



Inquiry into a possible Human Rights Act for Queensland

**Report No. 30, 55th Parliament
Legal Affairs and Community Safety Committee
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Legal Affairs and Community Safety Committee

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Contents

	Terms of reference	vii
	Abbreviations	viii
	Chair’s foreword	ix
	The arguments for and against a human rights act	xi
	Non-government members’ comments	xiii
	Government members’ comments and recommendations	xx
1	Introduction	1
1.1	Role of the Committee	1
1.2	Referral of the inquiry	1
1.3	Parliamentary inquiry purpose and process	1
1.4	Inquiry process	1
1.5	Scope of the inquiry	2
	1.5.1 Point 1 of the terms of reference	2
	1.5.2 Point 2 of the terms of reference	2
	1.5.3 Point 3 of the terms of reference	2
2	Key concepts	2
2.1	What are human rights?	2
2.2	International declarations	3
2.3	International human rights treaties	3
3	The effectiveness of current laws and mechanisms for protecting human rights	5
3.1	Common law	5
	3.1.1 Principle of legality	5
3.2	Statutory protections	6
	3.2.1 Enshrined human rights in Australia	6
	3.2.2 Statutes that protect human rights in Queensland	6
3.3	Legislative scrutiny - the <i>Legislative Standards Act 1992</i> (Qld)	8
3.4	Other structural mechanisms	9
4	The operation and effectiveness of human rights legislation by ordinary statute internationally	11
4.1	Australian Capital Territory	11
	4.1.1 Compatibility statements and parliamentary scrutiny	12
	4.1.2 Remedies	12
	4.1.3 Declaration of incompatibility	13
	4.1.4 The ACT Human Rights Commission	13
	4.1.5 Reviews	14
	4.1.6 Gradual process of reform	14

4.2	Victoria	14
4.2.1	<i>Statements of compatibility and parliamentary scrutiny</i>	15
4.2.2	<i>Over-ride mechanism</i>	16
4.2.3	<i>The Victorian Equal Opportunity and Human Rights Commission</i>	16
4.2.4	<i>Reviews</i>	16
4.2.5	<i>A model for Queensland?</i>	16
4.2.6	<i>Interpreting laws consistently with human rights</i>	17
4.2.7	<i>Remedies</i>	18
4.3	New Zealand	18
4.3.1	<i>Section 7 inconsistent reports by the Attorney-General</i>	19
4.3.2	<i>Scrutiny of bills by the parliament</i>	20
4.3.3	<i>Remedies available as a consequence of the Act</i>	20
4.3.4	<i>Declaration of inconsistency by the Supreme Court</i>	21
4.4	United Kingdom	21
4.4.1	<i>Human Rights Act 1998 (UK)</i>	21
4.4.2	<i>'Take into account' provision</i>	22
4.4.3	<i>Interpretation provision</i>	22
4.4.4	<i>Public authorities</i>	24
4.4.5	<i>Causes of action</i>	24
4.4.6	<i>Limitation of rights</i>	24
4.4.7	<i>Law making by parliament</i>	25
5	Costs and benefits of adopting a Human Rights Act	26
5.1	Financial aspects	26
5.2	Legal aspects	27
5.3	Social aspects	27
6	Previous reviews of and inquiries into human rights legislation	29
6.1	Queensland	29
6.2	Australia's National Human Rights Consultation 2009	30
6.3	Australian Capital Territory	31
6.4	Victoria	32
6.5	New South Wales	33
6.6	Western Australia	33
6.7	South Australia	34
6.8	Tasmania	34
6.9	Northern Territory	34
6.10	New Zealand	34
6.11	United Kingdom	35
Appendix A	List of Submissions	38
Appendix B	List of Witnesses	52
Appendix C	International Covenant on Civil and Political Rights	54

Appendix D International Covenant on Economic, Social and Cultural Rights

73

Terms of reference

Terms of Reference

On 3 December 2015, the Legislative Assembly directed the committee to inquire into whether it is appropriate and desirable to legislate for a Human Rights Act in Queensland, other than through a constitutionally entrenched model.

The committee was required to report to the Parliament by **30 June 2016**.

The full terms of reference were:

1. That the Legal Affairs and Community Safety Committee inquire into whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, other than through a constitutionally entrenched model.
2. That, in undertaking the inquiry, the committee consider:
 - a. the effectiveness of current laws and mechanisms for protecting human rights in Queensland and possible improvements to these mechanisms;
 - b. the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and by ordinary statute internationally;
 - c. the costs and benefits of adopting a HR Act (including financial, legal, social and otherwise); and
 - d. previous and current reviews and inquiries (in Australia and internationally) on the issue of human rights legislation.
3. That, if the committee decides it would be appropriate and desirable to legislate for a HR Act in Queensland, the committee consider:
 - a. the objectives of the legislation and rights to be protected;
 - b. how the legislation would apply to: the making of laws, courts and tribunals, public authorities and other entities;
 - c. the implications of laws and decisions not being consistent with the legislation;
 - d. the implications of the legislation for existing statutory complaints processes; and
 - e. the functions and responsibilities under the legislation.
4. That the committee invite public submissions, consult with the community and key stakeholders and report to the Legislative Assembly by 30 June 2016.

Abbreviations

ACT	Australian Capital Territory
ADCQ	Anti-Discrimination Commission Queensland
Charter	<i>Charter of Human Rights and Responsibilities Act 2006 (Vic)</i>
committee	Legal Affairs and Community Safety Committee
HRA	<i>Human Rights Act 2004 (ACT)</i>
EARC	Queensland Electoral and Administrative Review Commission
EU	European Union
inquiry	An inquiry into whether it is appropriate and desirable to legislate for a Human Rights Act in Queensland
LCARC	Queensland Parliament, Legal, Constitutional and Administrative Committee
LGBTI people	People who identify as lesbian, gay, bisexual, transgender and/or intersex
LSA	<i>Legislative Standards Act 1992 (Qld)</i>
NZ	New Zealand
NZBORA	<i>New Zealand Bill of Rights Act 1990 (NZ)</i>
QAILS	Queensland Association of Independent Lawyers
QCAT	Queensland Civil and Administrative Tribunal
UK	United Kingdom
UK HRA	<i>Human Rights Act 1998 (UK)</i>

Chair's foreword

The committee has undertaken this inquiry over several months, and received almost 500 submissions. The committee invited consultation with stakeholders in jurisdictions with statutory human rights legislation, namely the ACT, Victoria and New Zealand. The committee conducted public consultation with community and Indigenous groups in North Queensland and with selected stakeholder representatives in Brisbane.

We have identified key issues raised by those who made submissions, and considered features of human rights legislation in other jurisdictions.

In this instance the committee was unable to agree on whether it would be appropriate and desirable to introduce human rights legislation to Queensland.

Government members of the committee concluded that it is appropriate and desirable to have a human rights act in Queensland.

Non-government members were of the opposite view.

Given the above and the wording of the terms of reference at point 3, the committee as a whole has not considered the various aspects set out under point 3.

Government members have included their consideration of these matters in the section 'Government member comments and recommendations'.

On behalf of the committee, I thank all those who made submissions to the inquiry or participated in the committee's hearings and meetings.

I would also like to thank the Committee Office staff for the support they have provided us.

I commend this report to the House.



Mark Furner MP

Chair

The arguments for and against a human rights act

The committee heard a wide range of opinions both for and against the introduction of a human rights act for Queensland. It is clear that this debate has been continuing for some time, including when Queensland Parliament, Legal, Constitutional and Administrative Committee (LCARC) was considering a bill of rights in Queensland in the 1990s, and when the Australian Government conducted a national consultation on human rights in 2008. The following two statements throw the debate into relief. Firstly, from a proponent:

A Human Rights Act would operate not merely to protect the powerless but to guide the powerful to act in a spirit of brotherhood and sisterhood towards our fellow citizens. A human rights act can both protect and inspire.¹

And from an opposing view:

The core problem with any bill of rights is how it enervates democracy. That, in fact, is the very point of these instruments. If you buy a bill of rights you are, in some form or other, simply buying the views of a coterie of unelected judges or committees of ex-lawyers.²

The ACT Standing Committee on Justice and Community Safety provided this committee with the following succinct summary of the arguments presented for and against a human rights act in the ACT in 2003.

Those in favour of the Bill put the view that making rights explicit in a single piece of legislation would promote awareness of rights, make them more accessible, promote debate, and make departures from rights principles more transparent.

Those against the Bill put the view that creating explicit rights in one piece of legislation would lead to unintended consequences (in the form of undue litigation), and the weakening of already-present 'organic' processes inherent in civil society.

It is evident that these differences of opinion reflect deeper traditions within the progressive and conservative strands of modern politics, with one placing trust in deliberate shaping of society by means of legislation, and the other placing greater trust in custom and agreed truths and values accrued over time.³

The views that were strongly presented in the ACT in 2003 were evident during this inquiry in 2016.

¹ Matt Foley, submission 385, p 2.

² James Allan, submission 29, p 3.

³ ACT Standing Committee on Justice and Community Safety, submission 480, p 39.

Non-government members' comments

The non-government members do not support the introduction of a human rights act for Queensland.

Passing laws that have the potential to fundamentally change the constitutional balance in Queensland should carry bipartisan and broad-based support. The proposal for a human rights act in Queensland has neither. The Bar Association of Queensland and Queensland Law Society, peak bodies representing the legal profession, are divided on this issue. Academics are divided on this issue. Politicians across the spectrum are divided on this issue – and support and opposition to the concept comes from all parts of the spectrum.

Presently, our legal and political system provides, in a basic sense, that all actions are permitted unless specifically prohibited by law – whether it is common law or legislation made by democratically elected members of parliament. Overturning this principle is a decision that should not be taken on the basis of partisan, divided opinion.

Non-government members observed that a number of submitters and witnesses who provided evidence to the committee considered a human rights act to be a way of addressing a particular issue or problem without consideration of the possible negative effects the legislation will have. While it is recognised that many of those issues carry a human rights dimension, it is our view that the best way to address those issues is through direct legislative change by the Parliament and policy and priority changes of the executive government of Queensland. This is the optimum way of achieving better outcomes for all concerned, while avoiding the significant legal, political and constitutional risks of legislating a statutory human rights act in the terms suggested by many submitters.

Our view is that many of the issues sought to be addressed by implementing a human rights act are in fact policy issues based around enhancing people's lives, dignity shown and respect offered to people by public agencies. Simply putting in place another piece of legislation will, unfortunately, not bring about enhancements to the enjoyment of people's rights. Such improvements require changes to the culture of public bodies to show more respect for individuals, and in many cases increased funding for services – both of which require action on the government's part to change their policy and funding priorities.

We agree with Hon Richard Chesterman's observation:

A human rights act is too broad and too far reaching in its scope and effect. It may address some of those problems, it may not, but it will have a more profound effect on society [than] is needed to address those problems.⁴

Non-government members have identified a number of issues that lead us to oppose the introduction of human rights legislation. These are provided below.

A human rights act will transfer decision-making to an un-elected judiciary

Non-government members note that a number of submissions expressed concern that a human rights act would transfer decision-making from a parliament with democratically elected members, to the courts and more specifically to judges, who are not elected by the people. We note the statement by James Allan:

⁴ Public hearing transcript, Brisbane 9 June 2016, p 29.

You either have a process where you count everyone equally and they vote for representatives who decide or you have a process where seven or nine top judges decide things by purporting to be moral experts or philosopher kings of some sense.⁵

We note that the issue of implementing a human rights act or bill of rights has been considered by this Parliament on numerous previous occasions. In considering the issue in 1998, LCARC recommended not adopting a bill of rights. Non-government members note the observation of the Bar Association of Queensland:

Whilst recognising that legislation changes from time to time and the common law as determined by judges develops, the mechanisms and systems that operated to protect rights and freedoms in 1998 are very much the same as those that operate today.⁶

LCARC identified that a human rights act would alter the relationship between the legislature and the judiciary. This is because the courts would have final say on the interpretation of the provisions of any legislation.⁷ We agree with LCARC's conclusion on this point. This situation could put parliamentary sovereignty at risk. Parliament is entitled to make and amend laws and no other person or entity has the right to amend or set aside legislation as made by the parliament.⁸

A dialogue model of human rights legislation creates a new forum of political debate in the judicial arena rather than the parliamentary arena. The courts would have to make a decision on competing interests, and possibly contentious issues, based on a list of rights provided in a single legislative instrument. As judges are not elected by the people, these models are fundamentally undemocratic. Experience in New Zealand shows that, even where human rights laws are tightly worded to avoid conflict between the judiciary and parliament, the judiciary inevitably assumes upon itself a role that is akin to making policy because of the existence of a general list of human rights contained in legislation. In New Zealand, this has taken the form of the judiciary declaring specific legislation passed by Parliament to be contrary to human rights, despite the fact that judiciary has been given no specific remit by Parliament to make such declarations. In effect, such actions create an alternative forum of political and policy decision making – when a democratically elected parliament is the place for those decisions to be made.

There is a need to safeguard the sovereignty of parliament so that democratically elected members of parliament can make decisions about competing interests or contentious issues unrestrained by considerations of how a law or policy will later be interpreted in the courts. As Nicholas Aroney and Richard Ekins stated, a human rights act undermines the proper functioning of legislators as it 'requires democratic deliberation to be reframed in legalistic terms'.⁹ The ACT Supreme Court provided an example of this problem in its decision in *In the matter of an application for bail by Isa Islam [2010]*.¹⁰ It found part of the *Bail Act 1992 (ACT)* to be inconsistent with the ACT Human Rights Act, setting up a situation where the ACT Parliament is urged to amend bail laws to conform to a judicial decision. In Queensland, legislation provides for a presumption against bail being granted to people accused of murder. This is a provision, enacted by Parliament, that clearly demonstrates Parliament giving

⁵ Public hearing transcript, Brisbane 9 June 2016, p 3.

⁶ Bar Association of Queensland, submission 477, p 7.

⁷ Queensland Parliament Legal Constitutional and Administrative Review Committee (LCARC), [The preservation and enhancement of individuals' rights and freedoms in Queensland: Should Queensland adopt a bill of rights?](#), Report No 12, November 1998, p 33.

⁸ LCARC, *The preservation and enhancement of individuals' rights and freedoms in Queensland*, Report No 12, p 34.

⁹ Nicholas Aroney and Richard Ekins, submission no 474, p 8.

¹⁰ *In the matter of an application for bail by Isa Islam [2010] ACTSC 147.*

additional weight to the rights of the community to be protected than the right for bail to be granted (as is the case in other criminal proceedings where a presumption in favour of bail being granted may exist). If Queensland adopts a statutory bill of rights containing a list of rights similar to the ACT, it is conceivable that judges could rule in favour of accused murderers being released on bail because it is in accordance with their human rights under a Queensland Human Rights Act, despite very specific provisions applying in Queensland legislation passed by Parliament. Such a system undermines the representative nature of government as it undermines laws passed by the people's representatives in Parliament.

Evidence from Honourable Christopher Finlayson shows that the *New Zealand Bill of Rights Act 1990* ('NZBORA') has created a 'bill of rights based industry', where lawyers commonly try to run cases based on the NZBORA 'uncomplicated by any vestige of merit'. This, as Hon Finlayson points out, is one of the downsides of their Bill of Rights.¹¹ The Clerk of the New Zealand Parliament submitted that the NZBORA inevitably leads to a greater scope for judicial action.¹² In the United Kingdom the interpretive provision in s 3 of the *Human Rights Act 1998* ('UK HRA') has resulted in the courts imposing meanings on statutes that the enacting legislation clearly did not intend.¹³ We suggest, in these matters, that the very same situation will come to pass in Queensland if a statutory bill of rights is implemented here, with all of the resultant legal costs and expense to the private sector and government of having to engage in this litigation and the costs to democracy of greater judicial activism.

It is noted that, in Victoria and the ACT where statutory human rights acts exist, there does not seem to have been a deluge of litigation based on those charters. Evidence was also received that the acts have not achieved a great deal in terms of creating dialogue or changing policies of the government.¹⁴ However, non-government members point out that submissions to this inquiry by the ACT Human Rights Commissioner and also the Victorian Equal opportunity and Human Rights Commission indicate that those bodies are seeking amendment to those statutory human rights acts in order to facilitate more ready access to legal action by people based on the acts, and also enhanced access to monetary damages for people making claims under the acts.¹⁵ These moves, if proceeded with, will certainly make it all the more likely that Queensland will also move in that direction if a decision to enact a statutory bill of rights is taken.

If this is the case, James Allan's comment will be borne out in Queensland:

*Bills of rights cost significant amounts of money that could be spent elsewhere and deliver little, save to lawyers, judges, criminals, and some articulate, well-educated members of the professional class.*¹⁶

The common law

The common law recognises and protects human rights. The common law allows people to do what they want, to the extent not limited by a specific law.¹⁷ According to Mr Justice Weinberg 'the common law has gone a fair way towards protecting those rights through its approach to the interpretation of

¹¹ Public hearing transcript, Brisbane, 11 April 2016, p 5.

¹² Public hearing transcript, Brisbane, 11 April 2016, p 17

¹³ Nicholas Aroney and Richard Ekins, submission 474, p 5.

¹⁴ Nicholas Aroney and Richard Ekins, submission 474, p 9.

¹⁵ ACT Human Rights & Discrimination Commissioner, ACT Human Rights Commission, submission 434, p 10, Victorian Equal Opportunity and Human Rights Commission, submission 447, pp 16-17

¹⁶ James Allan, submission 29, pp 4-5.

¹⁷ Joint submission of Christian churches and organisations, submission 462, p 5.

statutes'.¹⁸ He adds 'Common law would say that you read the statute in the way that is most protective of individual rights and liberties'.¹⁹

A robust democracy ensures human rights are protected

Australia enjoys an established, respected and robust democracy. At election time people exercise freedom of expression and of association. Candidates have the right to put forward their individual policies and platforms for the endorsement of the Australian people.

Any decision by a government to curtail or change people's fundamental rights through legislative reform will ultimately be presented to the people for censure or endorsement at election. The outcome of recent elections in Australia is testament to decision-making driven by the people and not by the courts.

If human rights legislation is to be introduced, it should be consistently introduced across the nation

The Australian Government responded to the 2009 recommendations of the National Consultation on Human Rights Committee in 2010. The government launched a human rights framework for Australia, which focussed on:

- reaffirming a commitment to human rights obligations
- acknowledging the importance of human rights education
- enhancing domestic and international engagement on human rights issues
- improving human rights protections, including through greater parliamentary scrutiny, and
- achieving greater respect for human rights principles within the community.²⁰

Non-government members note the words of the then Labor Attorney-General Hon Robert McClelland MP upon introducing the new framework:

Let me say at the outset, that a legislative charter of rights is not included in the 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 community²¹.

We agree with the statement of the Attorney-General and note that his words echo the conclusion of the LCARC in 1998:

A bill of rights should serve to unite rather than divide the community.²²

We are concerned at human rights legislation being introduced state by state, rather than consistently on a national level. We note the response of the then Labor Attorney-General Hon Jim McGinty in Western Australia to the recommendations of the Committee for a Proposed WA Human Rights Act. He stated: 'Ideally human rights should be shared by all Australians and not be subject to change when you cross State borders.' He continued, 'Human rights protection is an objective best pursued at a national level'.²³

¹⁸ Public hearing transcript, Brisbane, 11 April 2016, p 9.

¹⁹ Public hearing transcript, Brisbane, 11 April 2016, p 9.

²⁰ Hon Robert McClelland, [Address to the National Press Club of Australia: Launch of Australia's Human Rights Framework](#) 21 April 2010.

²¹ Hon Robert McClelland, [Address to the National Press Club of Australia: Launch of Australia's Human Rights Framework](#) 21 April 2010.

²² LCARC, *The preservation and enhancement of individuals' rights and freedoms in Queensland*, p 33.

²³ Jim McGinty, ['Human rights report completed'](#), media release, 20 December 2007.

Indeed, as noted in this report, at the Commonwealth level there are various bodies that work to prevent discrimination and promote human rights. State and Territory based human rights acts create duplicated functions between the Commonwealth and these States and Territories.

No identifiable benefits from introducing a human rights act

It was presented to the committee that overrepresentation of Indigenous peoples in the criminal justice system is a testament to Queensland's failure to protect the human rights of its Indigenous population both historically and in the present.²⁴

In jurisdictions where there is human rights legislation, such as Victoria and New Zealand, non-government members discerned that there are no measureable benefits from that legislation regarding incarceration rates of Indigenous peoples. In New Zealand, where the NZBORA has been effective since the early 1990s, Maori people continue to be overrepresented in New Zealand's correctional system.²⁵ Indigenous overrepresentation in the criminal justice system has many causes, but a human rights act should not be seen as a solution to this problem.

LCARC stated in 1998 that:

*... the proponents of any particular bill of rights model must show that that bill of rights would achieve a real difference to the preservation and enhancement of individuals' rights and freedoms in Queensland.*²⁶

The claim that a human rights act can solve endemic problems is not supported by evidence.

As an example, the Office of the Public Guardian submitted that 'A human rights act would ... buttress the rights framework for the Public Guardian's decisions'.²⁷ During the public hearing in Brisbane on 9 June 2016, the Office of the Public Guardian could not identify specific examples of when the decisions of the Office were successfully challenged due to inadequacies in the current legislative framework or where the current protections in place had failed to assist the Office's decision-making.²⁸

A human rights act won't necessarily improve identified gaps in human rights protection or problems in service delivery.

A human rights act will create uncertainty in terms of considering one right over another

Nicholas Aroney provided his experience of the operation of the Charter in Victoria in terms of protection of rights:

*In a recent study of the relationship between rights and the balancing of rights under the Victorian charter, Professor Paul Babie, Dr Joel Harrison and I found that religious freedom, for example—because that is what we were asked to study—was better protected before the charter than under it. More generally, and this is the most important point, we found at best the charter did not make a difference in cases, and at worst it supported decisions in which one right was given priority over another.*²⁹

²⁴ Public hearing transcript, Brisbane, 9 June 2016, p 28.

²⁵ New Zealand Department of Corrections, ['Prison facts and statistics – March 2016'](#).

²⁶ LCARC, *The preservation and enhancement of individuals' rights and freedoms in Queensland*, Report No 12, p 33.

²⁷ Office of the Public Guardian 9Q(d), submission 415, p 3.

²⁸ Public hearing transcript, Brisbane, 9 June 2016, p 32.

²⁹ Public hearing transcript, Brisbane, 9 June 2016, p 4.

He concluded that:

In our study we examined the wider debate in Victoria concerning the exact balance to be struck between different rights, and we found that there was not much dialogue; rather, we found that participants in the debate were constantly talking past each other. They were making their arguments without really considering the arguments of the other side. We found that a charter of rights does not make a difference because these are political questions.³⁰

As discussed during the public hearing in Brisbane on 9 June 2016 in regards to access to public housing, we questioned how the rights of one applicant to access public housing – in line with policies concerning access to public housing made by elected government in a situation where there is a shortage of public housing places available - may be balanced with another applicant’s competing rights to that housing under a human rights act.³¹ In Victoria, it is possible that such decisions, which involve striking a balance between two competing rights, may be made by a court or a tribunal. These decisions should be made by the government and not by a court. Nicholas Aroney stated:

Human rights charters undermine the separation of powers because they weaken the ability of both the parliament and the courts to perform their proper functions. Charters of rights pervert the functioning of courts because they require judges to apply their own personal values to cases that involve essentially political judgements about the proper balance to be struck between competing rights and interests.³²

Rather than produce dialogue, we find that a human rights act will create uncertainty and tension over which rights may be given priority over others and all statutes subject to reinterpretation. This will create a discussion that is by nature political, as the interests of all contenders are involved. Simply put, human rights acts will ‘undermine the rule of law ... because they produce uncertainty’.³³ We agree with the conclusion of Nicholas Aroney who stated: ‘we need to distinguish between judicial power and political power and keep that distinction sharp’.³⁴

This is borne out by the example of the interpretative provision in s 3 of the UK HRA in which the leading UK Court has determined allows for a judicial interpretation beyond the ordinary power usually exercised by the courts. The leading case of *Ghaidon v Godin-Mendoza* [2004] is an example of judicial re-interpretation. Section 3 of the UK HRA allowed for legislation to be interpreted with a different meaning. The court read in words which changed the meaning of the enacted legislation, so as to make the legislation, in the view of the court, compliant with the UK HRA.³⁵

Identified gaps in current human rights protections can be addressed without a human rights act

Non-government members acknowledge the evidence provided to the committee concerning discrimination on race and other grounds and inadequacies of government service provision, especially in regards to disability services.

If there are gaps, those can be addressed either by specific legislative amendment or by new government-led policies, enhanced government services or increased government spending on targeted areas. Enhanced education directed to government service providers can change the tone or

³⁰ Public hearing transcript, Brisbane, 9 June 2016, p 4.

