="list-style-type: none"><li>• state sovereignty in the international community</li><li>• the role of the United Nations</li><li>• the role of intergovernmental organisations</li><li>• the role of the courts, tribunals and independent statutory authorities</li><li>• the role of non-government organisations</li><li>• the role of the media.</li></ul> | <p>In Australia:</p> <ul style="list-style-type: none"><li>• the incorporation of human rights into domestic law</li><li>• the role of the Constitution, including division of powers and separation of powers</li><li>• the role of statute law</li><li>• the role of common law</li><li>• the role of courts and tribunals</li><li>• the role of non-government organisations</li><li>• the role of the media</li><li>• the role of a Charter of Rights (arguments for and against).</li></ul> |
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### 1. The nature and development of human rights

#### • The definition of human rights

Human rights are a collection of fundamental standards that belong justifiably to all human beings. They aim to protect individuals from injustice, allow people to achieve their full potential in society and prevent discrimination.

#### • Developing recognition of human rights

Campaigns for the recognition of human rights began a long time ago, before there was any worldwide acceptance or formal recognition. Particular rights have each developed in their own way though independent historical movements that led to their eventual recognition.

## The Abolition of Slavery

**Slavery** is a type of forced labour where a person is considered to be the legal property of another.

This issue predates recorded history and was practiced legally in many parts of the world up until the 20<sup>th</sup> century. Moves to abolish slavery in European states began as early as the 12<sup>th</sup> century. Iceland, for example, abolished slavery officially in 1117. Abolitionism was a movement that began in the 18<sup>th</sup> century and gradually grew. Slavery was ruled illegal in the common law of England in 1772. Slavery Abolition Act 1833 (UK) was the official abolition. The abolitionist movement continued in the rest of the world. The UDHR stated that slavery was prohibited under article 4, after WWII.

## Trade Unionism and Labour Rights

A **Trade union** is an organisation of workers who have bonded together to achieve common goals – pay and working conditions.

As the world progressed and forced labour was made illegal, conventional labour was made the only means of securing large groups of workers. Labour law as a protection for workers with demands for better conditions arose with the industrial revolution and the introduction of mechanised manufacturing. The industrial revolution was a rapid development of industry in the 18<sup>th</sup> and 19<sup>th</sup> centuries, characterised by changes in manufacturing, agriculture and transport. Trade unions first emerged in response to the appalling working conditions, lack of safety, low wages and long working hours. In 1919, the international labour organisation was established as an agency of the UN. It aims primarily to improve working conditions. Trade unions and labour rights have essentially improved choice and the standard of living for all workers.

## Universal Suffrage

**Universal Suffrage** is the theory of democracy and is the right to vote in a democratic election.

Suffrage was usually restricted due to certain classes; race, gender, age, status and nationality. The concept of universal suffrage is only a recent development in the world, but where it has been achieved, it is now considered an essential human right.

International Covenant on Economic, Social and Cultural Rights – A binding international treaty creating obligations on states to respect economic, social and cultural rights of individualism.  
Article 21 of UDHR

## Universal Education

**Universal Education** refers to the idea that all humans have the right to an education.

By the 20<sup>th</sup> century and the end of the Second World War, free and compulsory education had spread throughout developed nations and was regarded as not only a desirable goal for all governments to pursue but was also seen as a basic human right. The United Nations made education a major priority of its economic and social development programs and the right to free education for all human beings was included under Article 26 of the UDHR, which goes on to state that children's elementary education should be compulsory.

Although free and compulsory education is now available in almost all countries in the world, there are still many children who for numerous reasons cannot access the education. In 2001, all member states of the United Nations agreed to a series of *Millennium Development Goals* (2015). It remains to be seen whether the developed countries of the world will be able to meet this commitment in helping poorer countries to achieve this goal.

## Self-Determination

**Self-determination** is a collective right – meaning that people of a territory or national grouping have the right to determine their own political status; the group has the right to choose how it will be governed without undue influence from another country.

This relates to sovereignty for individual rights... The collective right of self determination was long fought for and followed centuries of colonisation, yet some indigenous people around the world are still struggling to have their rights respected and recognised.

