

# Protection of human rights in Australia

## Key words

- Federal system:** a political system in which governmental power is shared between a central or federal government having power over the whole country, and regional governments having power over their respective regions. The Australian federal system consists of the division of powers between the Commonwealth parliament and the State parliaments, as set out in the Commonwealth Constitution.
- Federal clause:** a multilateral treaty clause allowing a federal state to ratify the treaty while reserving the right to determine the geographic extent of the treaty's implementation within its territory. (For example; the federal government of Australia has the power to conclude international treaties though it is the state and territory governments that need to implement and monitor adherence to treaty provisions).
- Common law:** the unwritten law derived from the traditional law of England as developed by judicial precedence (cases before), interpretation, expansion and modification.
- Jurisdiction:** the territory over which a state (regional area) has to legislate and enforce its laws. (For example; Australia has nine jurisdictions for legal proceedings).

## Key questions

- Who protects the rights of people in Australia?
- What international treaties and conventions has Australia ratified?
- Which human rights treaties has Australia incorporated into domestic law?
- Are there any differences between state and federal laws?

The Commonwealth Government has the responsibility for ensuring Australia's observance of internationally-recognised human rights. But State governments have the responsibility to make and administer many of the laws that are relevant to human rights observance. These include laws relating to the administration of justice, land matters, health and education issues, among others. In international law, a federal system does not justify a failure to observe internationally-accepted human rights. But in practical terms, a federal system can make the task of guaranteeing that people are able to access their rights more complicated.

It is the Commonwealth Government that decides whether or not to take on obligations to observe international human rights standards. But **the fact that the Commonwealth Government agrees to observe international standards does not make those standards legally enforceable within Australia. This requires specific Australian legislation.** Without such legislation there is no legal way within the Australian court system to ensure that the rights in any international human rights treaty will take precedence over any state or territory legislation that is inconsistent with the treaty.

The main human rights treaties that have been specifically incorporated into domestic Australian law are:

International treaty	Domestic legislation
International Convention on the Elimination of All Forms of Racial Discrimination	<i>Racial Discrimination Act 1975 (Cth) (RDA)</i>
Convention on the Elimination of All Forms of Discrimination Against Women	<i>Sex Discrimination Act 1984 (Cth) (SDA)</i>
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	<i>Crimes (Torture) Act 1988 (Cth)</i>

Australia has historically been an active participant in the development of international human rights standards. As new international standards have been developed, Australia has either endorsed non-binding instruments such as the Universal Declaration of Human Rights or the Declaration on the Rights of Disabled Persons, or has ratified binding legal instruments such as: the Covenants on Civil and Political, and on Economic, Social and Cultural Rights; the Conventions on Racial Discrimination, Discrimination against Women, and the Rights of the Child; and the Convention Against Torture. Australia has also ratified three of the mechanisms that give individuals the right to complain to United Nations bodies about violations of their rights.

In the common law, traditional freedoms are protected by centuries of custom and the precedents set by previous court decisions. The common law is a flexible instrument that is capable of reinterpreting rights in the light of changing circumstances. However, some rights may not be well-established in the common law. Where rights are not included in legislation, they may be more difficult to enforce. Political or economic interests may be given priority over human rights. And it is always open to governments to pass new legislation either to override the common law or to vary existing legislation that provides for human rights. Australian democracy is an important safeguard against these possibilities getting out of hand.

## Racial discrimination and the federal law

The *Racial Discrimination Act 1975* (Cth) (RDA) makes racial discrimination unlawful in Australia. It aims to ensure that we can all enjoy our human rights and freedoms in full equality regardless of race, colour, descent, national or ethnic origin, being an immigrant or being a relative or associate of someone of a particular race or other status.

The RDA applies to everyone in Australia including businesses, schools, local governments, state and territory government agencies and departments and Commonwealth Government agencies and departments. No-one is entitled to discriminate on racial grounds where that discrimination means someone's human rights are affected.

The RDA can override racially discriminatory state or territory legislation, making it ineffective. This is because section 109 of the Australian constitution allows for federal law to override state law in some cases.

Commonwealth legislation enacted prior to 31 October 1975 (when the RDA came into existence) may be overridden by the RDA. However, the RDA may not override Commonwealth legislation enacted after 31 October 1975 which is racially discriminatory, depending on the particular wording of the legislation.

The Racial Hatred Act 1995 (Cth) amended the RDA by making racially motivated offensive behaviour unlawful. It allows people to make a complaint to the Australian Human Rights Commission about offensive, insulting, humiliating or intimidating behaviour based on race, colour, or national or ethnic origin.

## The Australian Human Rights Commission

The Australian Human Rights Commission is an independent statutory organisation that works to protect and promote the human rights of all people in Australia. We were established by the Australian Government in 1986.

*Our vision is to work towards an Australian society where human rights are enjoyed by everyone, everywhere, every day.*

Our work covers four key areas:

- providing education and raising public awareness about human rights
- handling complaints of discrimination and breaches of human rights
- researching human rights issues and contributing to policy developments
- legal advocacy on human rights issues.

We have statutory responsibilities under the following federal laws:

- *Age Discrimination Act 2004*
- *Disability Discrimination Act 1992*
- *Australian Human Rights Commission Act 1986*
- *Sex Discrimination Act 1984*
- *Racial Discrimination Act 1975*

## Complaints service

No one has to put up with discrimination, harassment or bullying.

There are laws to protect you from discrimination in areas of public life such as: employment, education, sport and the provision of goods services and facilities.

These laws apply to everyone in Australia regardless of where they live.

If you think you have been discriminated against, you can lodge a complaint with us. It doesn't cost anything to make a complaint and we aim to deal with it quickly and with a minimum of fuss.

If you are unsure if what you have experienced could be discrimination, you can call us to talk about it or email us and we will let you know if we can help you, or refer you to someone who can.

We will handle your complaint by talking to the people involved and try to resolve the complaint through a process called 'conciliation'.

Outcomes of conciliation will vary depending on the complaint, but they may include an apology, compensation, the introduction of anti-discrimination training or practical changes to facilities and services.

To find out more read our complaints information online at:

[www.humanrights.gov.au/complaints\\_information/](http://www.humanrights.gov.au/complaints_information/)

This information has also been translated into a range of different languages available at:

[www.humanrights.gov.au/about/languages/](http://www.humanrights.gov.au/about/languages/)

For more information or to discuss a complaint contact our Complaints Infoline at:

**Phone:** 1300 656 419 (local call) or 02 9284 9888

**SMS:** 0488 744 487 (0488 RIGHTS)

**Complaints email:** [complaintsinfo@humanrights.gov.au](mailto:complaintsinfo@humanrights.gov.au)

**TTY:** 1800 620 241 (toll free)

**Fax:** 02 9284 9611

**Free Telephone Interpreter Service:** 13 14 50