³¹ Public hearing transcript, Brisbane, 9 June 2016, p 46.

³² Public hearing transcript, Brisbane, 9 June 2016, pp 4-5.

³³ Public hearing transcript, Brisbane, 9 June 2016, p 5.

³⁴ Public hearing transcript, Brisbane, 9 June 2016, p 10.

³⁵ *Ghaidon v Godin-Mendoza* [2004] 2 AC 571-572.

culture of a government service. The parliament can introduce these changes and foster a human rights tone or culture in the public services, and more broadly in society. This can be achieved without implementing a human rights act, with its resultant costs, complexity and undermining of democratic decision-making and parliamentary sovereignty.

In discussing this issue at the Brisbane public hearing, the Honourable Richard Chesterman affirmed that greater respect for human rights and better outcomes in different spheres of public services could be constructed by the executive and the legislature without involving the judiciary.³⁶

The government response to the 2015 *'Not now, not ever'- Putting an end to domestic and family violence in Queensland* report on domestic violence is an example of how far-reaching reforms can be made by governments in response to an identified problem. Part of the response is of a legislative nature but there are also significant reforms involving education and change in the culture of both government services and society.³⁷

The *Legislative Standards Act 1992* (Qld) ('LSA') sets out a range of factors to be considered in the drafting of primary and sub-ordinate legislation.

Section 4(3) of the LSA provides for consideration of whether legislation has sufficient regard to the rights and liberties of individuals. It does this by setting out a range of fundamental legislative principles, which include whether the legislation:

- (b) is consistent with principles of natural justice
- (f) provides appropriate protection against self-incrimination;
- (g) does not adversely affect rights and liberties, or impose obligations, retrospectively; and
- (j) has sufficient regard to Aboriginal tradition and Island Custom.³⁸

A submission to this inquiry observed that the work of the LSA is often overlooked because it doesn't use the term 'human rights'.³⁹ Non-government members observe that the LSA – and the fundamental legislative principles set out in it - functions well as a legislative scrutiny mechanism. That scrutiny process is, in our view, effective. If there are any shortcomings they could be addressed by legislative change to the content or wording of the fundamental legislative principles.

In setting out a number of issues in this commentary, non-government members endorse the statement of Martyn Iles at the public hearing in Brisbane on 9 June 2016:

*First, there is no compelling need for a human rights act. The common law recognises a great many fundamental rights and Queensland has a healthy democracy. Second, a human rights act undermines democracy by taking genuinely and highly contested political and social questions away from the democratic process towards unelected judges. Third, a human rights act undermines the role of the courts which no longer apply fixed laws to contested cases but are drawn in to applying uncertain laws in unpredictable ways.*⁴⁰

³⁶ Public hearing transcript, Brisbane, 9 June 2016, p 36.

³⁷ Queensland Government, *'Domestic and Family Violence Prevention Strategy'*.

³⁸ *Legislative Standards Act 1992* (Qld), s 4(3).

³⁹ Luke Geurtsen, submission 426, p 3. Refer to section 3.3 of this report.

⁴⁰ Public hearing transcript, Brisbane, 9 June 2016, p 3.

Government members' comments and recommendations

Recommendation 1

Government Committee Members recommend the Queensland Parliament move to legislate for a human rights act in Queensland

Recommendation 2

Government Committee Members recommend that where a human rights act is legislated that all Bills proposed by parliament be accompanied with a "statement of compatibility".

Recommendation 3

Government Committee Members recommend that where it is deemed by a parliamentary portfolio committee that a Bill be inconsistent with a "statement of compatibility" this in itself does not limit the Bill being passed by Parliament.

Recommendation 4

Government Committee Members recommend that judiciary have no part in any complaint process where a person is perceived to have suffered a human rights matter.

Recommendation 5

Government Committee Members recommend that objectives of a human rights act should it be legislated contain as a minimum, right to recognition and equality, right to life, right to freedom of movement, right to privacy and reputation, right to religion and belief, right to peaceful assembly and freedom of association, cultural rights (right to enjoy culture, declare and practise religion and use their language), rights to education and rights of children in the criminal process.

Government Committee Comments

Government Committee Members were encouraged and moved by the hopes and aspirations of those Queenslanders who either submitted or provided oral evidence of their stories and opinions to the Committee.

We believe a human rights act would provide greater protection for those vulnerable and disadvantaged people who have experienced persecution merely because their skin is a different colour, hold different beliefs, or suffer a disability or a medical condition or choose to associate with like partners.

Whilst there is argument that common law and the *Anti-Discrimination Act* provide sufficient protection the committee heard of significant gaps which could be covered in a human rights act. Current arrangements are a bit of a mishmash of different, overlapping statutes.

An over-arching human rights act would remedy any gaps and reinforce the fundamental character of those rights already protected under legislation by way of an unambiguous Parliamentary statement. A human rights act would encourage all arms of government to consider more fully human rights implications in decision making. The uniqueness of Queensland's unicameral parliament is a further reason for an additional mechanism in which to protect rights and freedoms.

Society is changing at a rapid rate and views are also changing in response. Consequently there needs to be a mechanism which allows these to be addressed.

Why a human rights act for Queenslanders

The committee received both passionate and considered calls for greater recognition of human rights in Queensland from among the submissions and evidence received during the course of this inquiry.

There was the realisation that human rights are essential, especially when events or circumstances place people in situations where their rights are compromised. This was succinctly stated by the Youth Advocacy Centre:

While life is going well, people do not think about human rights – it is when things go wrong that we need to know that they are there, recognised and can be acted upon.⁴¹

Most of those who provided submissions were concerned with achieving greater recognition of human rights and how best to achieve this – whether through a formal framework of a human rights act or outside such a framework. There was general consensus that the success or otherwise of a human rights protection framework is driven by how governments provide their services to people in Queensland.

The purpose of human rights is to make sure that everyone in our community has the opportunity to live a life characterised by freedom, respect, equality and dignity, so when we are thinking about the evidence that should be given the greatest weight [in] my view is that we should be looking to the people who do not have lives characterised by freedom, respect, equality and dignity.⁴²

⁴¹ Youth Advocacy Centre Inc., submission 484, p 2.

⁴² Aimee McVeigh, public hearing transcript, Brisbane, 9 June 2016, p 39.

Our International Obligations

Australia is not a party to the Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.⁴³

The Queensland Association of Independent Legal Services (QAILS) noted that Australia has signed and ratified five other international treaties concerning human rights. These five are the:

- 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 Forms of Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of the Child
- Convention on the Rights of Persons with Disabilities.⁴⁴

By ratifying international treaties, Australia has voluntarily accepted obligations under international law. However these obligations are directly enforceable in Australia only if they are implemented in domestic legislation.⁴⁵ The Queensland Law Society has noted that unless there are specific Australian laws bringing rights guaranteed by these treaties into force, the obligations are not legally binding under Australian law, although the courts must favour a construction aligning with international obligations where a statute is ambiguous.⁴⁶

Anthony Cassimatis observed that while Australia has not constitutionally entrenched its human rights obligations:

*there is no reason in principle why a comprehensive legal framework protecting human rights cannot be established by multiple pieces of ordinary legislation. Determining compliance with Australia's international obligations through the enactment and enforcement of multiple legislative instruments may be more complex but it may nonetheless be sufficient.*⁴⁷

The ICCPR and the ICESCR as ratified by the Australian Government are provided in full at Appendix C and D of the report.

How effective are current laws and mechanisms for protecting human rights?

Australia does not have a bill of rights enshrined in the *Australian Constitution*.

The Caxton Legal Centre acknowledged that the common law provides certain human rights protections in theory, but that 'they lie outside the reach of the overwhelming majority of citizens'. The Centre stated:

*Of all the jurisdictions available in Queensland, the Supreme Court is arguably the most inaccessible, yet it is the avenue for the majority of the existing rights protections, be they actions in tort, equity or judicial review.*⁴⁸

⁴³ Queensland Association of Independent Legal Services Inc, submission 476, p 4.

⁴⁴ Queensland Association of Independent Legal Services Inc, submission 476, p 4.

⁴⁵ Parliamentary Joint Committee on Human Rights, *Guide to human rights*, June 2015, p 5.

⁴⁶ Queensland Law Society, submission 475, p 3.

⁴⁷ Anthony Cassimatis, submission 382, p 3.

⁴⁸ Caxton Legal Centre Inc, submission 387, p 17.

Costs for introducing a human rights act

The ADCQ elaborated on the cost of *not* introducing legislation to protect Queenslanders human rights, acknowledging that the cost is ‘both tangible and intangible, and not always quantifiable in dollar terms’. The Commission stated:

[W]e know instinctively and anecdotally that where there is inequality in society, without a framework to address it, that there are significant costs — socially, economically, and culturally to those individuals directly affected, and the broader society ... These costs far outweigh the cost to establish and maintain a Human Rights Act.⁴⁹

Susan Harris Rimmer considered the issue of costs in relation to court proceedings in her submission. She recommended that there should be a presumption that the usual stance should be no costs to be awarded against a party, in a similar model to the provisions in the *Native Title Act 1993* (Cth). In court, such a provision allows for the granting of compensatory and or declaratory relief by a court in cases where an incompatibility has been found between an act of a public authority and a human right, but that the operation of the provision should be that a ‘no costs order’ is the normal course.⁵⁰

Peter Billings provided another possible solution to onerous court costs in his submission. He emphasised the need for a complaints system to be accessible, easy to navigate and relatively cheap, stating:

Inferior courts and tribunals are a more cost-effective pathway to remedying wrongs than superior courts, and also offer jurisdictional expertise in human rights-related matters.

Dr Billings suggested that the powers of the Queensland Ombudsman, the ADCQ and the Queensland Civil and Administrative Tribunal (QCAT) could be extended to deal with complaints and investigations of human rights breaches.⁵¹

The Queensland Mental Health Commission also pointed to a potential role for QCAT, as a way of providing accessible and effective remedies for claims of human rights breaches. The Commission recommended that a human rights act contain a direct cause of action to QCAT for a breach of human rights.⁵²

Similarly, the discussion paper provided to the committee by the ‘Human Rights Act for Queensland’ campaign, recommended that there be ‘affordable access to a remedy’ in the event there has a breach of a person’s human rights. The campaign discussion paper had a number of recommendations to ensure this occurred including:

- provision to make complaints to the Anti-Discrimination Commission and for complaints to be conciliated by the Commission provision for the Queensland Civil and Administrative Tribunal to receive applications alleging breaches of the Act.⁵³

Protection of human rights

Proponents for a human rights act have noted that a human rights act may highlight the rights of specific groups whose vulnerability calls for additional emphasis on protections.⁵⁴

⁴⁹ Anti-Discrimination Commission Queensland, submission 421, p 16.

⁵⁰ Susan Harris Rimmer, submission 443, pp 8-9.

⁵¹ Peter Billings, submission no 468, pp 38-43.

⁵² Queensland Mental health Commission, submission no 469,

⁵³ A Human Rights Act for Queensland Campaign, submission 470, *A Human Rights Act for Queensland: a discussion paper*, p 9.

⁵⁴ Queensland Law Society, submission 475, p 9.

In conducting its broad public consultation, the committee received numerous submissions and substantial evidence concerning the specific human rights needs of certain population groups and cohorts. The human rights of a number of these groups are discussed in this section.

Human rights to be protected in a possible human rights act

Rights drawn from the ICCPR and the ICESCR

In the submissions received in respect of the inquiry, a number of human rights proponents suggested that a human rights act in Queensland include all rights enshrined in the International Covenant on Civil and Political Rights (ICCPR). As noted elsewhere in this report, Australia has ratified this treaty. The rights in the ICCPR are included in the Victorian Charter and the ACT's HRA. The Caxton Legal Centre recommended that specified rights in a human rights act in Queensland could mirror those of the Victorian and ACT legislation.⁵⁵

The rights in the International Covenant on Economic, Social and Cultural Rights (ICESCR), which include such rights as adequate housing, education and working conditions, have been adopted partially by the ACT, where the right to education commenced in January 2013 (s 27A).⁵⁶ Victoria has considered extending the Charter to include ICESCR rights.⁵⁷

The Australian Lawyers for Human Rights recommended that a human rights act protect all civil and political rights, economic, social and cultural rights. In addition the submission called for inclusion of 'any additional specific rights that the Queensland community identifies as particularly worthy of protection'.⁵⁸

Susan Harris Rimmer also recommended that a human rights act include all rights in the ICESCR, as they are as 'integral to human dignity' as those rights enshrined in the ICCPR. She noted:

*In some ways, economic, social and cultural rights may be more relevant for many Australians because they impact on the quality of day-to-day life, rather than only kicking in relation to criminal convictions and court proceedings as many of the rights in ICCPR do.*⁵⁹

The Anti-Discrimination Commission Queensland noted that some economic, social and cultural rights have substantial protection elsewhere in Queensland laws, such as anti-discrimination laws. The Commission recommended adopting ICCPR entirely in a human rights act and progressively including ICESCR in a 'staged approach' where priority is given to some, immediately realisable rights, such as the right to basic education and emergency medical treatment.⁶⁰

The community-based 'Campaign for a Human Rights Act for Queensland' collected submissions to this inquiry through use of an online survey and the committee received approximately 320 submissions. While the committee notes that the survey results might not reflect the opinions of the wider Queensland population, the survey indicated the five highest ranked human rights to be included in a human rights act in order of priority were:

- the right to a fair hearing
- the right to education
- protection from torture, inhumane and degrading treatment

⁵⁵ Caxton Legal Centre, submission 387, p 5.

⁵⁶ *Human Rights Act (ACT)*, s 27A.

⁵⁷ Queensland Law Society, submission 475, p 8.

⁵⁸ Australian Lawyers for Human Rights, submission 472, p 5.

⁵⁹ Susan Harris Rimmer, submission 443, p 4.

⁶⁰ Anti-Discrimination Commission Queensland, submission 421, p 25.

- right to adequate health care
- right to recognition and equality before the law.⁶¹

Rights with limitations

Opponents of a human rights act have indicated that upholding an individual's human rights may restrict a government's ability to uphold peace and good order.⁶²

The joint submission of certain Christian churches and organisations is cautious about human rights legislation and 'the language of rights used mainly to advance a particular social or political view amongst others'.⁶³

A cautionary approach is offered by Narelle Bedford and Danielle Ireland-Piper, 'a human rights act in Queensland should articulate that all rights are important but that the rights are not absolute and can be subject to reasonable limitations'.⁶⁴

The Queensland Law Society reaches a similar conclusion, 'any consideration of the rights to be included must recognise their necessary limitations. It is well accepted that not all human rights are absolute, and can be limited in certain circumstances'.⁶⁵ In the ACT the HRA provides that rights may be limited in s 28.⁶⁶ The Victorian Charter provides for limitations to human rights in s 7(2).⁶⁷

QAILS indicated that a human rights act could specify that certain rights are absolute and that the derogation provision does not apply. The submission suggested the right to freedom from slavery or torture should be absolute.⁶⁸

On the issue of whether a human rights act might in fact limit certain rights in preference to other rights Tania Heber, representing the Environmental Defenders Office, stated:

*I am not concerned about that, because the important thing is that there has been a debate and an obligation for people to consider the rights. It is the politics of it rather than what the actual outcome is. The fact that we have all had the opportunity—Indigenous people, environmental people, people who live on the land. Everyone has had the opportunity to have that debate because we are required to have that debate by our human rights act.*⁶⁹

Obligations under a human rights act

The Endeavour Foundation noted that human rights legislation typically does not impose obligations on individuals acting in a private capacity. The general approach, and one taken in the ACT and Victoria, is for government and public authorities to comply with human rights legislation.⁷⁰

Narelle Bedford and Danielle Ireland-Piper recommended that human rights legislation should apply to all public authorities.⁷¹ This recommendation was repeated in a number of submissions. The Endeavour Foundation called for a broad and encompassing definition of public authority. The Foundation recommended:

⁶¹ Campaign for a Human Rights Act for Queensland, submission 470, p 4.

⁶² Queensland Law Society, submission 475, p 18.

⁶³ Joint submission of Christian churches and organisations, submission 462, p 14.

⁶⁴ Narelle Bedford and Danielle Ireland-Piper, submission 478, p 7.

⁶⁵ Queensland Law Society, submission 475, p 8.

⁶⁶ Human Rights Act 2004 (ACT), s 28.

⁶⁷ Charter of Human Rights and Responsibilities Act 2006 (Vic), s 7(2).

⁶⁸ Queensland Association of Independent Legal Services Inc, submission 476, p 4.

⁶⁹ Public hearing transcript, Cairns, 16 May 2016, p 8.

⁷⁰ Endeavour Foundation, submission 19, p 8.

⁷¹ Narelle Bedford and Danielle Ireland-Piper, submission 478, p 7.

*A definition of ‘public authority’ should include tribunals, courts, government departments, public officials, statutory authorities, government business initiatives/bodies, state owned companies, Queensland Police Service, local government, Ministers, Parliamentary Committee members when acting in an administrative function, a declared public authority and an entity whose functions include those of a public nature.*⁷²

A number of submissions expressed concern over how a human rights act may apply to private entities providing outsourced, government-funded services. Uncertainty was expressed in submissions by the Queensland Mental Health Commission and the Office of the Public Advocate (Qld) over whether private entities providing services through the Australian Government’s National Disability Insurance Scheme (NDIS) may be obliged to comply with a state-level human rights act.⁷³

The Caxton Legal Centre suggested that a human rights act should apply to both government and to public authorities, ‘including private entities performing functions of a public nature’. The Centre also recommended that a human rights act should provide that decisions of public authorities must be substantively compatible with human rights. To clarify which entities must comply with the act, it proposed that:

*[R]egulations should prescribe which entities are public authorities with commencement dates determined after consultations with representatives of the private entities.*⁷⁴

Human rights and Indigenous peoples

Human rights specified in the Victorian and ACT legislation

The human rights legislation in Victoria and the ACT provides explicit protection of a select group of human rights drawn from international human rights treaties.

The Victorian Charter specifies 20 rights drawn from the ICCPR.

The Charter acknowledges Article 27 of the ICCPR in s 19 (1) ‘Cultural rights’:

*All persons with a particular cultural, religious, racial or linguistic background must not be denied the right, in community with other persons of that background, to enjoy his or her culture, to declare and practise his or her religion and to use his or her language.*⁷⁵

The Charter adds specific recognition of the rights of Indigenous peoples in s 19(2):

- (2) *Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community—*
- a) to enjoy their identity and culture; and*
 - b) to maintain and use their language*
 - c) to maintain their kinship ties*
 - d) to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs*⁷⁶.

⁷² Endeavour Foundation, submission 19, p 9.

⁷³ Queensland Mental Health Commission, submission 469, p 11; Office of the Public Advocate (Qld), submission 399, p 8.

⁷⁴ Caxton Legal Centre, submission 387, p 2.

⁷⁵ Charter of *Human Rights and Responsibilities Act 2006* (Vic), s 19(1).

⁷⁶ Charter of *Human Rights and Responsibilities Act 2006* (Vic), s 19(2).

In February 2016, s 27 of the HRA was amended and the title changed from ‘Rights of minorities’ to ‘Cultural and other rights of Aboriginal and Torres Strait Islander peoples and other minorities’. Section 27 included a new subsection:

- (2) *Aboriginal and Torres Strait Islander peoples hold distinct cultural rights and must not be denied the right—*
- (a) *to maintain, control, protect and develop their—*
- (i) *cultural heritage and distinctive spiritual practices, observances, beliefs and teachings; and*
- (ii) *languages and knowledge; and*
- (iii) *kinship ties; and*
- (b) *to have their material and economic relationships with the land and waters and other resources with which they have a connection under traditional laws and customs recognised and valued.*⁷⁷

Issues of importance to Indigenous people

The committee conducted consultation in the Indigenous communities of New Mapoon, Thursday Island and Lockhart River. The committee conducted public hearings with stakeholder representatives and members of the public in Townsville and Cairns.

The committee received information about complex issues concerning service delivery from different areas and levels of government, and heard from many people recounting experiences at an individual or community level. While not all strictly relevant to the committee’s inquiry and the terms of reference, the committee acknowledges the many issues raised are affecting people on a daily basis in profound ways.

Identified problems are not seen as easily fixed by a single program, policy or piece of legislation. As noted by the Apunipima Cape York Health Council, there is a:

*complex interaction of social, emotional, physical, cultural, environmental and historical elements that contribute to the Aboriginal and Torres Strait Islander people at an individual, family and community level.*⁷⁸

There is often a gap between the identified need and the provision of services by way of response, as identified by Wayne Butcher, Mayor of Lockhart Shire Council: ‘Looking at the difference between the intentions of policies and what actually happens on the ground, there is a big gap in the intention and what it was designed to deliver’.⁷⁹

Gracelyn Smallwood questioned the effectiveness of previous government policies and programs. She stated:

*In this state, we are so far behind every other state and the human rights legislation, and that is evidence based ... Governments come and go, but my people remain the sickest and unhealthiest people in the world per head of population right across the board.*⁸⁰

One theme expressed at these meetings was the need to address past injustices as much as a need to address current problems. There was a range of opinions as to whether a human rights act could achieve this. At the Thursday Island hearing Harry Seriat stated:

⁷⁷ Human Rights Act 2004 (ACT), s 27.

⁷⁸ Apunipima Cape York Health Council, submission 428, p 1.

⁷⁹ Public hearing transcript, Lockhart River, 19 May 2016, p 8.

⁸⁰ Public hearing transcript, Townsville, 16 May 2016, p 17.

*In terms of human rights Australia has got a lot to answer for. I do not see a quick fix by introducing a bill for human rights, whether it is going to address issues of the past or address current issues.*⁸¹

Kevin Cocks submitted that ‘When we come to look at Aboriginal and Torres Strait Islander people, we are looking at over 200 years of structural exclusion and discrimination. It is going to take probably 200 years to get real equality’.⁸² Mr Cocks continued:

*That is where I think the potential for a human rights act in Queensland provides for the beginning of breaking down some of those destructive relationships and institutional cultural practices that we have had that have positioned Aboriginal people to be treated as second-class citizens in Queensland and Australia.*⁸³

Catherine Pereira of the Aboriginal and Torres Strait Islander Women’s Legal Service of North Queensland supported a human rights act for Queensland. She stated:

*As people would be aware, the disadvantage to Aboriginal and Torres Strait Islander people continues to be endemic. Notwithstanding government efforts to address the issues through piecemeal means, a human rights act would have the advantage of creating, first of all, a way of scrutinising legislation before it is passed to ensure that it is compliant with a human rights act and the human rights of people that it protects. Secondly, it would have the advantage of holding politicians and those acting in a public capacity at the very least to their obligations under the human rights act. In particular, we support the version of a human rights act which would require that all legislation produce a certificate of compliance with the human rights act.*⁸⁴

Ms Pereira also drew the committee’s attention to the disadvantages experienced by Indigenous women:

*I think it is fairly well documented that Aboriginal and Torres Strait Islander women are amongst the most disadvantaged socially and economically. They are 35 times more likely to be hospitalised for family violence, and that family violence relates to a whole lot of other indicators of disadvantage such as lack of housing, poverty, lack of access to the workplace and lack of education.*⁸⁵

During the committee’s consultation in North Queensland a number of general themes emerged and these are outlined below.

Effectiveness of current protections

Wayne Costelloe, from the Australian Aboriginal and Torres Strait Islander Centre of James Cook University, provided an example of discrimination he had personally experienced, when applying for a rental property. He stated:

Unless you have experienced discrimination on a daily basis and intergenerational discrimination on a daily basis, no matter what your background—male or female, whatever linguistic or culturally diverse background you come from—then asking the

⁸¹ Public hearing transcript, Thursday Island, 18 May 2016, p 15.

⁸² Public hearing transcript, Brisbane, 9 June 2016, p 44.

⁸³ Public hearing transcript, Brisbane, 9 June 2016, p 44.

⁸⁴ Public hearing transcript, Townsville, 16 May 2016, p 1.

⁸⁵ Public hearing transcript, Townsville, 16 May 2016, p 2.