## Environmental Rights

**Environmental rights** are a type of collective right that advocates say should be protected as a human right.

Environmental rights are said to be crucial to achieve other human rights, such as rights to life, health or property. Although there has been no universal recognition of environmental rights, there have been numerous treaties that attempt to deal universally with specific environmental threats. The 2009 UN Climate Change Conference demonstrated how difficult it is to secure global agreement on issues relating to climate change.

## Peace Rights

Conflict and war disrupt life and individual safety. The ICC, established in 2002, has now been given jurisdiction to try individual people for wars of aggression as well as war crimes and other crimes against the international community. Peace rights are recognized as fundamental to the United Nations, yet war still continues.

- **Formal statements of human rights**

## Universal Declaration of Human Rights

The **UDHR** was adopted as a declaration rather than a fully binding treaty, for the purpose of defining ‘fundamental freedoms’ and ‘human rights’ in the UN Charter, which is binding on all member states. It is a ‘soft law’ meaning it is non-binding but still influential. The UDHR has become an enduring statement that has inspired more than 200 international treaties, conventions, declarations and bills of rights in the last 50 years. It is possibly the most important of all human rights documents and has stood the test of time. Despite on-going abuses by some countries, the UDHR has gained wide acceptance by the international community.

## International Covenant on Civil and Political Rights

## International Covenant on Economic, Social and Cultural Rights

The **ICCPR** and **ICESCR** were implemented to cover all rights. Collectively, the UDHR and these two covenants are known as the **International Bill of Rights**.

- The term 'human rights' came into existence in a formal way in the 20th century and refers to fundamental and inalienable rights and freedoms for every person.
- Human rights are now an integral part of international law.
- Slavery was for most of human history, a legitimate institution and has only recently been outlawed in international law.
- Trade unions in many countries fought long and hard campaigns for labour rights in many countries but the right to join one was not always guaranteed.
- Universal suffrage has only become a feature of many nations' governments in the last 120 years or so.
- Universal education came to be valued by European governments little more than a hundred years ago but hundreds of millions of people in developing countries are not yet guaranteed a full primary school education.
- The collective right of self-determination was long fought for and followed centuries of colonisation, yet some indigenous peoples around the world are still struggling to have their rights respected.
- Environmental rights are a type of collective right that advocates say should be protected as a human right.
- Peace rights are recognised as fundamental to the United Nations, yet war still continues.
- The *Universal Declaration of Human Rights* was created in 1948 and is the formal international statement of human rights.
- The UDHR, ICCPR and ICESCR together comprise what is called the International Bill of Rights, which together impose obligations on states to respect and promote human rights.

## 2. Promoting and enforcing human rights

### In the international community:

- **State sovereignty**

State sovereignty is the ultimate law-making power of a state over its territory and population, including independence and freedom from external interference. It is limited under international law by certain duties owed to the international community.

#### State

An independent country; in law an internationally recognized entity possessing the characteristics required for statehood; not to be confused with political divisions within a federal system, like the states of Australia, Germany or the United States.

#### Nation

A nation, which is a people that share a common heritage, language, culture or race – nations do not always correspond with state borders.

In international law, recognition as a state requires a number of factors. Outlined in article 1 of the ***Montevideo Convention on the Rights and Duties of States 1933***, these essential characteristics include:

- A defined territory
- Permanent population
- Effective government
- The capacity to enter into international relations

### State Sovereignty doesn't enforce human rights as:

- States can ignore international human rights statements
- States can enact discriminatory laws and engage in repressive actions
- States can remove existing domestic human rights
- States can ignore domestic human rights violations

### State Sovereignty does enforce human rights as:

- States can exercise influence in international forums
- States can impose sanctions on other states for breaches of human rights
- States can implement domestic laws protecting human rights

- **The roles of:**

#### The United Nations

The UN is a vast organisation with substantial power consisting of 192 member states, including almost every sovereign state in the world. It is the principal international organization, with responsibility for almost every aspect of international affairs. The UN has five principal organs under the UN Charter. All of these have some role to play in the promotion or protection of human rights. They are outlined as follows:

**General Assembly (UNGA):** represents all member states and acts as a forum for global discussions, deliberations, declarations and recommendations, many relating to issues of human rights. The **UNHR COUNCIL** is the UN forum of member states responsible for overseeing and making recommendations on human rights in all member states.

**Security Council (UNSC):** maintenance of international peace and security. It can authorise military actions, sanctions or peacekeeping operations.

**Economic and Social Council (ECOSOC):** forum for international economic and social cooperation and development. It includes various committees and acts as the central forum for discussion of economic, social, environmental and humanitarian issues.

**Secretariat:** the main administrative body of the UN with over 40000 staff working worldwide, it provides the various information, studies, tasks and facilities needed by the UN. It includes the departments and offices of the UN, including the *Office of the High Commissioner for Human Rights (OHCHR)*.

**International Court of Justice (ICJ):** the principal judicial organ of the UN, that has jurisdiction under the UN Charter to settle international disputes submitted to it by member states, and produce advisory opinions when requested on matters of international law. Its cases will only rarely relate to issues of human rights.

#### Office of the High Commissioner of Human Rights

- Advance universal ratification and implementation of the UDHR
- Promoting universal human rights
- Providing support and information for other UN bodies

#### Human Rights Council

- Relatively new body (2006)
- 47 member seats rotated on a 3 year basis
- Measures: complaints procedure, compulsory periodic review, advisory committee

## Intergovernmental Organisations

An IGO is an international institution comprised of various member states. IGOs are created by agreement between states, by an international treaty that acts as a charter outlining the organisation's purpose and operation. They are usually permanent, meet regularly and have international legal personality and so can enter into enforceable agreements and are subject to international law.

The UN, created by the 1945 treaty the *United Nations Charter*, is the most important of all IGOs. Other powerful IGOs include the World Trade Organization, the International Monetary Fund (IMF), the North Atlantic Treaty Organization (NATO) and INTERPOL.

**WTO:** facilitates the negotiation of trade agreements, reduces trade barriers

**IMF:** financial transactions rates

**NATO:** defence

**INTERPOL:** international policing

## Courts, Tribunals and Independent authorities

### International Court of Justice (ICJ) 1946

- Hear and judge disputes between states
- Issue advisory opinions on matters of international law
- Little jurisdiction and enforcement power

The strongest criticism of the ICJ is that it requires the consent of state parties to hear matters and so has very little jurisdiction. States can consent to 'compulsory' jurisdiction of the court, but in 2010 only 66 states have done so, most with some form of reservation limiting the court's power, including Australia. The court is unable to hear cases brought by individual people or private organisations, is restricted to states themselves, and has very little power of enforcement, with Security Council members being able to veto any enforcement action. Despite these limitations, the court has issued important judgments that carry the weight of international law and act as significant guides to future actions.

### International Criminal Court (ICC) 2002 and Ad Hoc Tribunals

- Prosecute international crimes, including genocide and war crimes
- Jurisdiction to prosecute individuals rather than states, which makes it a powerful institution for combating people who seek to use state sovereignty as a defence for their abuses

The ICC is not a court for human rights violations, but prosecutes and hears matters of the most serious international crimes, including genocide, crimes against humanity and war crimes, although these acts would also constitute serious human rights abuse. It also has jurisdiction to hear crimes of aggression (illegal war) but the international community is still in the process of agreeing on a definition for this.

### European Court of Human Rights (ECHR) 1959

- Hears cases from individuals, organisations and states
- Has proven very successful: in 2010, it announced various procedural reforms in order to deal with a backlog of some 120 000 cases across Europe waiting to be heard

The ECHR is an extremely influential human rights body, and compliance has crucially been incorporated into the treaties of the European Union (EU). This means that the laws of all 27 member states of the EU must comply with the rulings of the ECHR. This has had an enormous



effect on member state laws – for example, numerous laws of the UK have had to be revised following ECHR rulings.