*question whether we need a human rights act and how that is manifested is an opportunity for further discussion’.*⁸⁶

Mr Costelloe was asked whether the *Anti-Discrimination Act 1991* (Qld) would have been sufficient to deal with his experience and whether he had sought recourse. In response, Mr Costelloe described the Act as ‘not helpful’, as it was hard to prove that discrimination had occurred. He observed:

*When I talked about what was required by the act to prove discrimination on the basis of race, a lot of people—and not just those from an Aboriginal and Torres Strait Islander background, but those from a range of linguistically and cultural diverse backgrounds—said, ‘I’m never going to get this up.’ We know this is discrimination on the basis of race. I am sure people from other groups—like aged groups—know what that feels like, but it is hard to prove it and satisfy the requirements of the act because the standards are quite high.*⁸⁷

He continued:

*It is just blatant but what is the standard of proof that is required by the Anti-Discrimination Act to say it was discrimination on the basis of race. That is what puts a lot of Queenslanders off when it comes to seeking recourse.*⁸⁸

The sentiment that current laws do not adequately protect people’s human rights was repeated on Thursday Island by Ivy Travallion:

*I support the idea for human rights legislation, or a bill of rights, so that we, our people, can have the opportunity to be represented fully on anything that they want, or any issues of concern that they have. At the moment, we have nothing to stand on, nothing to even go forward on if we have any issues.*⁸⁹

Mr Costelloe considered the development of a human rights act as a possible solution to the current perceived lack of protection:

*I think genuine community input from all equity groups, particularly Aboriginal and Torres Strait Islander viewpoints, is absolutely essential. Also if there is any recourse, what might that recourse look like and what is the standard of proof? If you have those as basic considerations in developing a model then that is really genuine community engagement where you are empowering people to engage.*⁹⁰

Recognition of Indigenous people

The need for better recognition of Indigenous peoples in Australia was important to many people who presented at the public hearings in North Queensland. For example, Associate Professor Gracelyn Smallwood succinctly stated: ‘First nation Australians have to be recognised. We are the original owners of this country’.⁹¹

Sereako Stephen stated:

⁸⁶ Public hearing transcript, Townsville, 16 May 2016, p 15.

⁸⁷ Public hearing transcript, Townsville, 16 May 2016, p 17.

⁸⁸ Public hearing transcript, Townsville, 16 May 2016, p 18.

⁸⁹ Public hearing transcript, Thursday Island, 18 May 2016, p 5.

⁹⁰ Public hearing transcript, Townsville, 16 May 2016, p 18.

⁹¹ Public hearing transcript, Townsville, p 21.

*It is very important that, if the government is looking at constructing a human rights bill to shape how the government will operate in the environment of human rights, our rights as Aboriginal and Torres Strait Islander people—first nation people’s rights—must be acknowledged at the very outset.*⁹²

Michael Bond of the Northern Peninsula Area Regional Council submitted:

*First and foremost, I think our people and community need to be given recognition about what and who we are, where we come from and what we want to achieve for our people.*⁹³

Human rights legislation in the ACT and Victoria recognises Indigenous people. In the preamble of the ACT’s HRA, Indigenous people are referred to as the ‘first owners of this land’, and in the preamble of the Charter as the ‘descendants of Australia’s first people’.⁹⁴

The HRA and the Charter both include specific recognition of the cultural rights of Indigenous peoples. Using the ACT and Victorian legislation as models, the Apunipima Cape York Health Council recommended that a human rights act ‘explicitly ensure the protection of Queensland’s Aboriginal and Torres Strait Islander peoples’ cultural rights’.⁹⁵

Self-determination, involvement in government decision-making

The Cape York Institute provided a history of often discriminatory legislative measures in relation to Indigenous people in Queensland. It concluded that legislation alone, whether at the state or Commonwealth level, ‘has not proven enough to protect Indigenous rights’. The submission called for ‘guarantees and processes for fair engagement, consultation and negotiation between Indigenous peoples and government’, and to help prevent ‘government abuse of Indigenous rights’. To that end the Institute recommended the establishment of an Indigenous representative body that the parliament would be required to consult with, and hear non-binding advice from, when making laws and policies affecting Indigenous rights and interests.⁹⁶

Cape York Institute representative Harold Ludwig called for a formal representative body:

*Any new human rights act for Queensland would be ineffective in improving Indigenous human rights protection without a requirement that Indigenous peoples must be heard on the political decisions made about them.*⁹⁷

The desire for active participation in government processes and decision-making was repeated on Thursday Island by Sereako Stephen:

*There is a plethora of social issues you have heard—housing, education, employment and training. What we want to do in the Torres Strait is to assert our fundamental basic human rights to build and be successful entrepreneurs. We want to bring investment into our region. We want to be sitting at the table and negotiating our children’s future.*⁹⁸

David Byrne of the Apudthama Agay Aboriginal Corporation recommended formal adoption by the state of the United Nations’ Declaration on the Rights of Indigenous People:

⁹² Public hearing transcript, Thursday Island, p 26.

⁹³ Public hearing transcript, New Mapoon, p 2.

⁹⁴ Charter of Human Rights and Responsibilities Act 2006 (Vic), preamble; Human Rights Act (ACT), preamble, para 7.

⁹⁵ Apunipima Cape York Health Council, submission 428, p 4.

⁹⁶ Cape York Institute, submission 389, p 10.

⁹⁷ Public hearing transcript, Cairns, 16 May 2016, p 2.

⁹⁸ Public hearing transcript, Thursday Island, 18 May 2016, p 27.

*It is really up to the state to enshrine the United Nations Declaration on the Rights of Indigenous People in domestic law. If that legislation is enshrined in domestic law—and do not be frightened of this—what it really says is: Indigenous people who live on their country, not having left it, are entitled to govern themselves. It is not sovereignty. Queensland is still sovereign. The Commonwealth is still sovereign.*⁹⁹

Human rights and people with disability

A number of submissions pointed out that people with disability are not without the capacity to make decisions about their care and their living arrangements. As stated by Colleen Papadopoulos, ‘what we have found in practice is that most people, even those with an intellectual disability, are able to step up to the challenge of understanding what they want and understanding how to make decisions’.¹⁰⁰

The submission of Speaking Up for You (SUFY) identified shortcomings in the provision of services to people with disability. The submission noted that ‘many people with disability are forced to live with people they do not know, like or are a threat to them’.¹⁰¹

Kevin Cocks made the following observation:

*When you have government agencies, or agents of government, which we are talking about a lot in this state, we are talking about service delivery. They have power. Vulnerable people do not have power. It is an unequal engagement between those who provide those services and make the decisions about what you get, when you get it and how you get it.*¹⁰²

Both SUFY and Kevin Cocks saw a human rights act as being beneficial in improving service delivery. SUFY stated that:

*[A] human rights act that required compliance with human rights at all levels of government policy would provide a safeguard so that Governments cannot simply overlook Human Rights considerations when making policies, programs and funding decisions.*¹⁰³

Kevin Cocks submitted:

*A human rights act would provide a more accessible avenue for citizens to challenge decisions or service delivery that they feel denied them their basic human rights. It would provide clarity about what is meant by ‘human rights’, how they are to be applied in the context of the many facets of a citizen’s life and to provide cultural change over time in the provision of government services by government agencies or their agents.*¹⁰⁴

The Office of the Queensland Public Guardian stated:

The following fundamental rights are not always enjoyed to the fullest extent by persons with impaired decision-making capacity: the right to legal capacity; the right to life; the

⁹⁹ Public hearing transcript, New Mapoon, 17 May 2016, p 8.

¹⁰⁰ Public hearing transcript, Brisbane, 9 June 2016, p 28-29.

¹⁰¹ Speaking Up for You, submission 454, p 7.

¹⁰² Public hearing transcript, Brisbane, 9 June 2016, p 44.

¹⁰³ Speaking Up for You, submission 454, p 7.

¹⁰⁴ Public hearing transcript, Brisbane, 9 June 2016, p 38.

*right to health care; the right to liberty and security of the person; or the right to social inclusion.*¹⁰⁵

In terms of which human rights would best offer people with a disability in a possible human rights act, the Office supported the incorporation of ‘the full range’ of human rights recognised in the international Convention on the Rights of Persons with Disabilities.¹⁰⁶

Human rights and the National Disability Insurance Scheme

The National Insurance Disability Scheme (NDIS) was seen by a number of submitters as bringing in a new era of rights-minded services to people with a disability. Paige Armstrong noted:

*We know that the NDIS is underpinned by the international convention of rights of people with disability through the United Nations. What we see as absolutely vital to bringing to life those issues that the NDIS underpins—of choice and control, of economic and social participation—is a levelling field, where all people are seen to have the same basic rights.*¹⁰⁷

The extension of human rights obligations to service providers under the NDIS was a cause for concern. The Queensland Mental Health Commission noted the trend towards outsourcing service delivery to organisations outside of government, including through the NDIS.¹⁰⁸ The Office of the Public Advocate (Qld) submitted that while a Queensland human rights act would apply to service providers that operate under contract to Queensland government departments, under the Commonwealth Government’s NDIS, service providers may not have the same obligation to comply with a human rights act.¹⁰⁹

The Queensland Office of the Public Guardian noted that the Victorian Charter applies to the actions of a ‘public authority’.¹¹⁰ The Charter’s definition of ‘public authority’ (s 4) is wide enough to capture state government agencies as well as agencies funded by the state government.¹¹¹ However, the 2015 Review of the Charter regarded it was unclear whether human rights obligations apply to non-government organisations funded by the NDIS.¹¹²

The Queensland Mental Health Commission recommended that a requirement to consider human rights in program and service delivery should be extended to all services funded directly and indirectly by the State, including those delivered by private and nongovernment organisations. The Commission recommended that ‘a Human Rights Act in Queensland defines public authorities broadly enough to include all private and not-for-profit organisations providing government funded services’.¹¹³ The Office of the Public Guardian submitted that ‘it is imperative that a Human Rights Act should apply to decisions and actions taken by service providers funded by the National Disability Insurance Scheme’.¹¹⁴

¹⁰⁵ Public hearing transcript, Brisbane, 9 June 2016, pp 26-27.

¹⁰⁶ Public hearing transcript, Brisbane, 9 June 2016, p 26.

¹⁰⁷ Public hearing transcript, Brisbane, 9 June 2016, p 28.

¹⁰⁸ Queensland Mental Health Commission, submission 469, p 11.

¹⁰⁹ Office of the Public Advocate (Qld), submission 399, p 8.

¹¹⁰ Queensland Office of the Public Guardian, submission 415, p 8.

¹¹¹ Charter of Human Rights and Responsibilities Act 2006 (Vic), s 4.

¹¹² Michael Brett Young, [From Commitment to Culture: the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006](#), September 2015, p 206.

¹¹³ Queensland Mental Health Commission, submission 469, p 11.

¹¹⁴ Office of the Public Advocate (Qld), submission 399, p 9.

The Endeavour Foundation recommended that Queensland negotiate with the Australian Government to ensure any public authority obligations in a proposed act would apply 'whenever a formal disability service is funded and provided in Queensland'.¹¹⁵

Human rights and older people

Several submitters asserted that current laws do not adequately protect older people and that a human rights act would protect members of this group.

Societal context

According to projections, the Queensland population of older persons will treble over the next 25 years.¹¹⁶ Queensland Treasury predict that those aged 100 and over will rise from 430 in 2006 to 6,500 in 2031, with the median age rising from 36 to 43 by 2056.¹¹⁷

Mr Bill Mitchell of the Townsville Community Legal Service (TCLS) advised the committee that, by 2061, over one quarter of Queensland's population will be over 65 years of age.¹¹⁸

A fundamental issue in the consideration of human rights for older people is the question of who is a member of that category. Mr Mitchell speculated on who might identify as an older person:

*...we might say you get a Seniors Card at 65, or you are entitled to this sort of discount or concession at 55, or if you are Indigenous you have a different life expectancy or you are an elder at a different age or at a different stage of life. Who is an older person is a social construct, but let us just say 65-year-olds are elders for the sake of it, today.*¹¹⁹

TCLS noted that older people can be:

*...a particularly vulnerable segment of the population in many ways including through the effects of ageism and stereotyping, poverty and exclusion, disease, senescence and death and as victims of crime, exploitation, abuse and neglect. Older persons are also vulnerable to recession, disasters and even seasonal variation and ... they have distinct legal and rights needs.*¹²⁰

Rights and Legal needs

Mr Mitchell identified some of the areas where there may be some articulation of rights, but where people may not clearly understand them:

For older people, many of those issues are end-of-life rights. They are things around the right to choose medical treatment and the right to not choose medical treatment; the right to palliative care; the right to be protected from abuse and violence from their children or others who might exploit or abuse them; the right to accommodation that is

¹¹⁵ Endeavour Foundation, submission 19, p 11.

¹¹⁶ Queensland Treasury, Office of Economic and Statistical Research Demography and Planning, Population projections to 2031: local government areas, 2011 edition, Queensland Treasury, Office of Economic and Statistical Research Demography and Planning, Queensland Government population projections to 2056: Queensland and statistical divisions 2011 edition; quoted by Townsville Community Legal Service Inc, Submission 452, p 3.

¹¹⁷ Queensland Treasury, Office of Economic and Statistical Research Demography and Planning, Population projections to 2031: local government areas, 2011 edition, Queensland Treasury, Office of Economic and Statistical Research Demography and Planning, Queensland Government population projections to 2056: Queensland and statistical divisions 2011 edition; quoted by Townsville Community Legal Service Inc, Submission 452, p 3.

¹¹⁸ Public hearing transcript, Townsville, 16 May 2016, p 5; Mr Bill Mitchell quoted Queensland Government Statistician's Office projection.

¹¹⁹ Public hearing transcript, Townsville, 16 May 2016, p 5.

¹²⁰ Townsville Community Legal Service, Submission No 452, pp 4-5.

*appropriate and that does not arbitrarily detain or subject them to what might be considered torture; and the right to have decisions made about them properly and in such a way that respects their human rights and their dignity.*¹²¹

The 2007 Commonwealth Parliamentary Inquiry into Older People and the Law found a range of specific rights issues existed for older persons, including:

- fraud and financial abuse
- substituted decision making
- family agreements
- discrimination and
- retirement accommodation.¹²²

TCLS submitted: 'The issues canvassed by this inquiry reflected that the legal needs of older persons are human rights issues'.¹²³ Additionally, it pointed to evidence indicating that studies have found:

*...older persons were less likely to be aware of and report legal problems, take legal action to enforce rights, recognise their legal needs and they exhibited a lack of knowledge about the available pathways to legal resolution. Where older persons commenced action, they had low finalization levels.*¹²⁴

Impact of a human rights act on older people

TCLS argued there is evidence to suggest that older persons' legal needs are not being met and that: 'Recent inquiries into exploitation and violence ha[ve] identified rights gaps for older Queenslanders'.¹²⁵

The Australian Association of Social Workers identified 'clear, inalienable and enforceable human rights protections' as the essential preconditions required to support its advocacy for the rights of older people:

*Rights and freedoms that are easily accessed when older people make decisions about their care and the quality of their lives, whether living independently or in a care facility. Core to this is ensuring that the voices of older people are not neglected or silenced, which currently occurs as there is no one overarching piece of legislation that covers the diversity of their needs and issues experienced, which are essentially about their human rights. A Human Rights Act in Queensland would ensure that the human rights of this particular group are upheld, something that is even more imperative given the growing ageing population and the demands for services that this brings with it.*¹²⁶

In TCLS's view, a human rights act would 'address the normative gap for older persons, and... reduce barriers to accessing the legal system'.¹²⁷ It explained that: 'A normative gap exists where the law

¹²¹ Public hearing transcript, Townsville, 16 May 2016, p 5.

¹²² The Parliament of the Commonwealth of Australia, Older people and the law, House of Representatives Standing Committee on Legal and Constitutional Affairs, September 2007 Canberra; quoted by Townsville Community Legal Service, Submission No 452, p 5. .

¹²³ Townsville Community Legal Service, Submission No 452, p 5.

¹²⁴ Christine Coumarelos et al, Legal Australia-Wide Survey: Legal Need in Australia, Access to justice and legal needs; v. 7, pp xxii, 229 & 230; quoted by Townsville Community Legal Service, Submission No 452, pp 6-7.

¹²⁵ Townsville Community Legal Service, Submission No 452, p 7.

¹²⁶ The Australian Association of Social Workers, Submission No 419, p 5.

¹²⁷ Townsville Community Legal Service, Submission No 452, p 7.

fails to respond adequately to a recurrent event, act or structural factor which deprives human beings of their dignity'.¹²⁸

TCLS argued that, under a human rights act, older Queenslanders could rely on substantive human rights, in alignment with numerous standards, including:

- the United Nations Principles for Older Persons (UNPOP)
- existing human rights instruments
- elder specificities identified as needing protection.¹²⁹

It asserted that a human rights act should be complementary with existing contemporary human rights standards, primarily the UNPOP, which were said to reflect fundamental human rights, as well as those specific to the needs and interests of older persons.¹³⁰ For example, the right to:

- determine when and at what pace to withdraw from workforce
- be able to “age in place” at home for as long as possible
- participate in inter-generational exchange of knowledge and skills
- make decisions about care and quality of life
- live free from abuse and exploitation.¹³¹

TCLA stated that these principles must be incorporated into a human rights act to avoid a normative gap.¹³² Additionally, it provided elder specific examples of rights and freedoms that illustrate an existing normative gap, being examples of rights and freedoms which would be protected by a human rights act.¹³³

Human rights and children and young people

A number of youth advocacy groups made submissions in respect to this inquiry. All expressed the desire for greater recognition and enhanced human rights protections for young people.

The ACT’s HRA was amended in 2012 to include a right to education, a human right drawn from the ICESCR. This section commenced on 1 January 2013.¹³⁴ The right was already essentially covered by the equality rights in s 8 of the HRA, along with the right of parents to choose schooling in accordance with the religious and moral education of their child, a right encompassed in the rights to religious freedom at s 14 of the HRA.¹³⁵

According to the Youth Advocacy Centre (YAC), children and young people in Australia are entitled to the same basic human rights as adults under the international human rights treaties. These rights are confirmed by the United Nations Convention on the Rights of the Child (CRC) which also provides additional human rights that recognise the need for protection for those under 18 years of age and that adults are responsible for providing the resources for this.¹³⁶

Australia ratified the CRC in December 1990.¹³⁷

¹²⁸ Townsville Community Legal Service, Submission No 452, p 7.

¹²⁹ Townsville Community Legal Service, Submission No 452, p 8.

¹³⁰ Townsville Community Legal Service, Submission No 452, p 8.

¹³¹ *United Nations Principles for Older Persons* adopted by General Assembly in December 1991; cited by Townsville Community Legal Service, Submission No 452, p 8.

¹³² Townsville Community Legal Service, Submission No 452, p 9.

¹³³ Townsville Community Legal Service, Submission No 452, pp 9-12.

¹³⁴ *Human Rights Act 2004* (ACT), s 27A.

¹³⁵ *Human Rights Act 2004* (ACT), ss 8, 14.

¹³⁶ Youth Advocacy Centre Inc, submission 484, p 5.

¹³⁷ Australian Human Rights Commission, [‘Australia’s commitment to children’s rights and reporting to the UN’](#).

The YAC stated that children and young people 'are susceptible to the non-recognition, diminution or abuse of their rights'. They also generally 'do not have the resources, nor often the knowledge, to be able to assert or protect their rights'.¹³⁸

Mr Peter Hanley of the Amnesty International Townsville Action Group provided the following observation:

[W]e are concerned in our work with young people that young people really are not that familiar with human rights. They think it is important, but when you ask what it means they are very hazy.

One benefit of a human rights act, according to Mr Hanley, would be that it may introduce 'a human rights culture' and raise awareness of human rights amongst young people.¹³⁹

YFS Legal noted that many young people have frequent contact with criminal justice¹⁴⁰. In such situations, the 'authoritative and sometimes intimidating nature of the police as well as appearing before the courts can result in instances where the rights of the young person are absent'.¹⁴¹

The Office of the Public Guardian supported the unequivocal application of any human rights act to children, stating 'Any act should include rights specific to children ... the convention enshrines the right of children to participate in decision making that concerns them, allowing for their voices to be heard and included in court and tribunal hearings'.¹⁴²

Human rights and LGBTI people

The LGBTI Legal Service stated that people who identify as lesbian, gay, bisexual, trans or intersex ('LGBTI people') experience disproportionate levels of violence, harassment, bullying and exclusion and high levels of discrimination with regards to government services and bullying and harassment in schools.¹⁴³ As stated by Ms Matilda Alexander:

*For years the LGBTI community has been in the position where our loves and our bodies have been considered moral issues, ethical issues or political issues and the human rights framework takes it out of that sphere and gives us back the ownership and the control of those issues.*¹⁴⁴

The LGBTI Legal Service acknowledged that the ICCPR encompasses the rights of all people, and called for human rights legislation that encompasses those rights in the ICCPR. In addition, it called for the committee to consider the *Yogyakarta Principles on the Application of International Human rights Law in Relation to Sexual Orientation and Gender Identity 2007*, an agreement formulated at an international summit in Indonesia in November 2006.¹⁴⁵ The Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group also called for a consideration of the Yogyakarta Principles in human rights legislation for Queensland to better protect LGBTI people.¹⁴⁶

¹³⁸ Youth Advocacy Centre Inc, submission 484, p 5.

¹³⁹ Public hearing transcript, Townsville, 16 May 2016, p 11.

¹⁴⁰ YFS Community Legal Centre, submission 481, p 3.

¹⁴¹ YFS Community Legal Centre, submission 481, p 3.

¹⁴² Public hearing transcript, Brisbane, 9 June 2016, p 27.

¹⁴³ LGBTI Legal Service Inc, submission 492, p 2.

¹⁴⁴ Public hearing transcript, Brisbane, 9 June 2016, p 45.

¹⁴⁵ LGBTI Legal Service Inc, submission 492, p 3.

¹⁴⁶ Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group, submission 409, p 5.

Human rights and the environment

A number of submissions brought to the attention of the committee the importance of the right to a clean or healthy environment.

The Environmental Defenders Office Queensland submitted that a human rights act should include all the rights in the ICCPR and the ICESCR as well as ‘a right to a healthy environment’. It noted that ‘as humans, our health and wellbeing is inextricably linked to the health of the environment we live in and depend on’.¹⁴⁷

The Environmental Defenders Office of North Queensland submitted that human and environmental rights are interdependent, and that human rights such as human dignity, freedom, justice and peace rely on ‘an environment that allows these qualities to flourish’. The submission stated that other substantive rights are made vulnerable in circumstances where the environment is degraded, such as the right to life and the right to health.¹⁴⁸

The Environmental Defenders Office Queensland identified benefits in recognising the right to a healthy environment, including:

- more robust decision making around new laws and proposals involving environmental impacts
- less likelihood of litigation where right to a healthy environment is considered upfront
- injustices relating to environmental protection measures for Queenslanders in rural areas, such as farmers, addressed.¹⁴⁹

The Darling Downs Environment Council offered a similar argument, with an emphasis on sustenance. It stated ‘the right to access sustenance that is air, water and food is a right without which we do not exist’. The Council recommended that access to fresh air, fresh water and food be recognised in a human rights act.¹⁵⁰

Key issues identified in the inquiry

Stand-alone cause of action and remedies

How a human rights act may provide for redress from perceived breaches of human rights was the concern of a number of submitters. The right to bring action against a public authority and the availability of remedies was discussed during the public hearing in Brisbane on 9 June 2016.

Aimee McVeigh identified a need for remedies or redress of perceived breaches of human rights. She stated:

*When you look at the information that has been provided to the committee by members of the general public, it is clear that people are seeking a human rights act because they have experienced human rights issues and they feel there is no way to rectify these issues.*¹⁵¹

George Williams and Daniel Reynolds observed that, when first enacted, neither the HRA nor the Charter gave a direct remedy to individuals whose human rights had been breached by a public authority. The rationale in Victoria and initially in the ACT was to reduce recourse to the courts. The

¹⁴⁷ Environmental Defenders Office Queensland, submission 459, p 6.

¹⁴⁸ Environmental Defenders Office of North Queensland, submission 403, p 4.

¹⁴⁹ Environmental Defenders Office Queensland, submission 459, pp 7-8.

¹⁵⁰ Darling Downs Environment Council, submission 445, p 1.

¹⁵¹ Public hearing transcript, Brisbane, 9 June 2016, p 39.

ACT Standing Committee on Justice and Community Safety noted that predictions at the outset that the HRA would result in undue litigation did not come to pass.¹⁵²

Williams and Reynolds noted that the provisions in the Victorian Charter where people seeking damages must rely on another separate action have made litigation 'lengthier and more complex', because they focus on preliminary jurisdictional questions rather than the real issue in dispute.¹⁵³ Additionally, as noted by Justice Weinberg, there has not been a flood of litigation in Victoria. He stated 'Some people thought it was the beginning of the end. It is just that there has been far less of an impact within the court system than people might have anticipated'.¹⁵⁴

Susan Harris Rimmer concurred: 'I think we need some remedies in a human rights act to give it some impact'.¹⁵⁵

Dan Rogers of the Queensland Law Society submitted that there is more to seeking a remedy than financial damages. He stated:

*In the majority of cases, which you will hear from experts in this field, persons are seeking a change in their life, whether it is an extra shower a day if they are suffering a disability, they are not seeking money. The cases in Victoria show that the pursuit of damages is just not sought, it is actual change in people's lives.*¹⁵⁶

However Bill Potts, President of the Queensland Law Society, made the point that true remedies for human rights breaches should be more than simply apologies: 'Money is clearly a remedy of this sort or a judgment that will prevent those types of decisions being made again, if you have a right'.¹⁵⁷

Judicial interpretation and role of courts and judges

The role of the courts and judges under a human rights act was discussed at length during the public hearings in Brisbane on 11 April and 9 June 2016.