**Unlike Europe, or Africa or the American states, Australia is not currently party to any regional human rights instrument or human rights court.**

## Statutory Authorities

### Human Rights Committee

- Assesses member compliance with the ICCPR and can hear petitions raised by the states about each other's compliance
- Quasi-judicial body: authority to make rulings but doesn't carry much weight
- Decisions are not enforceable

At the Committee, a group of human rights experts will hear a complaint brought against a state and make rulings on compliance, making it a quasi-judicial body. Although decisions are not enforceable, they are highly influential, embarrassing for the government of a state accused of violation and might influence local legal interpretation. These judgments will also be raised by the Committee in its periodic reports to each member state, which will include re-occurring recommendations to address the issues until the Committee is satisfied that the state is compliant. A number of cases have been raised against Australia, and the strong persuasive power of the Committee's rulings can be seen in the case of *Toonen v Australia* – enactment of the Human Rights (Sexual Conduct) Act 1994 (Cth).

## Non-governmental Organisations

Non-government organisations (NGOs) are organisations created by people that are independent and without representation of any government. They are separate from any government control and funding.

- Inform the global community, UN and governments of human rights violations
- Ensure greater government compliance; apply pressure

**International Committee of the Red Cross:** the ICRC's missions are strictly concerned with **international humanitarian law**, to protect the life and dignity of the victims of international and internal armed conflicts, although this work often overlaps with human rights abuses.

**Amnesty International**  
**World Vision**  
**Human Rights Watch**

## The Media

Like NGOs, the media plays a crucial role in the 'naming and shaming' of governments and human rights violators by exposing instances of human rights abuse and helping to bring about change. By investigating and reporting on human rights issues the media can have a significant influence on public opinion and government action.

- Give a voice to NGOs

Media freedom is severely restricted in many countries where it is often unsafe for reporters to undertake their work, which could result in censorship, imprisonment, beatings or even death.

## In Australia:

- **The incorporation of human rights into domestic law**

When an international treaty is negotiated and formed, states indicate their agreement to the principles of the treaty by signing it. Signing a treaty means the country will have to act in the spirit of the treaty, but it is not directly binding. In most cases a treaty will need to be ratified by the state before it becomes binding and enforceable.

**Australia is a dualist system**, meaning that simply signing a treaty does not make it enforceable in Australian law. The rights and obligations of the treaty need to be incorporated, usually through Parliament passing legislation that echoes the treaty or amends existing laws. This preserves state sovereignty, as Australia will sign the treaty but make its own laws to deal with the issue.

**International Criminal Court Act 2002:** authority over Australia.

- **The roles of:**

### **The Australian Constitution, including division of powers and separation of powers**

- Act of British Parliament that gives us autonomy as a state
- Outlines the powers given to the Federal Government
- Lays down the system of Australian government through which human rights are recognised
- Source of some specific human rights (expressed and implied)

#### **Division of Powers**

- The arrangement for the how the powers between the federal and state government and divided
- The division of power can act as a check on government by ensuring power is not too centralised in one place

**Exclusive:** Federal Government (Immigration, Income Tax, Defence)

**Concurrent:** Both State and Federal (Education, Roads, Healthy)

**Residual:** State (Police, Zoning, Parks)

**Express rights:** rights that are expressly included in a document

**Implied rights:** rights that can be implied through the text, structure or purpose of a document

**Example of implied right:** Lange v. Australian Broadcasting Corporation (1997) - controversial

#### **Separation of Powers**

The doctrine of separation of powers is important in protecting human rights. It involves the separation of the branches of state:

**Legislature** – elected lawmakers in parliament

**Executive** – government, including ministers and agencies,

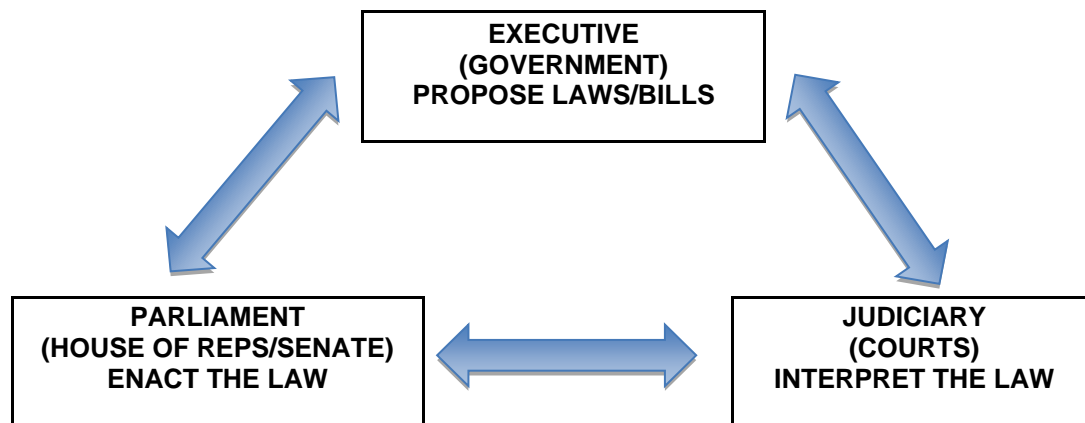
**Judiciary** – the courts that interpret and apply the law.

Australia has no strict separation between the legislature and executive – the Constitution provides for Ministers to sit in parliament and the executive can make delegated legislation.

However, the High Court has constantly ruled that strict separation of the judiciary from the other two 'political' branches is a fundamental principle in the Constitution.



The independence of the judiciary can be seen as an essential mechanism in upholding the rule of law, ensuring that all people, including government, are equally subject to the same law. It also helps ensure that rights and liberties are protected from the risk of abuses of power that could come with a politicised judiciary. Finally, the separation of power enables the judiciary to strike down any legislation that is deemed incompatible with the provisions of the Australian Constitution and the rights and limitations it contains.



One particular area that has been crucial for the development of human rights in Australia has been the external affairs power in s 51(xxix). This power gives the Commonwealth authority to legislate on external affairs, which includes Australia's treaty obligations. Since federation, the growth of treaties internationally has been enormous, and treaties have developed to cover many of the areas of the law that would traditionally have been solely within the power of the Australian states. Human rights treaties have transformed the country by enabling Commonwealth parliament to bind states to those rights and if necessary legislate to protect rights universally across Australian jurisdictions.

### Statute Law

Statute is a powerful tool in human rights protection and many laws have been wide reaching, but like common law, rights laid out in statute are not fixed, but can be removed by a later act of parliament if a government chooses to do so.

Some of the most important human rights legislation in recent times includes:

- Racial Discrimination Act 1975 (Cth)
- Sex Discrimination Act 1984 (Cth)
- Australian Human Rights Commission Act 1986 (Cth)
- Disability Discrimination Act 1992 (Cth)
- Age Discrimination Act 2004 (Cth), and
- Anti-Discrimination Act 1977 (NSW)

### Common Law

Common law is the body of law passed down by judgments of the courts, has evolved over centuries independently of government and carries the power to protect many human rights. Some examples of fundamental rights protected by the common law are the:

- Presumption of innocence
- Burden of proof
- Right to a fair trial

However, the common law does not offer absolute protection of human rights as common law rights are not fixed – that is, rights in the common law, no matter how crucial they may be seen to be, can be removed by any act of parliament.

**For example**, strict anti-terrorism laws passed by the Commonwealth government in the aftermath of the September 11 attacks and the Bali bombings were widely criticised as removing long-standing criminal law rights for certain people.

The common law cannot be relied upon to develop new rights, as judgments will only define those rights on a case-by-case basis, if and when a relevant matter is brought before a court. However, it has still been instrumental in establishing some rights in recent times.

**For example**, in 2001 in the case of *ABC v Lenah Games Meats Pty Ltd* [2001] HCA 63, the High Court suggested the possibility of a tort for invasion of privacy. In 2008, the Supreme Court of Victoria recognised a person's right to privacy in *Giller v Procopets* [2008] VSCA 236. In that case, privacy was breached by the defendant, who was the plaintiff's partner, after he unlawfully shared a private sexual videotape of her to her friends, family and employer. As of 2010, the High Court has yet to confirm whether this right of privacy applies in the common law Australia-wide.