George Williams provided the following opinion to the committee:

*My view is that the courts do have a role, a complementary role; if you like, quite a weak role as compared to anything like the US Bill of Rights, for example. However, it is a complementary role that comes in after the human rights act has properly shaped debate within those more democratic institutions. If that happens, you do not need to get to the courts.*¹⁵⁸

In considering the operation of human rights legislation and court activity, George Williams stated:

*You just do not get the litigation, because the work is being properly done in those other institutions, but the litigation is there if something goes really wrong. On rare occasions it is used, but it should be limited in the model to an expectation that it will be in rare occasions.*¹⁵⁹

Anthony Cassimatis also saw a limited role for the courts and judges: 'I am a strong believer in the dialogue model where the last word is not the judges' word. That would be something that I would oppose'.¹⁶⁰

¹⁵² ACT Standing Committee on Justice and Community Safety, submission 480, p 39.

¹⁵³ George Williams and Daniel Reynolds, submission 6, p 4.

¹⁵⁴ Public hearing transcript, Brisbane, 11 April 2016, p 6.

¹⁵⁵ Public hearing transcript, Brisbane, 9 June 2016, p 19.

¹⁵⁶ Public hearing transcript, Brisbane, 9 June 2016, p 30.

¹⁵⁷ Public hearing transcript, Brisbane, 9 June 2016, p 34.

¹⁵⁸ Public hearing transcript, Brisbane, 9 June 2016, p 17.

¹⁵⁹ Public hearing transcript, Brisbane, 9 June 2016, p 17.

¹⁶⁰ Public hearing transcript, Brisbane, 9 June 2016, p 19.

Justice Weinberg stated:

Generally, we [as judges] certainly do our best to get it right and we do get very much concerned about legislation that is drafted in very prescriptive terms and allows us so little room for the exercise of discretion. The community has its protections. If a judge gets it wrong, there is an appeal available, so I just think a little bit of greater trust in the judiciary might not be amiss.¹⁶¹

Negative and positive frameworks of legislation

The ACT Standing Committee advised that the HRA does not create any offences, and that the main emphasis in the HRA is on a ‘positive statements of rights’:

holding decision-makers to those rights by way of placing obligations on public authorities; requiring proponents of legislation to make statements regarding human rights implications of the legislation (s 37); and providing that the Assembly will scrutinise legislation for human rights implications in the work of the relevant committee (s 38).¹⁶²

The ADCQ submitted that human rights legislation should acknowledge the key purpose of human rights laws: ‘to respect, protect and fulfil human rights’. The obligation to fulfil human rights ‘is a positive obligation, and requires government to take active steps, or positive action, to implement the rights of its citizens’.¹⁶³

The Cairns Community Legal Centre offered examples of ‘positive obligations’ on state parties that could be included in a human rights act, so as to prevent violations of rights by third parties in regards to: ‘protecting persons with disabilities from mistreatment or abuse’ and ‘protecting persons from domestic and family violence’.¹⁶⁴

The contrast between existing current laws and mechanisms as a negative obligation and human rights legislation as a potentially positive obligation was discussed during the public hearings in Brisbane on 11 April and 9 June 2016.

Professor Geddis stated that the NZBORA provided:

the concept of individual rights and freedoms—those that are specifically recognised in the legislation—a positive legal foundation. You know that they are part of the law, because the act says they are. Then it imposes some genuine constraints on how those who are exercising public power may act to limit those rights. If they do so in ways that cannot be justified—there are insufficiently good reasons for imposing their rights limit—then their actions are unlawful and consequences may follow.¹⁶⁵

Mr Kevin Cocks observed there were limitations in the current Anti-Discrimination Act. He stated that ‘I think one of the real issues of the limitations of the anti-discrimination legislation is that it is a regressive or reactive act whereas a human rights act places positive obligations on all aspects of society to start to engage in change’.¹⁶⁶

He further explained the application of positive obligations to government provision of services:

¹⁶¹ Public hearing transcript, Brisbane 11 April 2016, p 10.

¹⁶² ACT Standing Committee on Justice and Community Safety, submission 480, p 11.

¹⁶³ Anti-Discrimination Commission Queensland, submission 421, p 20.

¹⁶⁴ Cairns Community Legal Centre, submission 453, p 6.

¹⁶⁵ Public hearing transcript, Brisbane, 11 April 2016, p 17.

¹⁶⁶ Public hearing transcript, Brisbane, 9 June 2016, p 42.

Once a decision has been made, you do not even need to get to perhaps the Anti-Discrimination Commission for a conciliation, or to QCAT for a decision, because the government agency realises that they have to comply to a specific right, whether that is access, or treating a person humanely, or allowing a person to live in the community in the place that they choose with whom they choose to live and who provides a service, which is article 19 of the CRPD. Where there are human rights acts existing, there have been advantages for cohorts.¹⁶⁷

Dan Rogers also observed that a human rights act may provide a positive framework which will avoid later litigation. He stated:

A human rights act can offer more than a remedy, it can offer a proactive approach to the consideration of rights at the point that a law is being considered so there is not a need to pursue remedies at a later point.¹⁶⁸

A plebiscite for a Human Rights Act?

A small number of submitters questioned why a plebiscite would not be considered for a human rights act.

In contrast, Susan Harris Rimmer stated:

I think it is extremely strange to have a plebiscite for an ordinary piece of legislation. You have a plebiscite if you are going to entrench a bill of rights. Nobody is talking about that here. I think it is completely unnecessary to have a plebiscite, but I always believe in more democracy, more deliberative governance, so that would be a reason why you might think about such a thing or a listening tour.¹⁶⁹

George Williams expressed opposition to a plebiscite for a number of reasons, including that it would be 'expensive and unnecessary'. He stated:

(I)f you had a plebiscite, it got up and you introduced a human rights act, would that mean that for the future amendments you need a new plebiscite? You actually do not want that. You want these instruments to be subject to parliamentary control. Parliament should be able to change it, update it, improve it over time. The last thing we want is a plebiscite or some other mechanism suggesting it is fixed and cannot be easily changed.¹⁷⁰

¹⁶⁷ Public hearing transcript, Brisbane, 9 June 2016, p 44.

¹⁶⁸ Public hearing transcript, Brisbane, 9 June 2016, p 30.

¹⁶⁹ Public hearing transcript, Brisbane, 9 June 2016, p 15.

¹⁷⁰ Public hearing transcript, Brisbane, 9 June 2016, p 17.

1 Introduction

1.1 Role of the Committee

The Legal Affairs and Community Safety Committee is a portfolio committee of the Legislative Assembly which commenced on 27 March 2015.¹⁷¹

The committee's primary areas of responsibility include:

- Justice and Attorney-General
- Police Service
- Fire and Emergency Services
- Training and Skills.

1.2 Referral of the inquiry

On 3 December 2015, the Legislative Assembly directed the committee to inquire whether it is appropriate and desirable to legislate for a Human Rights Act (HR Act) in Queensland, other than through a constitutionally entrenched model.

The Committee is required to report to the Parliament by 30 June 2016.

1.3 Parliamentary inquiry purpose and process

The purpose of a Parliamentary committee is to inquire into and report on specific matters referred to it by the Parliament, or under the *Parliament of Queensland Act 2001*. Members of the committee are generally not experts in the field of inquiry, rather, it is their job to collect evidence from those who are expert and from other stakeholders, analyse and synthesise that evidence and make recommendations back to the Parliament in response to the terms of reference.

Evidence is collected in a number of different ways, and these can and do vary depending on the nature of the inquiry and what the committee decides is appropriate. The committee may invite evidence from experts, interested individuals and organisations; conduct literature reviews to gather relevant and current objective information; conduct site visits where this would add valuable information and brings all of this information together into a report and makes recommendations back to the Parliament.

As Parliamentarians are representatives of the broader community, they are well placed to reflect the values and priorities of a broad social context. This is in contrast to a review or inquiry undertaken by technical experts.

1.4 Inquiry process

The steps undertaken by the committee during the inquiry are set out below.

A total of 482 submissions were received from a range of stakeholders, interest groups, organisations and individuals. A list of submissions is provided at **Appendix A**.

The committee held a private meeting with the Victorian Parliament's Scrutiny of Acts and Regulations Committee on 11 April 2016 by videoconference, to discuss various aspects of the operation of Victoria's *Charter of Human Rights and Responsibilities Act 2006* (Charter).

The committee received oral submissions at the following public hearings:

- 11 April 2016 at Parliament House, Brisbane (videoconference and teleconference)
- 16 May 2016, Townsville

¹⁷¹ *Parliament of Queensland Act 2001* (Qld), s 88 and Standing Order 194.

- 16 May 2016, Cairns
- 17 May 2016, New Mapoon
- 18 May 2016, Thursday Island
- 19 May 2016, Lockhart River
- 9 June 2016, Parliament House, Brisbane.

A list of witnesses is provided at **Appendix B**.

1.5 Scope of the inquiry

The terms of reference focus on possible human rights legislation for Queensland, with consideration of the effectiveness of laws and mechanisms currently in place for protecting human rights in Queensland, and the operation of human rights legislation (that is not constitutionally entrenched), such as in Victoria and the Australian Capital Territory.

1.5.1 Point 1 of the terms of reference

Point 1 of the terms of reference allows the committee to consider issues relevant to whether it is appropriate or desirable to legislate for a human rights act in Queensland, other than through a constitutionally entrenched model. The scope of this point is both broad, in terms of the range of issues that may be deemed relevant, and quite specific, in regards to the type of legislation that may be considered.

The inquiry was limited to consideration of human rights legislation other than through a constitutionally entrenched model. The committee therefore did not consider the operation and effectiveness of constitutionally entrenched human rights legislation, such as the *Bill of Rights* of the United States or the *Canadian Human Rights Act*.

1.5.2 Point 2 of the terms of reference

In undertaking the Inquiry, point 2 of the terms of reference state the committee should consider:

- a) the effectiveness of current laws and mechanisms for protecting human rights in Queensland and possible improvements to these mechanisms
- b) the operation and effectiveness of human rights legislation in Victoria, the Australian Capital Territory and by ordinary statute internationally
- c) the costs and benefits of adopting a HR Act (including financial, legal, social and otherwise)
- d) previous and current reviews and inquiries (in Australia and internationally) on the issue of human rights legislation.

Responses to each of these points are provided in this Report.

1.5.3 Point 3 of the terms of reference

The committee was unable to agree on whether it would be appropriate and desirable to introduce human rights legislation to Queensland. As a consequence, the committee was unable to make specific recommendations in relation to point 3 of the terms of reference.

2 Key concepts

2.1 What are human rights?

Human rights have been described as ‘the basic rights that belong to every person, regardless of age, race, sex, social status or any other characteristic. They are derived from, and serve to protect, the

inherent dignity and worth of each person as the foundation of freedom, justice and peace in the world'.¹⁷²

2.2 International declarations

Shortly after the Second World War, the then newly-formed United Nations drafted the *Universal Declaration of Human Rights*. Ratified in 1948, the declaration recognises that 'the inherent dignity and ... the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'.¹⁷³

Article 1 of the declaration recognises 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.

The universal declaration includes civil and political rights and also economic, social and cultural rights. For example, Article 3 of the declaration states: 'Everyone has the right to life, liberty and security of person'. Article 7 provides: 'all are equal before the law and are entitled without any discrimination to equal protection of the law'.¹⁷⁴

International declarations are an expression or statement of values shared by member countries of the United Nations. They are not treaties, and in most cases they do not create legally binding obligations.¹⁷⁵ Declarations form the foundation for treaties which, if ratified by individual countries, give rise to international obligations.¹⁷⁶

The Declaration on the Rights of Indigenous Peoples was adopted by the United Nations on 13 September 2007. The Australian Government announced its support for this declaration in 2009. The declaration affirms the minimum standards for the survival, dignity, security and well-being of Indigenous peoples worldwide and enshrines Indigenous peoples' right to be different.¹⁷⁷

2.3 International human rights treaties

Australia has voluntarily agreed to be bound by a number of international treaties, including the two core international human rights treaties:

- the International Covenant on Civil and Political Rights (ICCPR)
- the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Australia's participation in the ICESCR treaty commenced on 10 March 1976, and in the ICCPR on 13 November 1980.¹⁷⁸

By ratifying international treaties, Australia has voluntarily accepted obligations under international law. However these obligations are directly enforceable in Australia only if they are implemented in domestic legislation.¹⁷⁹ The Queensland Law Society has noted that unless there are specific Australian laws bringing rights guaranteed by these treaties into force, the obligations are not legally binding

¹⁷² Queensland Law Society, submission 475, p 7.

¹⁷³ United Nations, '[The Universal Declaration of Human Rights](#)'.

¹⁷⁴ United Nations, '[The Universal Declaration of Human Rights](#)'.

¹⁷⁵ Australian Human Rights Commission, '[Community Guide to the UN Declaration on the Rights of Indigenous Peoples](#), 2010.

¹⁷⁶ Julie Debeljak, submission 461, p 4.

¹⁷⁷ Australian Human Rights Commission, '[UN Declaration on the Rights of Indigenous Peoples](#)'.

¹⁷⁸ Australian Government Department of Foreign Affairs and Trade, '[ICCPR](#)' and '[ICESCR](#)', *Austlii: Australian Treaty Series*.

¹⁷⁹ Parliamentary Joint Committee on Human Rights, *Guide to human rights*, June 2015, p 5.

under Australian law, although the courts must favour a construction aligning with international obligations where a statute is ambiguous.¹⁸⁰

However, it must be noted that in the absence of specific laws to the contrary, all people in Australia are free to carry on their lives as they wish and to exercise all their rights and obligations set out in international law.

The ICCPR and the ICESCR as ratified by the Australian Government are provided in full at Appendix C and D.

¹⁸⁰ Queensland Law Society, submission 475, p 3.

3 The effectiveness of current laws and mechanisms for protecting human rights

This section of the report responds to point 2a of the terms of reference. The information provided in this section is largely drawn from submissions and evidence received during public hearings in respect to the inquiry.

3.1 Common law

The common law has been described as ‘the body of legal principles and rules developed over time by judges in cases that have come before them’. It is recognised that the common law has developed some ‘important protections for human rights particularly in the area of criminal justice’.¹⁸¹ As Peter Billings observed, there are a number of rights and freedoms recognised and protected through the common law that meet the description of human rights guarantees.¹⁸²

The rights and freedoms upheld by the courts include ‘freedom of speech, personal liberty, access to courts, legal professional privilege, protection from self-incrimination, procedural fairness, no alienation of property without compensation, and equality of religion’.¹⁸³

The Anti-Discrimination Commission of Queensland noted that: ‘under the common law there is no settled list of protected rights (unlike the human rights covenants); instead, rights are incrementally developed on a case by case basis’.¹⁸⁴

Legislation, as the supreme law of the land in our parliamentary democracy, can in turn influence the development of the common law and this has occurred continuously over many centuries.

3.1.1 Principle of legality

In statutory interpretation there is a presumption that legislation produced by the parliament is not intended to encroach upon common law fundamental rights and freedoms. This is known as the principle of legality. This principle imposes a requirement for clear statutory language so that any legislation purporting to override fundamental rights and freedoms must do so in clear and unambiguous terms.¹⁸⁵ The joint submission from various Christian churches and organisations stated that the common law has a ‘rich history’ and that ‘many fundamental rights and freedoms are protected at common law as necessary incidents of the system of representative democratic government’. The submission further stated that ‘many common law rights are expressed as freedoms or liberties due to the fundamental common law assumption that all things are permitted unless expressly prohibited by law’.¹⁸⁶

In contrast, some submitters saw this feature of the common law as a limitation of the common law’s ability to protect traditional rights and freedoms, as state parliaments can override rights and freedoms ‘with clear words’ in their statutes.¹⁸⁷ Another noted limitation was that judges can only protect rights and freedoms through the common law when cases come before them.¹⁸⁸

¹⁸¹ Caxton Legal Centre Inc, submission 387, p 16.

¹⁸² Peter Billings, submission 468, p 11.

¹⁸³ Anti-Discrimination Commission Queensland, submission 421, p 5.

¹⁸⁴ Anti-Discrimination Commission Queensland, submission 421, p 5.

¹⁸⁵ Paper by Aroney, Harrison and Babie, p 2, attached to Nicholas Aroney and Richard Ekins, submission 474.

¹⁸⁶ Joint submission of Christian churches and organisations, submission 462, p 5.

¹⁸⁷ Mason Clarke *et al*, submission 438, p 6.

¹⁸⁸ Julie Debeljak, submission 461, p 4.

3.2 Statutory protections

3.2.1 Enshrined human rights in Australia

The *Australian Constitution* contains a number of provisions that guarantee individuals' rights and freedoms. These rights are freedom of religion (s 116); right to trial by jury (s 80); compulsory acquisition of property to be on just terms (s 51 (xxxi)); and representatives to be directly chosen by the people (s 24). Two additional provisions apply to the states and indirectly affect individuals. They are free trade and commerce between states (s 92), and prohibition against discrimination against residents according to the state or territory they live in (s 117).¹⁸⁹ Queensland Association of Independent Lawyers (QAILS) noted that there are also a number of implied protections in the Constitution including the freedom of political communication and separation of powers.¹⁹⁰

Australia has obligations in relation to international human rights treaties. A range of laws help Australia to maintain its human rights obligations, by giving effect to some of the rights set down in international treaties that Australia has ratified.¹⁹¹ At a federal level these laws include the:

- *Australian Human Rights Commission Act 1986*
- *Privacy Act 1988*
- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992/2005*
- *Racial Discrimination Act 1975*
- *Sex Discrimination Act 1984*.¹⁹²

The Australian Government established a Parliamentary Joint Committee on Human Rights under the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) with a number of explicit functions including:

- to examine bills for Acts, and legislative instruments, that come before with House of the Australian Parliament for compatibility with human rights, and to report to both houses on that issue
- to examine Acts for compatibility with human rights, and to report to both houses on that issue
- to inquire into any matter relating to human rights which is referred to it by the Attorney-General, and report to both houses on that matter.¹⁹³

The *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth) also requires that a member of parliament who proposes to introduce a bill must create a statement of compatibility to be prepared in respect of that bill. The statement of compatibility must include an assessment of whether the bill is compatible with human rights.¹⁹⁴

Refer to section 6.2 of this report for a background to the establishment of the Committee.

3.2.2 Statutes that protect human rights in Queensland

In its submission the Queensland Law Society listed Queensland legislation that provides human rights protection in addition to Commonwealth legislation and common law principles:

¹⁸⁹ Queensland Parliament Legal, Constitutional and Administrative Review Committee, *Issues Paper*, No 3, September 1997.

¹⁹⁰ Queensland Association of Independent Legal Services Inc, submission 476, p 5.

¹⁹¹ Victorian Equal Opportunity & Human Rights Commission, *'Australia's human rights framework'*.

¹⁹² Australian Human Rights Commission, *'Legislation'*.

¹⁹³ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), s 7.

¹⁹⁴ *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), s 8.

- *Anti-Discrimination Act 1991*
- *Legislative Standards Act 1992*
- *Criminal Code Act 1889*
- *Youth Justice Act 1992*
- *Guardian and Administration Act 2000*
- *Mental Health Act 2000*.¹⁹⁵

The Caxton Legal Centre identified a number of important pieces of Queensland ‘rights’ legislation, including the *Anti-Discrimination Act 1991* and the *Peaceful Assembly Act 1992*. The Centre cited a number of statutes relating to administrative law that have equivalents at Commonwealth level including the *Judicial Review Act 1991*, the *Information Privacy Act 2009*, the *Right to Information Act 2009*, and the *Ombudsman Act 2001*. The Caxton Legal Centre also noted various acts relating to human rights in the criminal justice sphere, including the *Criminal Code 1899*, the *Police Powers and Responsibilities Act 2000*, and the *Justices Act 1886*.¹⁹⁶

The Caxton Legal Centre noted that ‘the fact the human rights protections in Queensland exist under a number of different statutes make it difficult to determine what protections are available to an individual in a given matter’. The Centre recommended ‘the administration of justice would benefit from those rights affirmed in one Act of parliament’.¹⁹⁷

The *Anti-Discrimination Act 1991* is the key legislation currently providing human rights protection in Queensland. The Act provides that it is an offence for a person to be discriminated against on the basis of factors such as sex, age, gender identity, race and impairment; and in certain contexts including work, education, and the provision of goods and services. The Anti-Discrimination Commission Queensland (ADCQ) called for amendment of this legislation, stating ‘improvements could be made to the *Anti-Discrimination Act 1991* which is now twenty-five years old, to provide better protection from discrimination, sexual harassment, victimisation and vilification’.¹⁹⁸ The committee heard no detailed suggestions as to how the Act could be enhanced.

Legal Aid Queensland strongly recommended amendment of the *Anti-Discrimination Act* in regards to the definitions of ‘direct discrimination’ and ‘indirect discrimination’, being of the view that, regardless of whether a human rights act is introduced, these definitions needed to be simplified to ‘enable better protection against discrimination in Queensland’.¹⁹⁹

Section 10 of the *Anti-Discrimination Act* defines ‘direct discrimination’. It uses what has been described as a ‘comparator test’ for establishing that discrimination has occurred.²⁰⁰ According to Legal Aid Queensland, this definition is ‘marred with difficulties in its application’.²⁰¹ Legal Aid Queensland recommended the definition of ‘direct discrimination’ be amended to require a detriment test rather than the current comparator test. Legal Aid Queensland also regards the definition of ‘indirect

¹⁹⁵ Queensland Law Society, submission 475, p 3.

¹⁹⁶ Caxton Legal Centre Inc, submission 387, p 15.

¹⁹⁷ Caxton Legal Centre Inc, submission 387, p 15.

¹⁹⁸ Anti-Discrimination Commission Queensland, submission 421, p 12.

¹⁹⁹ Legal Aid Queensland, submission 482, p 3.

²⁰⁰ *Anti-Discrimination Act 1991* (Qld), s 10; Legal Aid Queensland, submission 482, pp 4-5.

²⁰¹ Legal Aid Queensland, submission 482, p 4.

discrimination’ (at s 11) and the use of a ‘proportionality test’ as having ‘significant difficulties’ in application.²⁰²

The ADCQ submitted that, even if the Act was updated, ‘it would not have the framework, breadth of purpose, or ability to drive an enhanced human rights culture in Queensland to the extent that a Human Rights Act could achieve’.²⁰³

3.3 Legislative scrutiny - the *Legislative Standards Act 1992* (Qld)

The *Legislative Standards Act 1992* (‘LSA’) requires that bills and pieces of subordinate legislation, at the developmental stage and prior to becoming law, are drafted with ‘sufficient regard’ to the ‘fundamental legislative principles’, including the rights and liberties of individuals.²⁰⁴ Dr Peter Billings labelled the Act’s requirements to be ‘relatively nebulous’ and the level of scrutiny ‘thin’ in comparison to the legislative review processes under statutory human rights in Victoria and the ACT.²⁰⁵ Luke Geurtsen noted in his submission that, with regards the scrutiny requirements of the LSA, ‘the current Queensland approach is often overlooked because it doesn’t use the term human rights’.²⁰⁶ Other submissions considered general statements of human rights to be vague and unclear and likely to lead to difficulties in interpretation.²⁰⁷

In her submission, Jodie O’Leary explored the workings and potential of the LSA. She noted that some opponents of human rights legislation may argue that statements of compatibility, which may be required under a human rights act are already required under s 23(f) of the LSA. However, the LSA does not specifically refer to human rights, and she submitted: ‘a reference to incompatibility with a human right may have a different connotation than inconsistency with a Fundamental Legislative Principle’.²⁰⁸ Additionally, the rights considered under the LSA are much broader than those in the Victorian and ACT human rights acts and similar to the ‘expansive’ list articulated in the federal *Human Rights (Parliamentary Scrutiny) Act 2011*. Ms O’Leary recommended ‘against importing any list of rights to the exclusion of those that already exist’, and stated:

*Rather, a more nuanced approach may be required, potentially differentiating those rights that require legislative and judicial consideration of compatibility and those rights that permit a cause of action.*²⁰⁹

The Bar Association of Queensland, in offering alternative approaches to legislative reform, submitted that the process of legislative scrutiny under the LSA would render compatibility statements, such as those required under the provisions of the ACT HRA and the Victorian Charter, ‘unnecessary’ in Queensland. The Bar Association noted that the current law is ‘a workable approach’.²¹⁰

The ADCQ recommended the adoption of a human rights act for Queensland, but also proposed alternative measures of reform. It recommended amendment to the LSA to increase human rights accountability in the scrutiny of legislation, including the addition of ‘an express objective that

²⁰² *Anti-Discrimination Act 1991* (Qld), s 11; Legal Aid Queensland, submission 482, p 7.