## Courts and Tribunals

In Australia, all courts and tribunals will have some role in applying and enforcing human rights laws. Occasionally, courts will also play a role in interpreting and developing human rights law.

### Australian Human Rights Commission

- The most significant human rights body in Australia

An independent national body, it was established under the **Human Rights Commission Act 1986 (Cth)** to deal mainly with alleged violations of Australia's anti-discrimination legislation, which at the time covered racial and sexual discrimination.

It has the responsibility to:

- Receive and investigate complaints into discrimination and breaches of human rights
- Promote public awareness about human rights and provide legal advice
- Conduct public inquiries into human rights issues and issue recommendations
- Give advice and make submission to parliament and governments on development of laws, policies and programs consistent with human rights

The Commission has had an important influence on Australia's laws. **For example**, in 1997, it conducted an inquiry into the separation of indigenous children from their families (known as the Stolen Generation). The Commission's report, *Bringing Them Home*, recommended an apology by the Australian government to the victims. This recommendation was ignored for over a decade by the then Coalition government. However, in February 2008, a landmark apology to the stolen generation was made by the then newly elected Labor Prime Minister Kevin Rudd.

### High Court of Australia

The HCA is important as it has the power to set binding precedents on other courts or to overturn state or Commonwealth legislation.

The power of the judiciary, particularly the High Court, to protect human rights is critical, especially where judges can be influenced by agreed international standards, with the potential to apply those standards in the absence of conforming legislation passed by parliaments. Combined with the

court's power to declare legislation inconsistent or invalid, to uphold the rights of the Constitution and to continue to develop the common law, the High Court is arguably the most important protector of human rights in Australia.

#### EXAMPLES:

High Court cases involving human rights include the decriminalisation of homosexuality (*Croome v Tasmania*), a Constitutional right to freedom of political communication (*Lange v Australian Broadcasting Corporation*), or a possible common law right to privacy (*ABC v Lenah Game Meats*). In another recent case, the High Court upheld the Constitutional right of all people to vote, including prisoners (*Roach v Electoral Commissioner* [2007] HCA 43).

The High Court's methods of interpretation involving human rights have been particularly influential, and occasionally controversial. For example, the case of *Mabo v Queensland (No 2)* (1992) 175 CLR 1 is one of the most important cases in Australian law and involved recognition for the first time of Australia's Indigenous peoples' right to title in their traditional land. This principle became known as 'native title'.

### Non-government Organisations

Similar to international NGOs, these organisations will play a vital role in:

- Researching and reporting on human rights issues
- Making submissions to state and Commonwealth parliaments or law reform bodies on human rights inquiries
- Working in the field of human rights with victims of rights violations

Australian NGOs are important in:

- Protecting individuals' rights
- Shaping public and political opinion
- Exposing violations of human rights by governments and individuals

### The Media

The media play an indispensable role in the 'naming and shaming' of governments and human rights violators by exposing instances of human rights abuse and helping to bring about change. It has a significant influence on public opinion and government action.

Australia is ranked one of the top countries in the world for media freedom and Australian reporters, particularly the ABC and SBS, also play an important role in investigating and reporting on human rights on both a regional and worldwide basis.

### A Charter of Rights (arguments for and against)

Similarly, Australia protects certain human rights by statute, common law, courts and local organisations. However, the protection of rights in Australia is scattered and in many cases fragile – most rights could be overturned by the simple passing of a statute of parliament. While Australia currently lives under a peaceful and vibrant democracy, where rights for most people are respected and protected, history shows that this may not always be the case.

Many states around the world have opted to protect their citizens' rights through adoption of a bill or charter of rights, which aims to restrict the power of future parliaments to reduce or infringe certain rights.