²⁰³ Anti-Discrimination Commission Queensland, submission 421, p 12.

²⁰⁴ *Legislative Standards Act 1992* (Qld) s 4(2).

²⁰⁵ Peter Billings, submission 468, p 9.

²⁰⁶ Luke Geurtsen, submission 426, p 3.

²⁰⁷ Joint submission of Christian churches and organisations, submission 462, p 10; Queensland Law Society, submission 475, p 19.

²⁰⁸ Jodie O’Leary, submission 483, p 5.

²⁰⁹ Jodie O’Leary, submission 483, p 5.

²¹⁰ Bar Association of Queensland, submission 477, p 10.

Queensland legislation is consistent with the promotion and protection of human rights', and replacement of the expression 'rights and liberties of individuals' with 'human rights'.²¹¹

3.4 Other structural mechanisms

QAILS identified in its submission a number of other structural mechanisms that provide varying levels of human rights protection: representative democracy, responsible government, parliamentary sovereignty and the separation of powers.²¹²

Representative democracy is where members of the legislature elected by the people both form the government and hold the government to account through parliament. The High Court has implied into the Constitution an implied freedom of political communication.²¹³ One feature of representative democracy is that sections of the community will have differing points of view, and elected representatives balance these points of view through the democratic process. In the context of human rights, the potential for members of society to freely express their opinion about human rights issues and apply pressure to government through this political system is a powerful tool which may lead to changes in government policy to address issues of concern.

The doctrine of separation of powers is also an important safeguard of human rights as it provides for the separate and independent exercise of distinct functions – the making, exercise and interpretation of laws – by the legislature, executive and judiciary. Submissions were received from Nicholas Aroney and Richard Ekins that implementation of a human rights act, even if non-entrenched, could result in the judiciary being involved in decision-making exercises of a policy nature more akin to decisions taken by the legislature.²¹⁴ Professor Aroney's concerns revolved around courts becoming a place of political debate as they become empowered – and indeed required – to make decisions about competing rights set out in the human rights legislation.²¹⁵ Creating an alternative venue of political debate in the courts – a powerful arena – would also make it much more politically difficult for the legislature to exercise its powers in the way it considers to be correct.²¹⁶ Professor Aroney indicated that both these arms of government need to exercise their powers distinctly.²¹⁷

The principle of parliamentary sovereignty was described by LCARC in the following terms:

*... within the limits of the powers granted to it, the power of Parliament is supreme; Parliament can make and unmake laws as it sees fit, subject to the control or direction of no other entity. Subject to the federal system of government provided for in the Commonwealth Constitution and some other exceptions, the Queensland Parliament can be thought of in a general sense as operating under the principle of parliamentary sovereignty.*²¹⁸

If governments do not conduct themselves in a worthy fashion, the parliament has unlimited power to change course – and there are many recent examples of parliaments in Queensland moving in different directions based on the needs of the public exercising their freedom of speech. The Honourable Richard Chesterman noted that even non-entrenched human rights legislation can diminish the role of parliament and result in unelected judges exercising power and making decisions

²¹¹ Anti-Discrimination Commission Queensland, submission 421, p 9.

²¹² Queensland Association of Independent Legal Services Inc, submission 476, p 3.

²¹³ See for example *ACTV v Commonwealth* (1992) 172 CLR 106 and *Nationwide News v Wills* (1992) 177 CLR 1, referred to by Queensland Association of Independent Legal Services Inc, submission 476, p 5.

²¹⁴ Nicholas Aroney and Richard Ekins, submission 474, p 7.

²¹⁵ Public hearing transcript, Brisbane, 9 June 2016, pp 4-5.

²¹⁶ Public hearing transcript, Brisbane, 9 June 2015, p 29.

²¹⁷ Public hearing transcript, Brisbane, 9 June 2016, p 10.

²¹⁸ LCARC, *The preservation and enhancement of individuals' rights and freedoms in Queensland*, Report No 12, 1998, p 20.

about competing rights that are policy decisions to be made by politicians who are accountable to the public.²¹⁹ These decisions would diminish the sovereignty of the parliament.²²⁰

The doctrines outlined above are integral parts of how our society in Queensland operates today.

Nicholas Aroney and Richard Ekins submitted to the committee:

*While the existence of an upper house is no panacea, if the Queensland Parliament had a second chamber democratically elected on a proportionate basis, the Executive Government would not routinely be in a position to force its legislation through the Parliament by relying on the strict system of party discipline that operates in Queensland. Many statutes passed by the Queensland Parliament that have been objected to on human rights grounds would never have been enacted, or would have been enacted in vastly different form, if Queensland Governments had to secure the agreement of either the opposition or crossbench members of a second house of Parliament.*²²¹

²¹⁹ Public hearing transcript, Brisbane, 9 June 2015, p 30.

²²⁰ Public hearing transcript, Brisbane, 9 June 2016, pp 3-4.

²²¹ Nicholas Aroney and Richard Ekins, submission 474, p 12.

4 The operation and effectiveness of human rights legislation by ordinary statute internationally

In accordance with the terms of reference, the committee has considered the operation and effectiveness of human rights legislation in Victoria and the Australian Capital Territory ('the ACT'). Given similarities to Australian models, the committee has also considered human rights legislation in New Zealand and the United Kingdom. Many submissions to the inquiry provided specific analysis and observations on the effectiveness of human rights legislation in these jurisdictions.

4.1 Australian Capital Territory

The Australian Capital Territory (ACT) was the first Australian jurisdiction to introduce specific human rights legislation, in the *Human Rights Act 2004* (ACT) ('HRA'). The HRA forms part of a larger rights protection framework in the ACT along with the *Discrimination Act 1991* (ACT) and the *Human Rights Commission Act 2005* (ACT). The latter provides for the creation of the ACT Human Rights Commission.

The HRA contains a list of these human rights (ss 8-27A):

- recognition and equality before the law
- right to life
- protection from torture and cruel, inhuman or degrading treatment
- protection of the family and children
- privacy and reputation
- freedom of movement
- freedom of thought, conscience, religion and belief
- peaceful assembly and freedom of association
- freedom of expression
- taking part in public life
- right to liberty and security of person
- humane treatment when deprived of liberty
- children in the criminal process
- fair trial
- rights in criminal proceedings
- compensation for wrongful conviction
- right not to be tried or punished more than once
- retrospective criminal laws
- freedom from forced work
- rights of minorities
- right to education.²²²

²²² *Human Rights Act 2004* (ACT), ss 8 – 27A.

The Act provides that human rights may be ‘subject only to reasonable limits set by laws that can be demonstrably justified in a free and democratic way’ (s 28). The Bar Association of Queensland identified four important features of the Act:

- the HRA provides direction on the interpretation of laws in light of the Human Rights Act, so that, so far as it is possible to do so consistently with its purpose, legislation must be interpreted in a way that is compatible with human rights (s 30)
- the HRA gives the Supreme Court the power to issue a ‘declaration of incompatibility’ if the Court is satisfied that any ACT law is not consistent with a human right. However, the declaration does not affect the validity of that legislation (s 32)
- the Act provides that the Attorney-General must prepare a written statement on whether a new bill is consistent with human rights (s 37). These ‘compatibility statements’ are to be considered by the relevant standing committee in the ACT Legislative Assembly when considering human rights compatibility with regards all new bills (s 38)
- the HRA makes it unlawful for a ‘public authority’ to act in a way that is incompatible with a human right, or in making a decision, to fail to give proper consideration to a relevant human right (s 40B).²²³

4.1.1 Compatibility statements and parliamentary scrutiny

The ACT Human Rights Commissioner, Dr Helen Watchirs, advised the committee that the compatibility statements and parliamentary human rights scrutiny requirements of the HRA:

*... are having a clear effect on informing and improving the development of legislation and policy, thereby improving their overall quality.*²²⁴

Dr Watchirs stated that the HRA has made ‘a genuine cultural difference to the way the ACT Legislative Assembly goes about its work’. However she noted that the HRA does not require compatibility statements for subordinate legislation and private members bills, ‘a significant omission, which should not be followed’.²²⁵

Dr Watchirs recommended that compatibility statements should be prepared by the relevant Ministers introducing the legislation, rather than the Attorney-General, and that there should be a dedicated human rights committee in the parliament.²²⁶

4.1.2 Remedies

Unlike the Victoria Charter, the HRA provides for a stand-alone cause of action for breaches of human rights (s 40C). This provision was not in the original Act, but added in 2009 after a process of review. Refer to section 6 of this report regarding the review. The Supreme Court may grant an appropriate remedy, however that remedy is not to include financial damages (s 40C (4)). The ACT Standing Committee on Justice and Community Safety commented that ‘avenues for those seeking redress for a grievance under the Act are strongly constrained’.²²⁷

From 2004 to 2014, the HRA has been mentioned in approximately 50 cases in the ACT tribunals, 164 cases in the ACT Supreme Court, and 29 cases in the ACT Court of Appeal. In its 2014 review, the ACT

²²³ Bar Association of Queensland, submission 477, pp 8-10.

²²⁴ ACT Human Rights & Discrimination Commissioner, ACT Human Rights Commission, submission 434, p 7.

²²⁵ ACT Human Rights & Discrimination Commissioner, ACT Human Rights Commission, submission 434, p 7.

²²⁶ ACT Human Rights & Discrimination Commissioner, ACT Human Rights Commission, submission 434, p 8.

²²⁷ ACT Standing Committee on Justice and Community Safety, submission 480, p 10.

Human Rights Commissioner concluded that the HRA ‘had rarely made a difference to the actual outcome of cases, and the direct right of action remained under-utilised’.²²⁸

Dr Watchirs observed that a person can rely on their rights under the HRA in lower courts and tribunals, which offer applicants ‘a more cost-effective path to remedying wrongs’. As with the Supreme Court, the ‘lower courts and tribunals cannot grant a remedy under the HRA for that breach’. She concluded:

*It has been my longstanding position that the availability of damages under the HRA would assist genuine claimants who may otherwise be deterred by the cost and time involved in pursuing test case litigation.*²²⁹

4.1.3 Declaration of incompatibility

According to the ACT Standing Committee the ‘dialogue model’ envisaged in drafting the bill for the HRA, ‘has not largely come to pass’. The Committee noted that the Supreme Court has made a declaration of incompatibility only once, *In the matter of an application for bail by Isa Islam* [2010].²³⁰ In this case, the Court found a provision in the *Bail Act 1992* (ACT) to be inconsistent with the human rights recognised in s 18(5) that ‘Anyone who is awaiting trial must not be detained in custody as a general rule’.²³¹

To date, the Court’s declaration has not resulted in legislative reform of the Bail Act by the Legislative Assembly.²³²

4.1.4 The ACT Human Rights Commission

The ACT Standing Committee stated that one ‘palpable manifestation’ of the Act is the Human Rights Commission, ‘which plays a part in the degree to which the Act influences conduct by way of its education and public information functions, and by virtue of it accepting complaints under the *Discrimination Act* and the *Human Rights Commission Act*’.²³³

Susan Harris Rimmer concurred, noting that the Act has been the basis for the Human Rights Commission to conduct audits (s 41) of government compliance with human rights. In the case of a youth detention centre, the Commission ‘shone a light’ on practices that were, according to her submission, far from optimal.²³⁴ As a result of the audit certain practices were altered to be human rights compliant. The Australian Lawyers for Human Rights found that Commission audits have led to ‘powerful systematic changes’, which were only possible because of the ‘clear human rights standards and frameworks’ set out in the Act.²³⁵ In relation to audits, Dr Watchirs stated:

*I believe the inclusion of an independent audit power in a Queensland Human Rights Act would be an important way of ensuring that public authorities comply with their human rights obligations.*²³⁶

Dr Watchirs ‘strongly encourages’ that human rights legislation provide for a Human Rights Commissioner along with provisions to receive complaints and to resolve human rights disputes

²²⁸ ACT Human Rights & Discrimination Commissioner, ACT Human Rights Commission, submission 434, attachment, p 6.

²²⁹ ACT Human Rights & Discrimination Commissioner, ACT Human Rights Commission, submission 434, p 10.

²³⁰ ACT Standing Committee on Justice and Community Safety, submission 480, p 40.

²³¹ *In the matter of an application for bail by Isa Islam* [2010] ACTSC 147 [403].

²³² *Bail Act 1992* (ACT), s 9C.

²³³ ACT Standing Committee on Justice and Community Safety, submission 480, p 40.

²³⁴ Susan Harris Rimmer, submission 443, p 5.

²³⁵ Australian Lawyers for Human Rights, submission 472, p 13.

²³⁶ ACT Human Rights & Discrimination Commissioner, ACT Human Rights Commission, submission 434, p 12.

through mediation. This, she stated, would help people resolve their issues at an early point and 'in an accessible and resource-effective way'.²³⁷

4.1.5 Reviews

The HRA has been subject to three mandated reviews since its inception; in 2006, 2009 and 2014. Details of these reviews are at 6.3 of this report.

4.1.6 Gradual process of reform

The Standing Committee notes that the HRA has undergone a significant process of reform since its enactment in 2004. Refer to section 6.3 of this report for an outline of the reform process. The Committee considered that the history of the development of the HRA 'justifies a picture of it as a comparatively cautious process which has seen the gradual introduction of wider provisions'.²³⁸

4.2 Victoria

Another well-established (and non-entrenched) model is the Victorian *Charter of Human Rights and Responsibilities Act 2006* (the Charter). The Charter was assented to in July 2006 and was fully operational by 1 January 2008. The Charter is designed to enhance the promotion and protection of human rights in state and local government.

The Victorian Charter sets out rights largely based on those contained in the ICCPR. It includes the following rights:

- right to recognition and equality before the law
- right to life
- right to protection from torture and cruel, inhuman or degrading treatment
- right to freedom from forced work
- right to freedom of movement
- right to privacy and reputation
- right to freedom of thought, conscience, religion and belief
- right to freedom of expression
- right to peaceful assembly and freedom of association
- right to protection of families and children
- right to take part in public life
- cultural rights (right to enjoy culture, declare and practise religion and use their language)
- property rights: A person must not be deprived of his or her property other than in accordance with law.
- right to liberty and security of person
- right to humane treatment when deprived of liberty
- rights of children in the criminal process
- right to a fair hearing

²³⁷ ACT Human Rights & Discrimination Commissioner, ACT Human Rights Commission, submission 434, p 11.

²³⁸ ACT Standing Committee on Justice and Community Safety, submission 480, p 17.

- rights in criminal proceedings (setting out various minimum guarantees for those charged with offences)
- right not to be tried or punished more than once
- protection from retrospective criminal laws.

These stated rights are more extensive than those in the ACT HRA, in that the Charter sets out the rights of all persons with a particular cultural, religious, racial or linguistic background. It also sets out the right not to be deprived of property other than in accordance with the law. The Victorian Charter also makes specific mention of Indigenous peoples, a feature not adopted in the ACT model until February 2016.

Like the ACT model, the Victorian Charter is a ‘dialogue model’ described thus:²³⁹

... the emphasis is on identifying, considering and applying rights in everyday practice so as to make them a fundamental framework for government thinking that will prevent breaches of rights occurring in the first place.

The Charter’s adoption of a ‘dialogue model’ means that Parliament retains its sovereignty, because it cannot be forced to adopt a particular position on a human rights issue, and may enact legislation that is inconsistent with the human rights set out in the Charter.

The Charter sets out a number of human rights requirements in Victoria:

- Public authorities must act in ways that are compatible with human rights. The Victorian Government, public servants, local councils, Victoria Police and other public authorities are required to act compatibly with human rights, and to consider human rights when developing policies, making laws, delivering services and making decisions.
- Human rights must be taken into account when developing new laws. Each new bill introduced into the Victorian parliament must be accompanied by a statement of compatibility to tell parliament whether the bill is compatible with human rights. If a law limits the rights set out in the Charter, the statement of compatibility should explain how and why.
- Courts must interpret and apply all laws compatibly with human rights and may have regard to international, regional and comparative domestic human rights law. The Supreme Court has the power to declare that a law is inconsistent with human rights, but does not have the power to strike down or invalidate a law.

Regarding the first point, the definition of ‘public authority’ extends to entities ‘whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the State or a public authority’.²⁴⁰ The 2015 Young review of the Charter recommended that the definition be amended, by including a non-exhaustive list of functions of a public nature. Refer to section 6.4 of this report for an outline of the review’s recommendations.

4.2.1 Statements of compatibility and parliamentary scrutiny

As mentioned, a statement of compatibility must accompany any bill introduced in the parliament. A certificate regarding human rights must also accompany any proposed subordinate legislation.

The Victorian parliament’s Scrutiny of Acts and Regulations Committee (SARC) considers each bill introduced and reports to the parliament on whether the bill is incompatible with human rights. In some cases, the committee will correspond with the relevant minister where it considers there are

²³⁹ Victorian Equal Opportunity and Human Rights Commission, submission 447, p 3.

²⁴⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 4(1)(c).

human rights issues. The committee's report and the correspondence inform the ensuing debate on the bill from a human rights perspective.

4.2.2 Over-ride mechanism

The Charter includes an express provision that the Victorian government can declare an act or legislative provision to take effect notwithstanding any incompatibility with human rights (section 31 of the Charter). Such declarations must include a statement explaining the exceptional circumstances to justify the declaration overriding the Charter. There have been two such declarations. The Victorian Equal Opportunity and Human Rights Commission argued that the over-ride provision is inappropriate under the dialogue model of the Charter and ought to be repealed. The Commission contended that any human rights act in Queensland should not include such a feature.²⁴¹

4.2.3 The Victorian Equal Opportunity and Human Rights Commission

The Victorian Equal Opportunity and Human Rights Commission ('the Commission') is Victoria's independent statutory human rights authority with functions prescribed by the Charter. The Commission also has functions under the *Equal Opportunity Act 2010* (Vic) and the *Racial and Religious Tolerance Act 2001* (Vic).²⁴²

Sections 40 and 41 of the Charter underline the functions of the Commission. The Commission has a right to intervene in proceedings before any court or tribunal in which a question of law arises that relates to the application of the Charter or that arises with respect to the interpretation of a law in accordance with the Charter.²⁴³

The Commission also serves a function of providing education about human rights and the Charter.²⁴⁴

The Commission's powers are limited in some respects. The Commission noted that it cannot take complaints about human rights breaches by public authorities and cannot offer dispute resolution services in relation to such complaints.²⁴⁵ The Commission recommended that in a Queensland human rights act, the body vested with functions should be able to take complaints and investigate human rights breaches, and provide alternative dispute resolution.²⁴⁶

4.2.4 Reviews

The legislation required two statutory reviews of the Charter, one in 2011 after four years of operation, and one after eight years. More detail of these reviews is at section 6.2 below.

4.2.5 A model for Queensland?

Various submitters urged the adoption in Queensland of a model based on that in Victoria. At the same time, the committee was urged to learn from experience with the Victorian model and avoid a range of perceived problems with that model identified by various submitters. The Victorian Equal Opportunity and Human Rights Commission identified the following areas:²⁴⁷

- *ensuring that the human rights body vested with functions be able to take complaints and investigate human rights breaches, and provide alternative dispute resolution*
- *giving long-term prioritisation and funding to human rights education*

²⁴¹ Victorian Equal Opportunity and Human Rights Commission submission 447, p 17.

²⁴² Victorian Equal Opportunity and Human Rights Commission, submission 447, p 2.

²⁴³ *Charter of Human Rights and Responsibilities Act* (Vic), s 40 (1).

²⁴⁴ *Charter of Human Rights and Responsibilities Act* (Vic), s 41 (d).

²⁴⁵ Victorian Equal Opportunity and Human Rights Commission, submission 447, p 14.

²⁴⁶ Victorian Equal Opportunity and Human Rights Commission, submission 447, p 2.

²⁴⁷ Victorian Equal Opportunity and Human Rights Commission, submission 447, p 2. See also UQ Pro Bono Centre, submission 449, pp 24-26.

- *having clearer, more accessible and enforceable remedies in the form of a direct cause of action*
- *making changes to the operation of human rights scrutiny of legislation*
- *providing clarification of certain provisions, to provide an enhanced model for protecting and promoting human rights.*

On the other hand, Nicholas Aroney and Richard Ekins, who argued against a human rights act, described the Victorian model this way:²⁴⁸

A close examination of the case law and subsequent political debate in the State of Victoria suggests that the Charter of Rights has not contributed meaningfully to dialogue or deliberation. This is because, on most questions of public import, agreement on an abstract set of words contained in a statutory bill of rights does nothing to resolve debate. Differences of opinion in political and moral matters are caused by differences in underlying philosophy and values which inform the way in which the language of a statutory bill of rights is interpreted and applied.

In the context of freedom of religion, CLEAR International was of the view that:²⁴⁹

To adopt such a model as that implemented in the Victorian charter may amount to an effective withdrawal of the human rights of individuals or corporate entities. This is an unacceptable proposition for any charter that purports to protect human rights. Any proposed bill should not derogate from the standards implemented in international law.

CLEAR International Australia also expressed concern that Australian human rights legislation does not adequately protect the religious freedom of individuals and of corporate entities. It called for any proposed human rights legislation to protect the human rights of individuals and corporate entities. CLEAR International Australia noted that the Victorian Charter ‘effectively weakens’ the rights within the ICCPR by applying the ‘reasonable limits’ provision at s 7(2). This was considered a weaker stance than the ‘necessary’ limitations set out in Article 18(3) of the ICCPR.²⁵⁰ Mark Fowler submitted that ‘the Victorian charter also omits the rights of parents to ensure the religious and moral education of their children’.²⁵¹

CLEAR International Australia concluded that ‘to adopt a model such as that implemented in the Victorian Charter is to effectively weaken the protections offered under international law’.²⁵²

4.2.6 Interpreting laws consistently with human rights

Section 32(1) requires that so far as possible, all statutory provisions are to be interpreted in a way that is compatible with human rights. This interpretative provision was considered in *Momcilovic v The Queen*.²⁵³ This case involved an appeal to the High Court from the only Victorian decision resulting in a declaration of inconsistent interpretation. The High Court decision has been the subject of much comment and is widely regarded as having added great uncertainty to the meaning of section 32.²⁵⁴ As Mr Justice Weinberg observed succinctly in evidence to the committee:

²⁴⁸ Nicholas Aroney and Richard Ekins, submission 474, p 9.

²⁴⁹ Public hearing transcript, Brisbane, 9 June 2016, p 2.

²⁵⁰ CLEAR International Australia, submission 486, pp 4, 6-7.

²⁵¹ Public hearing transcript, Brisbane, 9 June 2016, p 2.

²⁵² CLEAR International Australia, submission 486, p 7.

²⁵³ (2011) 245 CLR 1, and for the Victorian decision see *R v Momcilovic* (2010) 25 VR 436.

²⁵⁴ See for example Professor George Williams and Daniel Reynolds, submission 6; Julie Debeljak, submission 461 (and in her articles referred to there); Victorian Equal Opportunity and Human Rights Commission, submission 447, p 17.

*... even though the High Court has spoken on the point, we do not know what the High Court's decision in Momcilovic actually says.*²⁵⁵

4.2.7 Remedies

There is no stand-alone remedy under the Charter. Rather, section 39(1) provides:

If, otherwise than because of this Charter, a person may seek any relief or remedy in respect of an act or decision of a public authority on the ground that the act or decision was unlawful, that person may seek that relief or remedy on a ground of unlawfulness arising because of this Charter.

Thus, the Charter does not enable a person to bring an independent action against a public authority on the basis of a breach of the Charter. In addition, section 39(3) expressly excludes a remedy by way of an award of damages. The Victorian Equal Opportunity and Human Rights Commission stated that there are no clear consequences for a breach of the Charter and the need to 'attach' a claim under the Charter to another claim significantly reduces the capacity for an individual to obtain effective relief. It argued:

The Commission considers that having no entitlement to damages under the Charter is unsatisfactory, as compensation in some (but not all) cases is necessary to provide an effective remedy where a person's human rights have been infringed.

*A Human Rights Act for Queensland should provide for a direct right of action to an independent tribunal in an accessible, low cost jurisdiction, in respect of a complaint that a public authority has breached human rights. Such a tribunal should be able to make a range of orders, including where appropriate, compensation for loss, damage or injury suffered in consequence of a contravention.*²⁵⁶

The 2015 review of the Charter included a recommendation that there be a direct cause of action for a breach of section 38 of the Charter (see below at section 6.2). On this recommendation, George Williams and Daniel Reynolds observed:

*If Victoria chooses not to accept [the] independent reviewer's recommendation, it will remain the only jurisdiction in the world to have a human rights act that lacks a direct right of action. In Queensland's case, it should avoid this problem by ensuring that any human rights act enacted in that state contains a stand-alone cause of action from its inception.*²⁵⁷

4.3 New Zealand

The New Zealand Parliament passed the *New Zealand Bill of Rights Act 1990* (NZ) ('the NZBORA') after consideration, and ultimate rejection, of an entrenched bill of rights into New Zealand's constitution, which could have empowered the courts to declare legislation invalid.²⁵⁸ The NZBORA, which is an ordinary statute, commenced in September 1990.²⁵⁹

²⁵⁵ Public hearing transcript, Brisbane, 11 April 2016, p 6.

²⁵⁶ Victorian Equal Opportunity and Human Rights Commission, submission 447, pp 16-17.

²⁵⁷ George Williams and Daniel Reynolds, submission 6, p 4.

²⁵⁸ New South Wales Parliament, Human Rights Standing Committee on Law and Justice, [A NSW Bill of Rights](#), Report no. 17, October 2001, p 32.

²⁵⁹ Andrew Geddis, submission 11, p 2. New Zealand does not have a written constitution, constitutional arrangements are reflected in legislation and other documents.

New Zealand also has a human rights act. The *Human Rights Act 1993* (NZ) protects people in New Zealand from discrimination in a number of areas of public life. The Act prohibits sexual and racial harassment and the excitement of racial disharmony. It provides for the establishment of a Human Rights Commission and a Human Rights Review Tribunal.²⁶⁰

The NZBORA affirms New Zealand's commitment to the *International Convention on Civil and Political Rights* (ICCPR) on which the rights contained in the Act are based. The Act does not reflect all the ICCPR rights, however s 28 provides that, just because a right or freedom is not expressly provided for in the Act, does not mean that the right or freedom does not exist or is otherwise restricted.²⁶¹

Section 3 of the NZBORA states that the Act applies to acts done:

- (a) by the legislative, executive or judicial branches, or
- (b) by any person or body in the performance of any public function, power or duty imposed by law.²⁶²

This implies that all individuals or entities that are a part of the three branches of the New Zealand Government are bound by the Act in everything they do. However, as Andrew Geddis noted, the legislature is not legally bound to abide by the NZBORA in terms of the *content* of any legislation it enacts.²⁶³

Sections 4, 5 and 6 relate to how an Act may be interpreted by the courts in accordance with the NZBORA.²⁶⁴

Section 29 of the NZBORA states that the provisions of the Act apply, so far as practicable, for the benefit of all legal persons as well as for the benefit of all natural persons. This provision means the Act applies to all individuals in New Zealand as well as organisations, such as companies and incorporated associations.²⁶⁵

4.3.1 Section 7 inconsistent reports by the Attorney-General

When a bill is introduced, s 7 of the NZBORA requires the Attorney-General to report to the New Zealand House of Representatives on whether any provision in the bill appears to be inconsistent with any of the rights and freedoms contained in the NZBORA.²⁶⁶

The Honourable Christopher Finlayson MP, New Zealand Attorney-General, commented on the effectiveness of the provision. He noted that the Attorney-General has the ability to report to the parliament on any piece of legislation where it appears that legislation is inconsistent with any of the rights prescribed in the Act. He described one salutary effect of the Act: that quite often during the new bill drafting stage, ministers of the Crown approach the Attorney-General seeking ways to avoid activating the s 7 Statement of Compatibility provision under the NZBORA. He stated:

*We do not even get to the section 7 procedure because the threat of it acting as some sort of ... legislative sword of Damocles means that ministers often engage with me even at a reasonably late stage of a bill's development to ensure that it is Bill of Rights compliant.*²⁶⁷

²⁶⁰ New Zealand Ministry of Justice, '[Human Rights Act 1993](#)'.

²⁶¹ New Zealand Ministry of Justice, '[New Zealand Bill of Rights Act 1990](#)'.

²⁶² *New Zealand Bill of Rights Act 1990* (NZ), s 3.

²⁶³ Andrew Geddis, submission 11, p 4.

²⁶⁴ *New Zealand Bill of Rights Act 1990* (NZ), ss 4-6.

²⁶⁵ *New Zealand Bill of Rights Act 1990* (NZ), s 29.

²⁶⁶ *New Zealand Bill of Rights Act 1990* (NZ), s 7.

²⁶⁷ Public hearing transcript, Brisbane, 11 April 2016, p 1.

Hon Finlayson observed that the s 7 provision ‘brings to the attention of policymakers, ministers and drafters at a relatively early stage Bill of Rights issues’. He stated that ‘in the 26 years since the Bill of Rights enactment, there is an increasing focus on Bill of Rights issues and the parliament is taking a greater interest in the section 7 reporting procedure’.²⁶⁸

On the question of whether there was conflict due to the Attorney-General having the dual roles of independent law officer and minister of the Crown, Hon Finlayson stated:

*It is me as the independent law officer who writes the reports, and it is said it is because I have to undertake that role independently, regardless of any criticism there may be from some of my colleagues in cabinet. It is always well respected by them that that is my function and that if there is a section 7 report then that is the way it has to be. People do not try and nobble me in some way.*²⁶⁹

4.3.2 Scrutiny of bills by the parliament

Reports made by the Attorney-General accompany the bill when it is referred to a select committee of the New Zealand Parliament for consideration. The select committee is required to report not only on the bill and any amendments it recommends, but also on the findings of the Attorney-General. The purpose of the process is to ‘give some consideration to bill of rights and human rights issues’ when committees report to the House. There is the opportunity for a committee to hold hearings and call for submissions to be made regarding a bill. Committees are generally provided with six months to report on a bill – which, according to David Wilson, Clerk of the New Zealand House of Representatives, is sufficient time to consider the bills and the accompanying s 7 reports.²⁷⁰

According to David Wilson, the scrutiny process ‘seems to be reasonably effective’. He stated: ‘I think for pragmatic reasons and reasons of consistency with the model of select committees we have, the idea of a specialist human rights committee has not been pursued any further. What we have focused on instead is strengthening the scrutiny that select committees might do of rights issues’.²⁷¹

The New Zealand Parliament’s Standing Orders Committee has noted that the obligation to report to Parliament under section 7 applies only to a bill on introduction. It does not apply to Supplementary Order Papers, which set out proposed amendments to a bill, and other amendments proposed later in the parliamentary process. The Committee has espoused the view that Supplementary Order Papers and other subsequent changes to a bill should also be subject to the same scrutiny as a bill upon introduction.²⁷²

4.3.3 Remedies available as a consequence of the Act

As noted by Andrew Geddis, the NZBORA contains no remedies provision, and it has been left to the judiciary to determine what remedies are available. He stated, ‘There is no getting around the fact that the damages remedy is pure judicial interpolation on top of the recent Bill of Rights Act’.²⁷³

²⁶⁸ Public hearing transcript, Brisbane, 11 April 2016, p 2.

²⁶⁹ Public hearing transcript, Brisbane, 11 April 2016, p 4.

²⁷⁰ Public hearing transcript, Brisbane, 11 April 2016, p 12.

²⁷¹ Public hearing transcript, Brisbane, 11 April 2016, p 12.

²⁷² New Zealand Standing Orders Committee, *Review of Standing Orders – state occasions, financial review, NZBORA scrutiny and declaration of gifts*, 1 July 2014.

²⁷³ Public hearing transcript, Brisbane, 11 April 2016, p 20.

The ADCQ noted that while there are no explicit enforcement provisions for citizens in the Act, the New Zealand Court of Appeal has held that compensation may be obtained from government agencies for any breach of the rights in the Act.²⁷⁴

Professor Geddis observed that monetary damages for a breach of the Act are not given automatically by the courts. They are available only if ‘no other remedy will suffice’ and it is necessary to ‘vindicate the rights breach’. He stated that awards of damages have been modest in size.²⁷⁵

Hon Finlayson observed a secondary effect of the NZBORA being ‘the development of a Bill of Rights industry, especially lawyers on legal aid who will run arguments from time to time that are not complicated by any vestige of merit’. He declared that this is the ‘down side of the Bill of Rights’.²⁷⁶

4.3.4 Declaration of inconsistency by the Supreme Court

Unlike the human rights legislation in Victoria and the ACT, the NZBORA contains no express provisions for the courts in New Zealand to formally declare an Act inconsistent with human rights. Regardless, a formal declaration of inconsistency has occurred once, in the case of *Taylor v Attorney-General* in 2015 when the High Court declared that a blanket ban on prisoners’ voting in general elections in the *Electoral Act 1993* (NZ) was inconsistent with s 12(a) of the NZBORA.²⁷⁷

The declaration had no immediate legal effect. In the words of David Wilson, ‘The High Court has also determined that it has the right to declare that legislation is inconsistent with the Bills of Rights Act but that declaration does not affect the validity of legislation’.²⁷⁸ It was, according to Andrew Geddis, nonetheless a ‘very strong denunciation’ of the relevant sections of the *Electoral Act*. As at June 2016, the parliament had not moved to amend the *Electoral Act* in response to the declaration.

According to James Allan, the New Zealand judiciary has not reached ‘the heady heights’ of the United States and Canadian judges, but ‘are still far more powerful than they were before the enactment of their 1990 statutory ‘bill of rights’.²⁷⁹

Nicholas Aroney expressed the view that the effect of the provisions within the NZBORA that require judges to interpret other legislation consistently with the bill of rights ‘has not been radical’, but stated that there are many cases where courts have relied on the NZBORA to ‘misinterpret’ statutes by departing from their original meaning.²⁸⁰

4.4 United Kingdom

4.4.1 Human Rights Act 1998 (UK)

The *Human Rights Act 1998* (‘the UK HRA’) came into force in the UK in October 2000. It introduced into domestic law some of the rights set out in international human rights treaties. More specifically, it codified the fifteen rights and freedoms protected by the European Convention on Human Rights and Fundamental Freedoms (the ECHR).²⁸¹

The ECHR includes civil and political rights such as the right to life, the prohibition against torture and slavery, the right to a fair trial and the right to vote. The ECHR does not canvass economic, social and cultural rights such as those covered by the ICESCR. Refer to Appendices C and D in this report.

²⁷⁴ Anti-Discrimination Commission Queensland, submission 421, p 14.

²⁷⁵ dialogue.

²⁷⁶ Public hearing transcript, Brisbane, 11 April 2016, p 5.

²⁷⁷ *Taylor v Attorney-General* [2015] NZHC, 1706.

²⁷⁸ Public hearing transcript, Brisbane, 11 April 2016, p 12.

²⁷⁹ James Allan, submission 29, p 4.

²⁸⁰ Nicholas Aroney and Richard Ekins, submission 474, p 5.

²⁸¹ United Kingdom Equality and Human Rights Commission, [‘The Human Rights Act’](#).

4.4.2 'Take into account' provision

Section 2 of the UK HRA provides that when a court or tribunal is determining a question which has arisen in connection with a Convention right, the court must take into account any judgment, decision, declaration or advisory opinion of the European Court of Human Rights.

In practice, this section has ensured courts and tribunals in the UK develop common law compatibly with Convention rights and that they take account of European Court case law.

However, the 'take into account' provision has become increasingly unpopular amongst some parties who believe that the requirement threatens the sovereignty and independence of the Supreme Court.²⁸²

Heydon has observed that:

*...before the Convention, the House of Lords was the ultimate court of appeal for the United Kingdom in relation to human rights. No foreign court could make binding decisions about United Kingdom compliance with human rights principles. But now the ultimate Court of Appeal for the United Kingdom in relation to human rights is not the Supreme Court (as successor to the House of Lords). It is the European Court. That is a foreign court.*²⁸³

Heydon described the UK's legal obligation to comply with the judgments of the European Court as a loss of sovereignty:

*On one view... a duty to take those decisions into account does not entail a duty to be bound by them. There are certainly examples of the Supreme Court not following the European Court. However, although the position is unsettled, it may be that... [this] view is not the prevailing view on the authorities.*²⁸⁴

Heydon quoted Sir Nicolas Bratza, former President of the European Court, who stated that where a clear principle was laid down by the Grand Chamber of the European Court of Human Rights, it is '...plainly important that it should be followed and applied by the...' UK courts.²⁸⁵ Heydon claimed:

*If it is plainly important that this be done, it should be done. And to say "it should be done" is to say that the United Kingdom courts are bound to follow the European Court decision, whether they think it is correct or not. If the highest United Kingdom court must submit to the opinion of a non-United Kingdom court, to that extent United Kingdom sovereignty is diminished.*²⁸⁶

4.4.3 Interpretation provision

Section 3 of the UK HRA provides:

²⁸² M Leftly, '[British Bill of Rights to be fast-tracked into law by next summer](#)', *Independent*, 18 October 2015.

²⁸³ J D Heydon, *Are bills of rights necessary in common law systems?*, lecture delivered at the Oxford Law School on 23 January 2013, p 36; attached to Nicholas Aroney and Richard Ekins, submission 474.

²⁸⁴ J D Heydon, *Are bills of rights necessary in common law systems?*, lecture delivered at the Oxford Law School on 23 January 2013, p 37; attached to Nicholas Aroney and Richard Ekins, submission 474.

²⁸⁵ J D Heydon, *Are bills of rights necessary in common law systems?*, lecture delivered at the Oxford Law School on 23 January 2013, p 38; attached to Nicholas Aroney and Richard Ekins, submission 474.

²⁸⁶ J D Heydon, *Are bills of rights necessary in common law systems?*, lecture delivered at the Oxford Law School on 23 January 2013, p 38; attached to Nicholas Aroney and Richard Ekins, submission 474.

... so far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

Section 4 provides that if it is impossible to interpret legislation to be compatible with Convention rights, courts may issue a declaration of incompatibility. A declaration of incompatibility cannot invalidate the legislation nor bind the parties to the case the subject of the declaration.²⁸⁷

While section 3 does not affect the validity, continuing operation or enforcement of any incompatible primary or subordinate legislation, different judges have taken different views on how far they can re-interpret existing law.²⁸⁸

Notably, in *Ghaidan v Godin-Mendoza* [2004] 2 AC 557, the House of Lords held that for human rights legislation, the judicial interpretative power extends beyond the ordinary power exercised by the courts. Lord Nicholls in the majority said:

*It is now generally accepted that the application of s 3 (the reading down provision) does not depend upon the presence of ambiguity in the legislation being interpreted. Even if, construed according to the ordinary principles of interpretation, the meaning of the legislation admits of no doubt, s 3 may none the less require the legislation to be given a different meaning ... Section 3 may require the court to ... depart from the intention of the Parliament which enacted the legislation ... It is also apt to require a court to read in words which change the meaning of the enacted legislation, so as to make it convention-compliant.*²⁸⁹

In their joint submission to the committee, Professors Aroney and Ekins argued that:

*The legal effect of a statutory bill of rights turns in large part on the application of the requirement, contained in most statutory bills of rights, that judges must strive to interpret other legislation consistently with the bill of rights. The effect of this requirement can be more or less radical ... in the United Kingdom the courts have taken the requirement to authorise them to impose meanings on statutes that the enacting legislature clearly did not intend.*²⁹⁰

In the professors' view, the effect of the requirement can be seen in 'particularly glaring fashion' in *R v A (No 2)* [2002] 1 AC 45, where the court 'undermined' rape shield legislation.²⁹¹

James Allan expressed concerns about the effect of the provisions:

*...in the Ghaidan and Mendoza case in the UK, which has been rejected in Australia and rejected in New Zealand, but the House of Lords, now the Supreme Court... said, 'You don't need ambiguity in the statute. You can read words in.' By implication you can read words out. It does not matter if the judges know—and I am basically quoting here—the clear intention of parliament.' All of that goes out the window if we can give it a rights respecting meaning up to the point of judicial vandalism.*²⁹²

²⁸⁷ Australian Lawyers for Human Rights, submission 472, p 27.

²⁸⁸ United Kingdom Department for Constitutional Affairs, *A guide to the Human Rights Act 1998*, 3rd edition, 2006, p 7.

²⁸⁹ *Ghaidan v Godin-Mendoza* [2004] 2 AC 571-572.

²⁹⁰ Nicholas Aroney and Richard Ekins, submission 474, pp 4-5.

²⁹¹ Nicholas Aroney and Richard Ekins, submission 474, p 5.

²⁹² Public hearing transcript, Brisbane, 9 June 2016, p 10.

The interpretation provisions of the UK HRA are not replicated in the human rights legislation of New Zealand, Victoria and the ACT. However, some argued that the use of declarations has influenced the legislation in the ACT and Victoria.²⁹³

As observed by Nicholas Aroney and Richard Ekins, for Victoria and the ACT, the High Court of Australia has mandated a more circumspect approach, as reflected in the decision in *Momcilovic*.²⁹⁴

4.4.4 Public authorities

Section 6(1) of the UK HRA requires public authorities to act consistently with human rights. It is unlawful for any public authority to act in a way that is incompatible with a right protected by the ECHR. Public authorities include courts and tribunals, but exclude the Parliament.²⁹⁵

However, under section 6(2), the prohibition does not apply where, as a result of one or more provisions of the relevant legislation, the public authority could not have acted differently, or where the legislation in question cannot be read or given effect in a way that is compatible with the rights protected in the Convention.

4.4.5 Causes of action

For any breaches of rights contained in the ECHR, individuals no longer have to take their human rights cases to the European Court of Human Rights in Strasbourg:

An application to Strasbourg may only be brought once all domestic remedies have been exhausted. Since the operation of the UK HR Act, human rights disputes can be resolved in UK domestic courts, which would afford individuals 'just satisfaction' for the wrong suffered.

Under the UK HR Act, claims that a public authority has acted incompatibly with ECHR rights may only be brought by 'victims', which is defined to be 'someone who would be a victim for the purposes of the Article 34 of the Convention if proceedings were brought in the [European Court of Human Rights] in respect of that act'. The court may grant relief or remedy within its powers as it considers just and appropriate. The UK HR Act permits the award of damages, but only if the court held that the award is necessary to afford just satisfaction to the person, whilst taking into consideration the circumstances of the case. The court must take into account the principles applied by the [European Court of Human Rights] in pursuant to Article 41 of the ECHR in making determination regarding the award of damages. The UK courts are mostly bound by the [European Court of Human Rights] jurisprudence, except in matters where they expressly consider the case law in the [European Court of Human Rights] is wrong.²⁹⁶

4.4.6 Limitation of rights

In the ECHR, the protected rights fall into three classifications:

An absolute right cannot be interfered with under any circumstances.

²⁹³ Australian Lawyers for Human Rights, submission 472, pp 26.

²⁹⁴ Nicholas Aroney and Richard Ekins, submission 474, p 5.

²⁹⁵ Anti-Discrimination Commission Queensland, submission 421, p 14.

²⁹⁶ Australian Lawyers for Human Rights, submission 472, p 27.

Limited rights can be interfered with in specific circumstances on the balance of proportionality. The limitations on these rights are necessary in order to achieve a balance between the protection of individuals and the public interest.

Qualified rights can be interfered with on three bases:

- 1. where the interference has its basis in law*
- 2. where the interference is done to secure a permissible aim set out in the relevant Article*
- 3. where the interference that is essential in a democratic society, weighed against the overall interests of others.²⁹⁷*

4.4.7 Law making by parliament

When a bill is introduced in parliament, the Minister responsible for a bill must make a 'statement of compatibility' before the second reading of the bill, which must state that:

- in the Minister's view, the bill is compatible with human rights ("statement of compatibility") or*
- the bill is incompatible with human rights but the government, nevertheless, wishes the Houses to proceed with the Bill.²⁹⁸*

²⁹⁷ Australian Lawyers for Human Rights, submission 472, pp 27-28. The ECHR provides for absolute rights, which: prohibit torture, inhuman and degrading treatment and punishment; prohibit slavery and enforced labour; and protect individuals from retrospective criminal penalties. Limited rights include, for example, the right to liberty and security, which can be interfered with on occasions of lawful arrest and detention, on the basis that the authority's reasonable suspicion is weighed against national security. Qualified rights include the right to respect for private and family life, religion and belief, freedom of expression, assembly and association, right to peaceful enjoyment of property and right to education.

²⁹⁸ Australian Lawyers for Human Rights, submission 472, p 26.

5 Costs and benefits of adopting a Human Rights Act

The terms of reference at point 2c require the committee to consider the cost and benefits of adopting a human rights act (including financial, legal, social and otherwise).

There are difficulties accurately identifying the costs and benefits of introducing human rights legislation in Queensland. Information from jurisdictions that already have established human rights legislation and have conducted reviews on the effectiveness and operation of that legislation are insightful.

A number of submissions to the inquiry provided information concerning perceived benefits in legal and social terms, and they are reflected below. In regards to financial costs and benefits, there was less information available, both in the material provided by submitters and from wider sources.

5.1 Financial aspects

Those submissions that did discuss financial costs and benefits generally relied on the findings of a review which investigated the overall costs and benefits of the Victorian Charter. This review was conducted by the Victorian Parliament's Scrutiny of Acts and Regulations Committee (SARC) in 2011.

That review considered a submission from the Victorian Government providing detailed Charter-related costs to government over the five financial years from 2006-07 to 2010-11. The submission provided a total cost for introducing and implementing the Charter of \$13,488,750. The total included:

- Charter implementation funding for certain departments and agencies
- establishing a human rights agency with the Department of Justice
- funding for Charter-related work by the Victorian Equal Opportunity and Human Rights Commission
- training and legal advice in the public sector, and
- other identified human rights staff in the Victorian public service.²⁹⁹

In its review, SARC was unable to make any specific conclusions about the costs and benefits of the Charter, largely because of difficulties in assessing indirect costs associated with the Charter.³⁰⁰ These indirect costs may include costs expended on time taken to perform Charter-related tasks by public authorities including local authorities, Charter contributions to delays in the court system and costs associated with occasions when Charter compliance requirements consume the resources of public authorities.³⁰¹ Despite this inability to determine all costs, the Caxton Legal Centre concluded, after consideration of human rights legislation in the ACT and Victoria, that 'the costs of implementing a legislative scheme are not prohibitive'.³⁰² George Williams and Daniel Reynolds submitted that 'the benefits of these Acts have not come at a significant cost to the public purse: an analysis of the Victorian Charter in 2011 found that it had only cost 50 cents per Victorian per year'.³⁰³

²⁹⁹ Victorian Parliament, Scrutiny of Acts and Regulations Committee, *Review of the Charter of Human Rights and Responsibilities Act 2006*, No. 69 of 2010-11, p 141.

³⁰⁰ Victorian Parliament, Scrutiny of Acts and Regulations Committee, *Review of the Charter of Human Rights and Responsibilities Act 2006*, No. 69 of 2010-11, p x.

³⁰¹ Victorian Parliament, Scrutiny of Acts and Regulations Committee, *Review of the Charter of Human Rights and Responsibilities Act 2006*, No. 69 of 2010-11, p 141.

³⁰² Caxton Legal Centre, submission 387.

³⁰³ George Williams and Daniel Reynolds, submission 6, p 2 citing a calculation in Ben Schokman, *Human Rights Law Centre*, 2 September 2011.

ADCQ acknowledged that the cost of adopting a human rights act would ‘depend on the model introduced, and the resources devoted to its implementation’.³⁰⁴

Legal Aid Queensland identified areas of potential expense including:

- establishment of additional legal and policy resources
- provision of training to public authorities, ‘which will be ongoing’
- investigation of possible human rights breaches.³⁰⁵

Queensland Advocacy Incorporated also stated, ‘while there would be some implementation costs associated with the introduction of a Human Rights Act in Queensland, these costs would be outweighed by the economic benefits that would increase over time’.³⁰⁶

5.2 Legal aspects

Penelope Mathew acknowledged there would be financial costs incurred within the courts and legal services in the establishment of a human rights act, but she stated in her submission that:

*[L]egislation that is properly vetted and correctly viewed as compatible with human rights is likely to see fewer challenges in the courts. This is the benefit of ‘frontloading’ the system so that human rights are considered at the point of enacting new legislation, rather than focussing on judicial enforcement.*³⁰⁷

James Allan provided a contrasting view: ‘bills of rights cost significant amounts of money that could be spent elsewhere and deliver little, save to lawyers, judges, criminals, and some articulate, well-educated members of the professional class’.³⁰⁸

Hon Finlayson identified a down side of the New Zealand Bill of Rights Act, in that ‘the courts are bogged down with frivolous and vexatious arguments run by people who are on legal aid’.³⁰⁹

Legal Aid Queensland identified costs related to litigation as likely to be ‘significant’ and ‘one which is likely to impact on Legal Aid Queensland’. Conceding that such costs are ‘difficult to quantify’, the submission stated that litigation costs ‘will very much depend on the nature of the rights included in any charter and whether there is a stand-alone cause of action for breaches of rights’.³¹⁰

5.3 Social aspects

According to Queensland Advocacy Incorporated ‘the social benefits of introducing a Human Rights Act in Queensland would be significant and the social costs negligible’.³¹¹

In direct contrast, the Queensland Law Society presented the following statement in the ‘opponent’ section of its submission:

A Human Rights Act would impose (perhaps substantial) costs, economically and socially. The social costs will come in the form of an extra layer of regulation and restrictions on ordinary citizens and expose them to an additional set of remedies and sanctions at the suit of those enforcing their own rights. These added restrictions and sanctions will be an

³⁰⁴ Anti-Discrimination Commission Queensland, submission 421, p 16.