## Arguments for a Human Rights Act

- There is high community support
- Redress the inadequacy of existing human rights protection by filling the gaps in the framework
- Serve as an important symbolic statement of Australian values and would reinforce national identity
- Assist in educating individuals and groups about their rights and empowering them to call for better promotion and protection of them
- Improve the quality and accountability of the government and encourage public debate – this would improve government policy, legislation, government service delivery and judicial decisions
- A culture of respect for human rights would be engendered – it would lead to greater awareness of human rights in the community and greater consideration of and adherence to human rights principles by all sectors of the community
- It could generate economic benefits, reducing the economic costs associated with policies that do not protect the lives and safety of Australians

## Arguments against a Human Rights Act

- Human rights are already adequately protected in Australia and thus it is unnecessary
- Australia enjoys greater social equity than other countries who do have a human rights act
- There would be an unacceptable shift of power from the legislature to the judiciary – it would require judges to make policy decisions, could result in courts ‘rewriting’ legislation, and would ultimately lead to the politicisation of the judiciary, undermining public confidence in the independence of the courts
- It might actually limit human rights or lead to other negative consequences for human rights protection. The very process of identifying and defining rights can limit them, and unintended or adverse consequences could flow from the protection of certain rights.
- Generate excessive and costly litigation, and the legal profession would be the main beneficiary

<b>FOR</b>	<b>AGAINST</b>
<ul style="list-style-type: none"> <li>– High community support</li> <li>– Redress inadequacy of existing protections</li> <li>– Reflect basic Australian values</li> <li>– Protect marginalised and disadvantaged</li> <li>– Improve quality and accountability of gov.</li> <li>– Contribute to a culture of respect</li> <li>– Improve Australia’s international reputation and standards</li> <li>– Bring Australia into line with other democracies</li> <li>– Generate economic benefits</li> </ul>	<ul style="list-style-type: none"> <li>– Already have adequate protections</li> <li>– Protection improvement is not guaranteed</li> <li>– Potentially negative outcomes</li> <li>– Excessive and costly litigation</li> <li>– Major economic cost</li> <li>– Already enjoy social equity</li> <li>– Identifying human rights can limit them</li> <li>– Shift in power from legislature to courts</li> </ul>

- Protection of human rights differs internationally and domestically.
- State sovereignty can be used to promote or to hinder human rights.
- The various bodies of the UN and international courts have differing roles to play in protection of human rights.
- The responsibility to protect is a new UN doctrine that attempts to make the prevention of human rights abuses the collective responsibility of the international community.
- Many IGOs and NGOs play an important role in promoting human rights internationally.
- The UN Human Rights Committee can hear complaints submitted directly by citizens of states.
- The ICC was the first permanent international court to deal with violations of human rights and crimes against humanity.
- Australia incorporates international treaties into domestic law by legislation.
- The Australian Constitution enshrines some minimal human rights.
- Most Australian human rights are found in statute or in common law.
- The High Court has a crucial role in upholding human rights in the Constitution and common law.
- Freedom of speech and freedom of information are essential for a healthy democracy and the maintenance of the rule of law.
- A Charter of Rights has been proposed for introduction into Australian law. There are many arguments for and against a charter, but the majority of Australians are in favour of it.

### 3. Investigate a contemporary issue which illustrates the promotion and/or enforcement of human rights

#### EXPLOITATION OF WORKERS

Labour exploitation is work obtained from a person under threat and which the person has not offered themselves voluntarily (ILO 1930).

Forced labour can be identified by the following, (ILO, 2007 as in Dowling, Moreton & Wright, 2007):

- Threats or actual physical harm
- Restriction of movement and confinement to the workplace or to a limited area
- Debt-bondage
- Withholding of wages or excessive wage reductions that violate previous agreements
- Retention of passports and identity documents
- Threat of telling authorities that the worker is of illegal status

#### International – Legal Responses

##### UN International Labour Organisation

The ILO is responsible for drawing up and overseeing international labour standards. It is the only 'tripartite' United Nations agency that brings together representatives of governments, employers and workers to jointly shape policies and programs promoting Decent Work for all. This unique arrangement gives the ILO an edge in incorporating 'real world' knowledge about employment and work.