³⁰⁵ Legal Aid Queensland, submission 482, p 13.

³⁰⁶ Queensland Advocacy Incorporated, submission 28, p 23.

³⁰⁷ Penelope Mathew, submission 398, p 3.

³⁰⁸ James Allan, submission 29, pp 4-5.

³⁰⁹ Public hearing transcript, Brisbane, 11 April 2016, p 5.

³¹⁰ Legal Aid Queensland, submission 482, p 13.

³¹¹ Queensland Advocacy Incorporated, submission 28, p 26.

*unnecessary intrusion into the lives of citizens where existing laws, amended in the light of experience, adequately adjust competing interests and actions.*³¹²

The Australian Lawyers for Human Rights explored the social costs and benefits of introducing a human rights act in Queensland. It provided the following observation:

If a HR Act is adopted and properly enforced so that its aim of harm reduction and protection of Queenslanders' human rights is fully carried into effect, there will be enormous direct and indirect benefits to Queensland society.

*Not only will Queenslanders have the benefit of having a mechanism by which their human rights can be enforced; the introduction of a HR Act will educate society, set higher standards, and enhance democracy in Queensland by encouraging a more inclusive, rights-based society.*³¹³

³¹² Queensland Law Society, submission 475, The Opponent Perspective, para 7.

³¹³ Australian Lawyers for Human Rights, submission 472, p 44.

6 Previous reviews of and inquiries into human rights legislation

6.1 Queensland

Australia's first attempt to introduce human rights legislation occurred in Queensland in 1959. The Nicklin Government introduced the Constitution (Declaration of Rights) Bill, fulfilling a commitment made by the Country-Liberal Party during the 1957 general election. The Bill sought to protect rights for 'detainees and property holders' and contained provisions that prevented Parliament from passing legislation contrary to human rights without holding a referendum. The Bill lapsed prior to the 1960 state election.³¹⁴

In 1993, the Queensland Electoral and Administrative Review Commission (EARC) conducted an inquiry into related to the preservation and enhancement of individuals' rights and freedoms, as specified in the *Electoral and Administrative Review Act 1989* (Qld). The resulting, *Report on the Preservation and Enhancement of Individuals' Rights and Freedoms*, in August 1993 recommended that Queensland adopt a bill of rights. EARC attached a draft bill of rights to its report.³¹⁵

In 1997 the Queensland Parliament's Legal, Constitutional and Administrative Committee (LCARC) undertook a review of the issues canvassed in EARC's report and the proposed bill of rights. An issues paper was released in September 1997.³¹⁶ In November 1998 LCARC presented its report, *The preservation and enhancement of individuals' rights and freedoms in Queensland: should Queensland adopt a bill of rights?* to the Queensland Parliament.

LCARC recommended that the Queensland Government *not* adopt a bill of rights, concluding that human rights were already protected in Queensland:

*The Commonwealth Constitution, specific rights-type legislation, pre-legislative processes, the common law and, increasingly, international law all operate in one way or another to protect rights. In combination, and within the overall operation of Queensland's system of parliamentary democracy, such mechanisms operate to protect—or at least provide a safety net for protecting—individuals' rights and freedoms.*³¹⁷

The committee expanded on its position:³¹⁸

The committee naturally endorses the values that a bill of rights such as the one proposed by EARC enshrines—human dignity, life, liberty, security of person, democratic participation, equality—but does not believe that an enforceable bill of rights is an apt or practical mechanism to realise these values.

Implementation of EARC's recommendation would potentially have a significant—and the committee believes—inappropriate impact on the fundamental nature of the Queensland polity.

Moreover, the committee is not convinced..... that the adoption of a bill of rights would achieve a real difference in the protection of the rights and liberties of Queenslanders.

³¹⁴ LCARC, *The preservation and enhancement of individuals' rights and freedoms in Queensland*, Report No 12, p 11.

³¹⁵ Queensland Electoral and Administrative Review Commission, [Report on the Preservation and Enhancement of Individuals' Rights and Freedoms](#), August 1993.

³¹⁶ Queensland Parliament Legal, Constitutional and Administrative Review Committee, *Issues Paper*, No 3, September 1997.

³¹⁷ Queensland Parliament Legal, Constitutional and Administrative Review Committee, *Report No 12*, 1998, p iii.

³¹⁸ Queensland Parliament Legal, Constitutional and Administrative Review Committee, *Report No 12*, 1998, p 69.

LCARC raised concerns about possible empowerment of the judiciary, increased litigation and ‘substantial economic and social costs’. The reasons for not recommending a bill of rights included:

An enforceable Queensland Bill of Rights would most likely result in a significant and inappropriate transfer of power from the Parliament (the Queensland legislative body elected by the people) to an unelected judiciary.

Prohibitive legal costs associated with enforcing one’s rights under a bill of rights (whether constitutional or statutory) might effectively see the utility of a bill of rights being restricted to wealthy and corporate citizens. Yet the public costs associated with a bill of rights—such as maintaining court machinery and repairing successfully-challenged regulatory schemes—will be costs borne by all members of society.³¹⁹

The committee found there were ways to enhance the protection of rights in Queensland without a bill of rights. The committee’s subsequent recommendations, including recommending the publication of a booklet titled *Queenslanders’ Basic Rights*, were based on two primary concepts:

- ensuring wide-spread education of members of our community about their rights
- enhancing a rights culture or consciousness in State and local government policy, law and decision-makers.³²⁰

In May 2005 the Queensland government provided its response to the LCARC report. The government supported the committee’s recommendation to not adopt a bill of rights for Queensland:

There are compelling reasons against adopting a bill of rights for Queensland, including the likelihood of a significant and inappropriate transfer of power from the Parliament to an unelected judiciary; increased public costs; and the prospect of increased litigation and challenges to legislation.³²¹

The response affirmed the committee’s stance that an adequate rights system was already in place:

The existing system of rights protection in Queensland, including constitutional rights, legislation, the common law, and the system of parliamentary democracy, provides effective protection for individuals’ rights and freedoms.³²²

6.2 Australia’s National Human Rights Consultation 2009

In December 2008 the Australian Government formed a committee to conduct a national consultation with the aim of discerning which human rights and responsibilities should be protected and promoted in Australia. The committee made a number of recommendations in their report of September 2009, including recommending the enactment of a federal Human Rights Act, with an interpretative provision for the courts and a suite of remedies available for claimants.³²³

Ultimately, the Australian Government did not enact a human rights act, but adopted other recommendations from the consultation report, including recommending to form a parliamentary committee charged with reviewing bills and regulations to determine compliance with human rights.

³¹⁹ LCARC, *The preservation and enhancement of individuals’ rights and freedoms in Queensland*, Report No 12, p iv.

³²⁰ LCARC, *The preservation and enhancement of individuals’ rights and freedoms in Queensland*, Report No 12, p v.

³²¹ Queensland Government, [Government’s final response to the Legal, Constitutional and Administrative Committee’s Report No 12](#), 19 May 2005.

³²² Queensland Government, *Government’s final response to the Legal, Constitutional and Administrative Committee’s Report No 12*, 19 May 2005.

³²³ Australian Government Attorney-General’s Department, [National Human Rights Consultation Report: Recommendations](#), September 2009, pp xxix-xxxviii.

This was implemented by the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth). The Parliamentary Joint Committee on Human Rights was established by the Act in 2011 and has a number of functions, including examination of bills and legislative instruments that come before either House of the Australian Parliament for compatibility with human rights. The committee reports to both Houses on its findings.³²⁴

The Committee's first Annual Report 2012-2013 stated that; 'its work to date has contributed to the elevation of the consideration of human rights within the Parliament and in the development of policy and legislation'. The Report found that:

*There are positive signs that the committee's work is being taken into account in the development and refinement of legislation. Departments and agencies are increasingly aware of the committee's expectations regarding the content of statements of compatibility. More significantly, a number of Ministers have undertaken to review procedures and make amendments to legislation in response to the committee's comments.*³²⁵

6.3 Australian Capital Territory

The *Human Rights Act 2004* (ACT) (HRA) has been subject to three mandated reviews since its inception; in 2006, 2009 and 2014. The report of the most recent review was tabled in the ACT Legislative Assembly on 25 November 2014.

Following the 2006 government review, the HRA was subject to considerable reform. Among other measures, the *Human Rights Amendment Act 2008* (ACT) introduced clarification of the interpretative provision in s 30, a duty on public authorities to comply with the Act, and an independent right of action in the Supreme Court for breaches of the Act. These measures came into force on 1 January 2009.³²⁶

The 2009 review, conducted independently by the Australian National University, found that the HRA had resulted in an improved quality of law-making in the ACT with regards consideration of human rights.³²⁷

The government's 2014 review considered various matters, particularly whether additional economic, social and cultural rights (those ratified under the ICESCR) should be included in the HRA.³²⁸ The right to education had been added to the HRA in 2012, effective from January 2013. This new right is referred to in s 7.7 below. In considering the right to adequate housing, health, work and cultural life, the government decided not to introduce additional economic social and cultural rights. The review found that many of these rights were already protected in the ACT through specific legislation and related policies.³²⁹ The review briefly considered amending available forms of relief for breaches of human rights and the scrutiny process of bills through the parliament. The government recommended no change to the HRA in regards these matters.³³⁰

³²⁴ Parliamentary Joint Committee on Human Rights, *Guide to Human Rights*, June 2015, p i.

³²⁵ Australian Parliamentary Joint Committee on Human Rights, [Annual Report 2012-2013](#), Department of the Senate, Parliament House, Canberra.

³²⁶ Australian National University, [The Human Rights Act 2004 \(ACT\): the first five years of operation](#), May 2009, p 6.

³²⁷ Australian National University, [The Human Rights Act 2004 \(ACT\): the first five years of operation](#), May 2009, p 6.

³²⁸ ACT Government Justice and Community Safety Directorate, [Economic, social and cultural rights in the Human Rights Act 2004: Section 43](#), November 2014, p 4.

³²⁹ ACT Government Justice and Community Safety Directorate, [Economic, social and cultural rights in the Human Rights Act 2004: Section 43 Review](#), November 2014, p 19.

³³⁰ ACT Government Justice and Community Safety Directorate, [Economic, social and cultural rights in the Human Rights Act 2004: Section 43 Review](#), November 2014, p 24-25.

In February 2016³³¹, the HRA was amended to expressly state the distinct cultural rights accorded to Aboriginal and Torres Strait Islander people, and to expressly include children in the existing rights accorded to all people covered by the Act.³³²

In reviewing of the Human Rights Amendment Bill 2015, the Standing Committee on Justice and Community Safety argued that the HRA had experienced a ‘trend of orderly development’ in which it had incrementally extended over time, maintaining an appropriate relationship between the HRA and broader societal expectations. The Committee noted that:

*... the incremental introduction of enhancements, new rights and powers in the HR Act has allowed the ACT to avoid what many feared prior to the enactment of the HRA: that it would result in undue litigation. In the Committee’s view it is important to continue with this measured, consistent, and careful approach to ensure that any litigious activity in relation to the HRA is warranted and proportionate to grievance which may arise.*³³³

6.4 Victoria

The Victorian *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter) required two statutory reviews, one after four years in 2011, and one after eight years, in 2015.

The 2011 review was conducted by the Parliament’s Scrutiny of Acts and Regulations Committee and presented to the Victorian Parliament on 14 September 2012. The requirements of the review were broad and included: whether the Charter should include additional human rights; if the Charter should include the right to Indigenous self-determination; whether there should be regular auditing of public authorities; and whether a direct remedies provision should be added. The review made 35 recommendations. Ultimately, the Victorian Government did not make legislative amendments to the Charter as a result of the 2011 review.³³⁴

The *2015 Review of the Charter of Human Rights and Responsibilities Act 2006* was an independent review led by Michael Brett Young. The review looked at ways to enhance the effectiveness of the Charter and improve its operation. The 2015 Review contains 52 recommendations, including:

- additional promotion of a human rights culture in the public sector
- clarification of the responsibilities of public authorities
- creation of an avenue for dispute resolution through the Victorian Equal Opportunity and Human Rights Commission (VEOHRC)³³⁵
- amendment of the Charter to enable a person who claims a public authority has acted incompatibly with their human rights to apply to the Victorian Civil and Administrative Tribunal for a remedy, or rely solely on the Charter in any legal proceedings
- clarification of the sections of the Charter dealing with interpretation and application of the law
- improvement of the scrutiny process through the parliament, including allowing sufficient time for the relevant parliamentary committee to examine a bill

³³¹ *Human Rights Act (ACT)*, s 27.

³³² ACT Legislative Assembly, Human Rights Amendment Bill 2015, as presented, March 2015.

³³³ ACT Standing Committee on Justice and Community Safety, [Inquiry into the Human Rights Amendment Bill 2015](#), Report No 5, November 2015, p 6.

³³⁴ Michael Brett Young, [From Commitment to Culture: the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006](#), September 2015, p 7.

³³⁵ Michael Brett Young, [From Commitment to Culture: the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006: Summary report](#), September 2015.

- amending the Charter to require another review four years after amendment of the proposed complaints and remedies provision.³³⁶

The Victorian Government is currently considering the recommendations from the review.

6.5 New South Wales

In October 2001, the Legislative Council Standing Committee on Law and Justice published a report on its inquiry into a NSW Bill of Rights. Consistent with the widely publicised views of the then NSW government, the committee recommended against a bill of rights, but proposed the establishment of a parliamentary standing committee to scrutinise legislation for compliance with human rights standards.³³⁷ The government renamed the joint standing Regulation Review Committee to the Legislation Review Committee and expanded its role to include a scrutiny of bills function.³³⁸

The Legislation Review Committee's role is to review all bills introduced into parliament and report on the impact of these bills on personal rights and liberties. Specifically, the committee is required³³⁹ to report to the parliament any Bill that:

- trespasses on personal rights and liberties
- does not properly define administrative powers that may affect personal rights
- does not allow for the review of decisions that may affect personal rights
- inappropriately delegates legislative power
- does not sufficiently allow the Parliament to scrutinise legislative power.³⁴⁰

The committee also reviews and reports on any regulation that impacts on personal rights and liberties, or adversely affects the business community. The committee can also recommend that Parliament disallow a regulation based on human rights concerns.³⁴¹

6.6 Western Australia

In May 2007, the government appointed the Committee for a Proposed WA Human Rights Act to determine if there was support in the community for a human rights act in Western Australia. The committee was also to consider, more broadly, ways in which the Western Australian Government and the community could encourage a 'human rights culture'.³⁴²

At the same time, the government released a proposed Human Rights Act for discussion. In November 2007, the committee found that while there were conflicting views, there was clear majority support for a human rights act in Western Australia. The committee recommended the introduction of a human rights act, concluding that it would contribute to an increased awareness of, and concern for, human rights in the state. The committee expressed strong support for the maintenance and preservation of parliamentary sovereignty and the state's legal and constitutional traditions.³⁴³

³³⁶ Michael Brett Young, *From Commitment to Culture: the 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, September 2015, pp v-xi.

³³⁷ New South Wales Standing Committee on Law and Justice, *A NSW Bill of Rights*, October 2001, pp xii-xiii.

³³⁸ Premier of New South Wales, [Government response to the report of the Legislative Council's Standing Committee on Law and Justice, A NSW Bill of Rights](#), 21 October 2002.

³³⁹ *Legislation Review Act 1987* (NSW), s 8A.

³⁴⁰ *Legislation Review Act 1987* (NSW), s 8A.

³⁴¹ Parliament of New South Wales, ['Legislation Review Committee'](#), (accessed 11 February 2016).

³⁴² Government of Western Australia, [A WA Human Rights Act: Report of the Consultation Committee for a proposed WA Human Rights Act](#), November 2007, p iii.

³⁴³ Government of Western Australia, *A WA Human Rights Act: Report of the Consultation Committee for a proposed WA Human Rights Act*, November 2007, p iii.

In a media statement following release of the committee report, the then Attorney-General, Jim McGinty, welcomed the findings of the committee. However he said that 'human rights protection is an objective best pursued at a national level'.³⁴⁴

6.7 South Australia

In South Australia, a Human Rights Bill was introduced to the South Australian Parliament by the then leader of the South Australian Democrats, Sandra Kanck, as a private members bill in 2004.³⁴⁵ The Bill contained provisions similar to the ACT's HRA, though without the HRA's provisions relating to the obligations of public authorities. It did not progress beyond the second reading in the Legislative Council.

Ms Kanck subsequently introduced a private member's bill in 2005 - the Human Rights Monitors Bill - a bill to promote human rights by monitoring the standard of institutional care provided to people with a disability.³⁴⁶ This Bill did not proceed beyond the second reading stage in the parliament.

6.8 Tasmania

In 2006, the Tasmanian government commissioned the Tasmanian Law Reform Institute to report how human rights were currently protected in Tasmania and whether human rights could be enhanced or extended. In October 2007, the Tasmanian Law Reform Institute published its report, recommending that a Charter of Human Rights and Responsibilities be enacted in Tasmania, as an ordinary (not entrenched) piece of legislation.³⁴⁷ In 2010, the Department of Justice undertook consultation as part of its Human Rights Charter Legislative Project. Ultimately, the Tasmanian government did not proceed with the recommendation.

In 2012 then Attorney-General, Brian Wightman, stated that work had stalled on establishing a Charter of Human Rights and associated Human Rights Commission because the state couldn't afford it.³⁴⁸

6.9 Northern Territory

In the Northern Territory, there have been a number of examinations of the question of a bill of rights. None of the considerations has resulted in legislative change, and the issue has become part of the broader political question of whether the Northern Territory should become a state.

Most recently, a bill of rights was considered by the Legislative Assembly's Standing Committee on Legal and Constitutional Affairs. The committee considered whether a bill of rights in the Northern Territory would improve and extend existing rights protection. At the same time, the committee also considered the broader issue of the Territory being granted statehood. In its report of February 2010, the committee expressed the view that statehood needed to be achieved before the issue of a bill of rights could be considered, and that propriety must be given to the attainment of Statehood. According to the committee's findings, 'achieving Statehood first, would make clearer the way for a state-wide debate on a bill of rights'.³⁴⁹

6.10 New Zealand

The *New Zealand Bill of Rights 1990* (NZ) (NZBORA), as passed in August 1990, did not contain a statutory requirement for the legislation to be reviewed. As at 2016, the NZBORA has not been the focus of a systematic review.

³⁴⁴ Jim McGinty, '[Human rights report completed](#)', *media release*, 20 December 2007.

³⁴⁵ New South Wales Parliament, Legislative Council, Record of Proceedings, 15 September 2004, p 56.

³⁴⁶ New South Wales Parliament, Legislative Council, Record of Proceedings, 19 October 2005, p 2790.

³⁴⁷ Tasmania Law Reform Institute, [A Charter of Rights for Tasmania](#), Report No 10, October 2007.

³⁴⁸ Human Rights Law Centre, '[Human rights protections in Tasmania a vital and cost-effective way to promote human rights](#)', *News*, 6 February 2012.

³⁴⁹ Legislative Assembly of Northern Territory Standing Committee on Legal and Constitutional Affairs, [Towards Northern Territory Statehood: issues for consideration](#), February 2010, p iii.

In 2011 the New Zealand government appointed an advisory panel to consider constitutional issues. In 2013, the Constitutional Advisory Panel released the report of its analysis of New Zealand's constitution. The Panel recommended that the NZBORA be reviewed to further explore ways to improve its effectiveness. Specifically, the Panel suggested:

- adding economic, social and cultural rights, property rights, and environmental rights
- improving compliance by the Executive and Parliament with the standards in the Act
- giving the judiciary powers to assess legislation for consistency with the Act
- entrenching all or part of the Act.³⁵⁰

The New Zealand Parliament's Standing Orders Committee considered ways of improving the NZ Parliament's awareness of bill of rights matters during the legislative process. In 2014, following a review of the parliament's standing orders, the House adopted the Committee's proposed recommendation that reports presented by the Attorney-General under section 7 of the NZBORA, concerning inconsistency of bills, be referred to an appropriate select committee for consideration. The Committee also expressed concern that the obligation to report under s 7 applied only to a bill on introduction and not to subsequent amendments to the bill.³⁵¹ As at June 2016 there has been no change to the NZBORA in regards to this provision.

6.11 United Kingdom

Similar to the NZBORA, the United Kingdom's *Human Rights Act 1998* (UK) ('UK HRA'), did not contain a statutory requirement to conduct periodic review, when it was passed in 1998.

In 2006, the Department of Constitutional Affairs published the results of a review undertaken at the request of the government, in response to concerns that the operation of the UK HRA had led to the public being exposed to additional or unnecessary risks. The review found that the UK HRA had not had a significant impact on criminal law or on the government's ability to fight crime. In some respects the UK HRA's impact was found to be beneficial. The review found the UK HRA had not significantly altered the constitutional balance between the parliament, the executive and the judiciary.

The review also found that the UK HRA has had a significant and beneficial effect on the development of government policy, but that the Act had been widely misunderstood by the public, and sometimes misapplied. The review recommended the government better educate the public and the public sector of the benefits of the Act.³⁵²

Following the 2015 general election the conservative government, led by Prime Minister David Cameron, announced a plan to 'bring forward proposals for a Bill of Rights to replace the Human Rights Act'.³⁵³ The government stated that:

*This would reform and modernise our human rights legal framework and restore common sense to the application of human rights laws. It would also protect existing rights, which are an essential part of a modern, democratic society, and better protect against abuse of the system and misuse of human rights laws.*³⁵⁴

³⁵⁰ New Zealand Constitutional Advisory Panel, [New Zealand's Constitution: a report on a conversation](#), November 2013.

³⁵¹ Alex MacBean, [New Zealand Bill of Rights Act 1990: options for reform](#), New Zealand Parliamentary Library, September 2014, p 30.

³⁵² United Kingdom Department of Constitutional Affairs, [Review of the implementation of the Human Rights Act](#), July 2006, p 2.

³⁵³ The Conservatives (United Kingdom), [Protecting Human Rights in the UK: The Conservatives' proposals for changing Britain's human rights laws](#), October 2014.

³⁵⁴ United Kingdom Equality and Human Rights Commission, '7 May 2015 – The Queen's Speech'.

In December 2015 it was reported that the release of a consultation document on the issue was delayed due to perceived complexities of the government's proposed reforms.³⁵⁵ In particular, there were concerns that devolution of the UK HRA may have constitutional implications in Wales, Northern Ireland and Scotland. For example, the *Scotland Act 1998* currently ensures that the Scottish Parliament cannot pass legislation which is incompatible with the resolutions of the ECHR, as stated in the Act.³⁵⁶

The European Union Committee of the House of Lords recently completed an inquiry into the potential impact of repealing the UK HRA in regards to European Union (EU) Law.³⁵⁷ In February 2016 the Secretary of State for Justice gave evidence to the Committee. He stated:

*Human rights have become associated with unmeritorious individuals pursuing through the courts claims that do not command public support or sympathy. More troublingly, human rights are seen as something that are done to British courts and the British people as a result of foreign intervention, rather than something that we originally championed and created and seek to uphold. Therefore, part of the purpose of a British Bill of Rights or a UK Bill of Rights is to affirm the fact that things like a prohibition on torture or a right to due process and an appropriate trial before a properly constituted tribunal before deprivation of liberty or property are fundamental British rights.*³⁵⁸

The Committee concluded it was 'unsure as to why a British Bill of Rights was really necessary'. The review found strong opposition from the devolved nations - Scotland, Wales and Northern Ireland - to a British Bill of Rights. The Committee recommended the government give careful thought before proceeding with plans to replace the existing UK HRA with a British Bill of Rights.³⁵⁹

³⁵⁵ Kate McCann, ['David Cameron's plan to scrap the Human Rights Act delayed until 2016'](#), *The Telegraph (UK)*, 3 December 2015.

³⁵⁶ Alexander Horne & Lucinda Maer, ['From the Human Rights Act to a Bill of Rights?'](#), *Key issues for the New Parliament 2010*, House of Commons Library Research, p 84.

³⁵⁷ House of Lords European Union Committee, [The UK, the EU and a British Bill of Rights](#), 12th Report of the Session 2015-16, May 2016.

³⁵⁸ House of Lords, [Unrevised transcript of evidence taken before the Select Committee on the European Union Justice Sub-Committee Inquiry on the Potential on EU law of repealing Human Rights Act](#), Evidence Session No 8, 2 February 2016.

³⁵⁹ House of Lords European Union Committee, [The UK, the EU and a British Bill of Rights](#), 12th Report of the Session 2015-16, May 2016, pp 3, 49.

Appendix A List of Submissions

01	Laura Ferguson
02	Anonymous
03	Dennis Nestor
04	Dean McNulty
05	Rodney Crisp
06	George Williams and Daniel Reynolds
07	Children by Choice
08	Travis Jordan
09	Leon Fruean
10	Alan and Marie Alford, Peter Barber, Eirene Bennett, Peter and Morvyth Howard, Barry and Anne Mulquin, Diane and Rick Whittle, and Anne Window
11	Andrew Geddis
12	Queensland Family and Child Commission
13	Gay Fraser, Annette Hill, Katy Kucks, Lesley Parker, Stephen and Carol Porter, and Marilyn Rowsome
14	Joy Bola, Chris & Sharon Mason, and Glen Wright
15	Renai Ahlatis, Cindy Colborne, Norma Hill, Peter and Heather Mitchelhill, Greg and Suzan Smith
16	Gregory Carroll
17	Margaret Cruickshank
18	Alexander Rucker
19	Endeavour Foundation
20	James Lee
21	Confidential
22	Kelly Lawn
23	Stephen Clancy
24	Civil Liberties Australia
25	David Pincus
26	Jim McGurk
27	Stephen Fitzgerald
28	Queensland Advocacy Incorporated
29	James Allan
30	Nick Collyer
31	Tony Jardine
32	Family Voice Australia

33	Anthony Berglas
34	Ross Williams
35	Zlatko Simjanovski
36	Zlan Glen
37	Zacchias Assan Alfred Sam
38	Wendy Ingram
39	Wendy Donnellan
40	Wanda Grabowski
41	Wallace Wight
42	Vivien Willicombe
43	Vincent Brancatisano
44	Vicki Watson
45	Vicki Batty
46	Veronica Lever-Shaw
47	Valerie Carter
48	Trina McLellan
49	Travis Jordan
50	Tracey Nayler
51	Timothy Smith
52	Thomas Hung
53	Teresa Brennan
54	Tamzyn Davey
55	Tamara Townsend
56	Sylvia Jones
57	Suzette McClelland
58	Susan Green
59	Susan Dalziell
60	Sue Kent
61	Sue Collings
62	Stuart Oliver
63	Stuart Harrison
64	Steven Vaughan
65	Steven Campbell
66	Stephen Baggaley
67	Socrates Aronis

68	Simone Dall
69	Shauna Bradley
70	Shaun Newman
71	Alex Whitney
72-79	Sequence Numbers Not Utilised
80	Sharon Lowe
81	Sharne Vogt
82	Shane Gosper
83	Sean Corrigan
84	Scott Brunskill
85	Sarina Welch
86	Sarah Harvey
87	Sandra Sewell
88	Sandra Betts
89	Sammani Samarasuriya
90	Sally Dodds
91	Ruth Trower
92	Ruth Soorley
93	Rowena Rankine
94	Roslyn McBride
95	Rosemary
96	Ron Smith
97	Ro Barlow
98	Robyn Sheehan
99	Robin Wilkes Bright
100	Robert Bryant
101	John Carter
102	Rigby Taylor
103	Richard Shaw
104	Raylene Preuss
105	Ray Bricknell
106	Rachel MacDonald
107	Rachel Harding
108	Prudence Gazzola
109	Phillip Piott

110	Phillip Nelson
111	Phil Devery
112	Philippe Lamothe
113	Philip Hambling
114	Peter Grimley
115	Peter Fitz-Gibbon
116	Peter Davis
117	Penny Rivlin
118	Pearl Tabart
119	Paul Bradford
120	Paul Bergin
121	Parker Forbes
122	Pandanus Petter
123	Pamela Kniese
124	Pamela Hauff
125	Pamela Forte
126	Pam Thorley
127	Pam Maegdefrau
128	Norma Boyd
129	Nina Babed
130	Nicola Crameri
131	Nic Kennedy
132	Neville Morrison
133	Neridah Murray
134	Neil Swann
135	Neil Renison
136	Neil Rasmussen
137	Beth Toleman
138	Geoff Airo-Farulla
139	Leonie Joseph
140	QUT Amnesty International Student Group
141	Natasha Hayes
142	Monique Hold
143	Miriam McBride
144	Mike John Deller

145	Mike Germain
146	Miira Kostava
147	Miff Pate
148	Michelle
149	Michelle Paytem
150	Michelle Parsons
151	Michele Doyle
152	Michael Warner
153	Merrilee Frankish
154	Melissa Petrak
155	Melissa Kummerow
156	Maureen Griffin
157	Maureen Cooper
158	Sequence Number Not Utilised
159	Sequence Number Not Utilised
160	Matthew J Little
161	Mary Duckett
162	Martin and Helen Coyne
163	Mark Jones
164	Mark Heaney
165	Marion Harrington
166	Marianne Ramm
167	Marieke de Laat
168	Marguerite Goodger
169	Margaret Airoidi
170	Maree Brown
171	Manfred Klose
172	Maja Garbiec
173	Madeleine Bisshop
174	Lynn Kennedy
175	Lyndel Corin
176	Luke
177	Sequence Number Not Utilised
178	Louise Maiorana
179	Lorraine Waters

180	Lorraine Tait
181	Loretta Woolston
182	Lisa
183	Lisa Okungbowa
184	Liam Jenkinson
185	Leslie Shirreffs
186	Lesley Schoenwald
187	Lesley Richards
188	Lesleigh Hart
189	Lawson Wrigley
190	Laura McCallion
191	Lars Bendall
192	Lara Solyma
193	Kylie
194	Kimberley Muffatti
195	Kim Lucas
196	Kerry Holder
197	Kelly Lawn
198	Kathy Faldt
199	Karen Samson
200	Karen Jones
201	Sequence Number Not Utilised
202	Justin M
203	Julie Lumsdale
204	Julie Johnson
205	Judith Gatland
206	Judith Ellouise Ntumba
207	Jozsef Vegh
208	Joshua Jennings
209	Joseph
210	Joseph Flynne
211	Jonathan Peter
212	Jon Burmeister
213	John Durkin
214	John Brown

215	Joanne Fraser
216	Jo Wynter
217	Jim Smith
218	Jenny Roberts
219	Jennifer Osborne
220	Jennice
221	Jeff Lonsdale
222	Janine Barrett
223	Janette McLeod
224	Janette Gillies
225	Jane McAdam
226	James Philp
227	James Penfold
228	Jake Langley
229	Jacqueline Wardle
230	Jacqueline Henrion
231	Jacqueline Budgeon
232	Ince
233	Ian Wynne
234	Iain McCowie
235	Honey Newman
236	Hilary Cleminson
237	Helena Bond
238	Helen Crombie
239	Heather Schafer
240	Hayden Belgrave
241	Hayan
242	Harold Fatnowna
243	Hannah Collings-Andrews
244	Greg Carroll
245	Graham Storrs
246	Graham Smith
247	Graham Paterson
248	Graham Morrison
249	Graeme Channells

250	Giovanna Tama
251	Gina Burnett
252	Gillian Middleton
253	Gideon Huppert
254	Gerard Phipps
255	Gerard D’Rozario
256	George Stan
257	Geoffrey Schleeauf
258	Gavin Power
259	Gary
260	Gary Rafferty
261	Garry Moffatt
262	Gail Creighton-Davies
263	Gabrielle Rose
264	Fred Tromp
265	Frank Sauter
266	Frank Keding
267	Frances Quan Farrant
268	Frances Mitchell
269	Fran Bancroft
270	Christine Becroft
271	Darran Dennis
272	Danielle Eastlake
273	Daniel Bazzana
274	Dan Olofsen
275	Conrad Noad
276	Colleen O’Brien
277	Colleen Enchelmaier
278	Cody Samain
279	Tracey Kosenko
280	Graham Wessling
281	Darryl Goiser
282	George Allen
283	Paul Ezard
284	Pamela Hayse

285	Stephen Tanner
286	Julie Jeynes
287	Sequence Number Not Utilised
288	Colin Monro
289	Claire Bathgate
290	Clair Duffy
291	Christine Becroft
292	Chris Cook
293	Chris Congoo
294	Chris Andrews
295	Chantal McNaught
296	Chad Stelmach
297	Catherine Shepherd
298	Cassie Vella
299	Carole Tilling-Rekort
300	Carole Cornick
301	Carol Evans
302	Carla
303	Carla Blonde
304	David Diill
305	Estela
306	Ernst Brinkmann
307	Erin Roseneder
308	Erin O'Brien
309	Enrique Hernandez
310	Emily Joy Tierney
311	Alison Courtice
312	Emily Hyde
313	AnneMarie Howard Braisby
314	Sequence Number Not Utilised
315	David Pyle
316	John Cadwallader
317	Douglas Turnbull
318	Campbell Usher
319	Doug Young

320	Callum Thomas
321	Donna-Maree O'Connor
322	Donna Lewin
323	Don Sinnamon
324	Diane Bos
325	Diana Kain
326	Dennis Nestor
327	Brynn Mathews
328	Bryce Alcock
329	Dee Wallis
330	Brian Springett
331	Debra Lynch
332	Brett Jones
333	Brett Freestone
334	Bradley Jorgensen
335	Boyd Craig
336	Bill Sherwood
337	Betty Bergman
338	Audrey Hutchison
339	Deanne Morrison
340	David Walling
341	Arne Bold
342	Anthony Drake
343	Annie Humphries
344	Annette Rodriguez
345	Anne Dureau-Power
346	Ann Marshall
347	Anne Kreger
348	Andy Scott
349	Andy Mav
350	Andrew
351	Andrea Mitchell
352	Alan N
353	Alan Farrow
354	Adrian Cooke

355	Dean Remfrey
356	Mamre Family Support
357	Nick Young
358	Neil Skilbeck
359	Angelo Uichanco
360	Gary Dingle
361	Ian Mann
362	Andrea Barton
363	Whitsunday Residents Against Dumping
364	Phil Airey
365	Wayne Pearman
366	Shane Ockenfels
367	Michael Imelfort
368	Shay Dougall
369	Glenda Gurney
370	Cathy Predergast
371	Richard Davies
372	Eugene White
373	Desa Cvetkoul
374	Enga Mills
375	Frances Fisher
376	Geralyn McCarron
377	Clive Rippon
378	David Ingram
379	Margot and Louis Salzman
380	Don Willis
381	Alan Harrison
382	Anthony Cassimatis
383	Queensland Greens
384	Tanya Hunt
385	Matt Foley
386	Loretta Woolston
387	Caxton Legal Centre
388	Toni Gwynn
389	Cape York Institute

390	Amnesty International Brisbane Group
391	United Voice
392	Kim Stewart
393	New South Wales Council for Civil Liberties
394	Nathan Laurent
395	Amnesty International Queensland and Northern New South Wales
396	Anthony Gray, Pauline Collins, Nicky Jones and Jeremy Patrick
397	Unicef Australia
398	Penelope Mathew
399	Office of the Public Advocate (Qld)
400	Di Glynn
401	Stuart MacLeod
402	Kurilpa Futures Campaign Group
403	Environmental Defenders Office of Northern Queensland
404	Murray Henman
405	Queensland Council for Civil Liberties
406	The Royal Australian and New Zealand College of Psychiatry
407	Australian Vaccination-skeptics Network Incorporated
408	Michael Furtado
409	Brisbane Lesbian Gay Bisexual Transgender Intersex and Queer Action Group
410	Sequence Number Not Utilised
411	The Australian Family Association
412	Australian Lawyers Alliance
413	Debra Lynch
414	Adam Fletcher and Sarah Joseph
415	Office of the Public Guardian
416	International Commission of Jurists Queensland Inc.
417	Office of the Information Commissioner
418	Vision Australia
419	Australian Association of Social Workers
420	Soroptomist International
421	Anti-Discrimination Commission Queensland
422	Queensland Positive People
423	Multicultural Development Association
424	Queensland Council of Unions

425	Spinal Life Australia
426	Luke Geurtsen
427	Sisters Inside Inc.
428	Apunipima Cape York Health Council
429	Amnesty International Townsville Action Group
430	Craig Burgess
431	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
432	Sequence Number Not Utilised
433	Thomas Wiltshire
434	ACT Human Rights and Discrimination Commissioner
435	Womens International League for Peace and Freedom
436	Ryan Bryer
437	Centre for Innovative Justice, RMIT University
438	Mason Clarke, Kate Marchesi, Sara Mitchell, Frances-Ellen Peck and Emily Reyher
439	Aboriginal and Torres Strait Islander Women's Legal Services NQ Inc.
440	Queensland Public Interest Law Clearing House Inc.
441	Nyst Legal
442	Law and Justice Institute
443	Susan Harris Rimmer
444	Iain Benson
445	Darling Downs Environment Council Inc.
446	Indigenous Lawyers Association of Queensland
447	Victorian Equal Opportunity and Human Rights Commission
448	Roger Callen
449	UQ Pro Bono Centre (Tom Mackie, Courtney Pallot and Keilin Anderson)
450	Sequence Number Not Utilised
451	Graham Paterson
452	Townsville Community Legal Service Inc.
453	Cairns Community Legal Centre Inc.
454	Speaking Up For You
455	Keith Bedford
456	Elizabeth Handley
457	Brisbane Residents United
458	Stephen Keim
459	Environmental Defenders Office QLD

460	Queenslanders With Disability Network
461	Julie Debeljak
462	Christian Churches and Organisations
463	Sequence Number Not Utilised
464	Confidential
465	NC Bullen
466	Colleen Johnson
467	Queensland Ombudsman
468	Peter Billings
469	Queensland Mental Health Commission
470	A Human Rights Act for Queensland Campaign
471	Queensland Branch of the Australian Family Association
472	Australian Lawyers for Human Rights
473	Association of Labor Lawyers
474	Nicholas Aroney and Richard Ekins
475	Queensland Law Society
476	Queensland Association of Independent Legal Services Inc.
477	Bar Association of Queensland
478	Narelle Bedford and Danielle Ireland-Piper
479	Pat Coleman
480	Standing Committee on Justice and Community Safety, ACT Legislative Assembly
481	YFS Legal
482	Legal Aid Queensland
483	Jodie O’Leary
484	Youth Advocacy Centre Inc.
485	Property Rights Australia Inc.
486	CLEAR International Australia Limited
487	Robin Smith, Terry Foreman and Gary Graham
488	Michael O’Keeffe
489	PeakCare Qld Inc.
490	Queensland Council of Social Service
491	Australian Muslim Advocates for the Rights of All Humanity
492	Lesbian Gay Bisexual Intersex Legal Service Inc.

Appendix B List of Witnesses

In order of appearance before the Committee:

Public Hearing Brisbane – 11 April 2016

The Honourable Christopher Finlayson, New Zealand Attorney-General
Justice Mark Weinberg, Judge of the Court of Appeal, Supreme Court of Victoria
Mr David Wilson, Clerk of the Parliament, New Zealand
Professor Andrew Geddis, Professor of Law, University of Otago, New Zealand

Public Hearing Townsville – 16 May 2016

Ms Catherine Pereira, Aboriginal Torres and Strait Island Women's Legal Service of North Queensland
Mr Bill Mitchell, Townsville Community Legal Service
Mr Peter Hanley, Amnesty International Townsville Action Group
Mr Wayne Costelloe, Head, Aboriginal and Torres Strait Islander Student and Community Engagement, Australian Aboriginal and Torres Strait Islander Centre, James Cook University
Associate Professor Gracelyn Smallwood AO, Private capacity
Ms Jeanie Adams, Private capacity

Public Hearing Cairns – 16 May 2016

Ms Paula Arnol, Executive Manager, Primary Health Care, Apunipima Cape York Health Council
Ms Tania Heber, Environmental Defenders Office of Northern Queensland
Mr Harold Ludwig, Cape York Institute
Mr Brian Stacey, Cape York Institute
Ms Sue Tomasich, Community Legal Centre
Ms Renee Williams, Partnership and Development Coordinator, Apunipima Cape York Health Council
Mr Adrian Marrie, Private capacity
Professor Henrietta Marrie, Private capacity
Ms Ruth Venables, Private capacity

Public Hearing Brisbane – 9 June 2016

Professor Nicholas Aroney, University of Queensland
Professor James Allan, University of Queensland

Mr Martyn Iles, Australian Christian Lobby

Mr Mark Fowler, CLEAR International Australia Limited

Professor George Williams AO, University of New South Wales

Professor Anthony Cassimatis, University of Queensland

Associate Professor Susan Harris Rimmer, Griffith University

Queensland Law Society –

Mr Bill Potts, President

Mr Dan Rogers, Chair, human rights working group

Hon. Richard Chesterman AO, Member, human rights working group

Ms Julia Duffy, Queensland Office of the Public Guardian

Dr Lesley van Schoubroeck, Queensland Mental Health Commissioner

Ms Paige Armstrong, CEO, Queenslanders with Disability Network

Ms Colleen Papadopoulos, Queenslanders with Disability Network

Dr Fotina Hardy, Australian Association of Social Workers (Qld Branch)

Mr Kamil Shah, Queensland Council of Social Service

Mr Simon Brown, Endeavour Foundation

Mr Kevin Cocks AM, Anti-Discrimination Commissioner Queensland

Ms Aimee McVeigh, a Human Rights Act for Queensland Campaign

Ms Matilda Alexander, Lesbian Gay Bisexual Trans Intersex Legal Service Inc.

Appendix C International Covenant on Civil and Political Rights

THE STATES PARTIES TO THE PRESENT COVENANT,

CONSIDERING that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

RECOGNISING that these rights derive from the inherent dignity of the human person,

RECOGNISING that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

CONSIDERING the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

REALISING that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant,

AGREE upon the following articles:

PART I Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realisation of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional

processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognised in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognised are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognised or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide.^[1] This penalty can only be carried out pursuant to a final judgement rendered by a competent court.
3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorise any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;

(b) Paragraph 3(a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

(i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognised, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognised in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
 - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.

2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognised. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize^[2] to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognised.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognised competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the presented Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain

the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognised herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognises the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant.^[3] Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognised principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.

(d) The Committee shall hold closed meetings when examining communications under this article.

(e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognised in the present Covenant.

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.

(g) The States Parties concerned, referred to in sub-paragraph (b) shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.

(h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:

(i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article.^[4] Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognised in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached.

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned.

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.^[5]

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialised agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.^[6]

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.^[7]

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.^[8]

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.^[9]

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FAITH WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

[Signatures not reproduced here.]

RESERVATIONS AND DECLARATIONS

The instrument of ratification of the Covenant on Civil and Political Rights deposited for the Government of Australia with the Secretary-General of the United Nations contained the following reservations and declarations:

Articles 2 and 50

Australia advises that, the people having united as one people in a Federal Commonwealth under the Crown, it has a federal constitutional system. It accepts that the provisions of the Covenant extend to all parts of Australia as a federal State without any limitations or exceptions. It enters a general reservation that Article 2, paragraphs 2 and 3 and Article 50 shall be given effect consistently with and subject to the provisions in Article 2, paragraph 2.

Under Article 2, paragraph 2, steps to adopt measures necessary to give effect to the rights recognised in the Covenant are to be taken in accordance with each State Party's Constitutional processes which, in the case of Australia, are the processes of a federation in which legislative, executive and judicial powers to give effect to the rights recognised in the Covenant are distributed among the federal (Commonwealth) authorities and the authorities of the constituent States.

In particular, in relation to the Australian States the implementation of those provisions of the Covenant over whose subject matter the federal authorities exercise legislative, executive and judicial jurisdiction will be a matter for those authorities; and the implementation of those provisions of the Covenant over whose subject matter the authorities of the constituent States exercise legislative, executive and judicial jurisdiction will be a matter for those authorities; and where a provision has both federal and State aspects, its implementation will accordingly be a matter for the respective constitutionally appropriate authorities (for the purpose of implementation, the Northern Territory will be regarded as a constituent State).

To this end, the Australian Government has been in consultation with the responsible State and Territory Ministers with the object of developing co-operative arrangements to co-ordinate and facilitate the implementation of the Covenant.

Article 10

Australia accepts the principle stated in paragraph 1 of Article 10 and the general principles of the other paragraphs of that Article, but makes the reservation that these and other provisions of the Covenant are without prejudice to laws and lawful arrangements, of the type now in force in Australia, for the preservation of custodial discipline in penal establishments. In relation to paragraph 2(a) the principle of segregation is accepted as an objective to be achieved progressively. In relation to paragraphs 2(b) and 3 (second sentence) the obligation to segregate is accepted only to the extent that such segregation is considered by the responsible authorities to be beneficial to the juveniles or adults concerned.

Article 14

Australia accepts paragraph 3(b) on the understanding that the reference to adequate facilities does not require provision to prisoners of all the facilities available to a prisoner's legal representative.

Australia accepts the requirement in paragraph 3(d) that everyone is entitled to be tried in his presence, but reserves the right to exclude an accused person where his conduct makes it impossible for the trial to proceed.

Australia interprets paragraph 3(d) of Article 14 as consistent with the operation of schemes of legal assistance in which the person assisted is required to make a contribution towards the cost of the defence related to his capacity to pay and determined according to law, or in which assistance is granted in respect of other than indictable offences only after having regard to all relevant matters.

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

Article 17

Australia accepts the principles stated in Article 17 without prejudice to the right to enact and administer laws which, insofar as they authorise action which impinges on a person's privacy, family, home or correspondence, are necessary in a democratic society in the interests of national security, public safety, the economic well-being of the country, the protection of public health or morals, or the protection of the rights and freedoms of others.

Article 19

Australia interprets paragraph 2 of Article 19 as being compatible with the regulation of radio and television broadcasting in the public interest with the object of providing the best possible broadcasting services to the Australian people.

Article 20

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

Article 25

The reference in paragraph (b) of Article 25 to "universal and equal suffrage" is accepted without prejudice to laws which provide that factors such as regional interests may be taken into account in defining electoral divisions, or which establish franchises for municipal and other local government elections related to the sources of revenue and the functions of such governments.

Convicted persons

Australia declares that laws now in force in Australia relating to the rights of persons who have been convicted of serious criminal offences are generally consistent with the requirements of Articles 14, 18, 19, 25 and 26 and reserves the right not to seek amendment of such laws.

Discrimination and distinction

The provisions of Articles 2(1) and 24(1), 25 and 26 relating to discrimination and distinction between persons shall be without prejudice to laws designed to achieve for the members of some class or

classes of persons equal enjoyment of the rights defined in the Covenant. Australia accepts Article 26 on the basis that the object of the provision is to confirm the right of each person to equal treatment in the application of the law.

END OF RESERVATIONS AND DECLARATIONS

On 6 November 1984 Australia withdrew reservations and declarations made upon ratification, with the exception of reservations to Article 10, paragraphs 2(a), 2(b), and 3, Article 14, paragraph 6 and Article 20. At the same time the following declaration [federal statement] was deposited:

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

[8] The Covenant entered into force generally 23 March 1976, except for Article 41 (*qv*).

[9] The Covenant entered into force for Australia 13 November 1980, except for Article 41 (*qv*).³⁶⁰

³⁶⁰ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>

Appendix D International Covenant on Economic, Social and Cultural Rights

THE STATES PARTIES TO THE PRESENT COVENANT,

CONSIDERING that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

RECOGNISING that these rights derive from the inherent dignity of the human person,

RECOGNISING that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

CONSIDERING the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

REALISING that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognised in the present Covenant,

AGREE upon the following articles:

PART I Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II Article 2

1. Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognised in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognised in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognise that, in the enjoyment of those rights provided by the State in conformity with the present Covenant, the State may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights or freedoms recognised herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognised or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognise the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedom to the individual.

Article 7

The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work, which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this Article shall authorise States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognise the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognise that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognise that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians, to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the State and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph 1 of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 14

Each State Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognise the right of everyone:

(a) To take part in cultural life;

(b) To enjoy the benefits of scientific progress and its applications;

(c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.

3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.

4. The States Parties to the present Covenant recognise the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognised herein.

2. (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant.

(b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts thereof, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts thereof, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialised agencies concerned.

2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.

3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any State Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or as appropriate for information the reports concerning human rights submitted by States in accordance with Articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with Article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under Article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognised in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognised in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART V

Article 26

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.^[1]

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.^[2]

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this Article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed the present Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 27

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.^[3]

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.^[4]

Article 28

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 29

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 30

Irrespective of the notifications made under Article 26, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

(a) Signatures, ratifications and accessions under Article 26;

(b) The date of the entry into force of the present Covenant under Article 27 and the date of the entry into force of any amendments under Article 29.

Article 31

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in Article 26.

IN FAITH WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

[Signatures not reproduced here.]

[1] Signed for Australia 18 December 1972.

[2] Instrument of ratification deposited for Australia 10 December 1975.

[3] The Covenant entered into force generally 3 January 1976.

[4] The Covenant entered into force for Australia 10 March 1976.³⁶¹

³⁶¹ <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>