Core Standards include:

- Freedom of association
- Right to collective bargaining
- Prohibition of all forms of forced labour
- Non-discrimination in employment
- Elimination of the worst forms of child labour

## International – Non-Legal Responses

### International Organisation for Standardisation

- The world's largest developer of voluntary International Standards
- Gives state of the art specifications for products, services and good practice, helping to make industry more efficient and effective
- Developed through global consensus, they help to break down barriers to international trade

ISO 26000 (Social Responsibility) provides guidance on how businesses and organizations can operate in a socially responsible way. This means acting in an ethical and transparent way that contributes to the health and welfare of society.

### International Labour Rights Forum

ILRF is an advocacy organisation dedicated to achieving just and humane treatment for workers worldwide.

Projects include:

- Freedom at work
- Stop child labour
- Rights for Working Women
- Creating a Sweat-free World

### Institute for Global Labour and Human Rights

This is a non-profit human rights organisation dedicated to the promotion and defence of internationally recognised worker rights in the global economy.

### Human Rights Watch

Human Rights Watch is dedicated to protecting the human rights of people around the world. They stand with victims and activists to prevent discrimination, to uphold political freedom, to protect people from inhumane conduct in wartime, and to bring offenders to justice. They investigate and expose human rights violations and hold abusers accountable. They challenge governments and those who hold power to end abusive practices and respect international human rights law. They enlist the public and the international community to support the cause of human rights for all.

### EXAMPLE:

The legal response with regards to the rights of workers is difficult as highlighted in the recent case of 3 workers that died on a coal ship in international waters (ABC AM 19/11/12). While the Australian police are investigating the events around the deaths they are limited in that they don't have the jurisdiction to bring charges. As the ship is registered in one country and most of the crew are from different, often developing, countries there is the issue of which country has jurisdiction and which are actually interested in pursuing the cases.

## Australia – Legal Responses

### Fair Work Australia (Fair Work Act 2009) – collective level

FWA is the independent national workplace relations tribunal. It hears workplace related matters and makes decisions about many workplace matters.



The FWA protects human rights through the provision of a basic wage determination and minimum conditions. The minimum wages gives Australians the safety net of knowing that they will be provided 'fair pay for a fair day's work'. The provision of minimum conditions implies a level of rights that applies to every worker and thus protects them from unscrupulous employers, e.g. the case of Crystal Car Wash Pty Ltd not providing holiday pay (ACA, 22/11/12).

### **Fair Work Ombudsman – individual level**

FWO is an independent statutory agency who educates people about their workplace rights and obligations, investigates breaches of these rights and takes cases to courts.

The FWO protects human rights through the authority it has under the Fair Work Act 2009 (Cth) to investigate and ensure compliance of businesses with respect to Commonwealth workplace laws. This ensures the rule of law in Australia and offers a vehicle for employees who feel that they have been unfairly dealt with to raise a complaint that will be dealt with and possibly lead to a remedy. This can be seen in the case of Crystal Car Wash Pty Ltd of underpaying employees and not providing holiday pay (ACA, 22/11/12).

### **Industrial Relations NSW**

- Works in partnership with the FWO
- Monitors wages, employment rights, obligations and employment conditions in NSW
- Administers NSW laws regulating shop trading hours, public holidays and long service leave
- Strategic policy and advice to the Government on public sector industrial relations issues

They can help if a person has been:

- Refused a job
- Dismissed from a job
- Refused a promotion, transfer or other benefit associated with employment
- Given unfair terms or conditions of employment
- Refused training opportunities
- Refused flexible work arrangements
- Harassed or bullied

### **Australian Human Rights Commission**

It is similar to FWA, but also provides anti-discrimination rights

### **Australia – Non-Legal Responses**

#### **Australian Council of Trade Unions**

The ACTU is the peak union body representing 46 affiliated unions and the interests of almost 2 million workers across Australia.

- Advocacy group for employees
- Aims to lift living standards and quality of working life

CASE:

#### ***New laws will help overcome gender inequality in Australian workplaces. ACTU, 23/11/2012***

- Overcoming gender inequality by getting organisation to report on how they are improving the position of women in the workforce
- Equal Opportunity for Women in the Workplace Amendment Bill passed to strengthen its powers