

# 2. PROMOTING AND ENFORCING HUMAN RIGHTS

## INTERNATIONAL COMMUNITY

### STATE SOVEREIGNTY

**State sovereignty:** Notion that each individual nation-state has the right to independently govern its affairs free from, and without interference of external states or bodies

- Through representing the people, elected governments inherit the right to sovereignty of rule

### ↳ SOVEREIGN STATE

**State:** Geographical area that is controlled by a central government which exercises supreme independent authority over that area internally and externally

#### Montevideo Convention on the Rights and Duties of States (1933) – Article 1

Characteristics of recognised states include:

- A defined territory
- A permanent population
- Effective government
- Capacity to enter into international relations

- State must be recognised by a number of other states so that it can exercise its full political and legal capacity
- 193 fully recognised state members of the United Nations, 196 states in the world
- Disputed states are often denied UN membership even though they are recognised by other nation-states as Council members have veto-power
  - > E.g. China has **veto power** which has prevented Taiwan's recognition as a state despite functioning as a state with informal diplomatic relations
  - > Taiwan's citizens do not have access to the international human rights framework despite ratifying both ICCPR, ICESCR into domestic law

### ↳ CHARACTERISTICS OF STATE SOVEREIGNTY

- A national government has complete control regarding the governance of the state and its people
- All nationals have equal standing
- Nation is its own highest authority
- No country may impose their laws or values upon another sovereign nation
- No country may invade another

#### Advantages

- ✓ Celebration of diversity
- ✓ Acknowledges each nation state's unique history, culture and social code of conduct
- ✓ Each state will have a unique legal system and expectation of its citizens to reflect the society's values
- ✓ No nation's values are greater than another's – nations cannot impose laws and value upon another
- ✓ State sovereignty is not absolute – limited by certain duties owed to the international community
  - Governments cannot abuse their own citizens or commit genocide without fear of consequences

#### Disadvantages

- × No binding or overriding authority that exists within international law to enforce compliance
- × United Nations only has moral authority
- × International law cannot be imposed upon another nation-state
- × Nations are only bound by international law when they agree to be bound
- × No foreign state or law can interfere in another state's jurisdiction without consent of that state
- × Can deny external authority from protecting a people from its own dictator/army

### ↳ HUMAN RIGHTS AND STATE SOVEREIGNTY

- States are interdependent and interrelated – politically, financially, environmentally and legally
- States sign numerous international agreements to create legal obligations
- Put responsibility on sovereign state to uphold its commitments or face international sanctions
- Domestic laws may still limit or deny basic rights of its nation's citizens
  - Does not legislate to apply human right provisions
  - Does not remove laws that deny basic rights/freedoms
- Many governments seek to avoid and ignore international scrutiny regarding their human rights record by justifying on the grounds of:
  - State sovereignty
  - The claim of superior understanding of their own domestic circumstances
- > The mandatory detention of children in Australian Immigration Detention Centres is an overt breach of human rights in UNCROC

## **BODIES THAT PROMOTE AND ENFORCE HUMAN RIGHTS**

### **UNITED NATIONS**

- Pre-eminent intergovernmental organisation in the United Nations
- Provides a forum for the negotiation and creation of human rights treaties
- 193 member states
- Main instruments: UDHR, ICCPR, ICESCR
- Many of the treaties also has associated protocols and optional protocols which provide further and specific human right protections
- Each nation that assents and then ratifies a human rights treaty will have reporting obligations
  - These obligation are published in an annual report
- Chapter VII of the UN Charter enables the UN Security Council to pass a resolution
  - Allow deployment of peacekeepers
  - Generally concern grave abuses of human rights

- Geneva Conventions of 1949 – also called International Humanitarian Law
- Convention on the rights of the child (1990)
- Convention in the Elimination of All forms of Discrimination against Women (1979)
- The United Nations Declaration on the Rights of Indigenous Peoples (2007)
- The Declaration on the Rights of Disabled Person 1975 and Convention on the Rights of Persons with Disabilities (2006)

### ↳ **UNITED NATIONS HUMAN RIGHT BODIES**

- Agencies seek to promote adherence to human rights

### **THE UN OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (OHCHR)**

- Principal UN office mandated to promote and protect human rights
- Leads global human rights efforts
- Speaks out objectively in the face of HR violations
- Individuals can make complaints against their own government
  - This will be recorded in an annual report

### **THE UN HUMAN RIGHTS COUNCIL**

- Inter-governmental body
- Responsible for strengthening the promotion and protection of HR around the globe
- Main purpose of addressing HR violations and make recommendations on them

### **THE UN HIGH COMMISSION FOR REFUGEES (UNHCR)**

- UNHCR now deals with 33.9 million people of concern:
  - Displaced people, refugees, stateless people, asylum seekers, other person of concern

## **INTERGOVERNMENTAL ORGANISATIONS**

### **[STATUTORY AUTHORITIES]**

- Statutory authorities tend to be regional, countries tend to be geographically close to create IGOs
- Tend to be more powerful at human rights protection and enforcement than the UN

#### **Advantages**

- ✓ Regional bodies have a closer understanding of the history/culture of nation the region
  - Can frame human rights conventions that account for the particular characteristic of the nations within the region
- ✓ Stronger capacity to require that nations give up their sovereignty to join IGO
  - Can apply political, economic, social and cultural pressure
- ✓ Usually have a human rights court which has the capacity to pass judgements that all finding for all member states
- ✓ Regional human rights courts can overturn domestic legal decisions

#### **Council of Europe (COE) Commission of Human Rights**

- Human rights body for Europe
- Comprises of 27 countries of Europe
- COE has a human rights court called the **European Court of Human Rights (ECHR)**
- Try to find “shared solutions to major problems such as terrorism, organised crime and corruption, cybercrime, violence against children and women, and trafficking in human beings”

#### **The Inter-American Commission on Human Rights**

- 25 member nations of the Organisation of American States
- The American Convention on Human Rights set up the **inter-American Court of Human Rights** and its decision if binding on member nations

#### **ASEAN Inter-governmental Commission on Human Rights (AICHR)**

- ASEAN: Association of Southeast Asian Nations
- Founded in 2009 and is the human rights body for the ASEAN
- Aims to uphold human rights across the ASEAN region
- Working to draft the ASEAN Human Rights Declaration (AHRD)
- E.g. Malaysia, Indonesia, Philippines, Vietnam

#### **African Commission on Human and People’s Rights**

- Set up by the African Union (AU)
- Established by the [African Charter on Human and People’s Rights](#)
- Human Rights court can hear alleged breaches of the charter

## COURTS AND TRIBUNALS

- Courts and tribunals are independent statutory authorities
- Set up under statutory instruments – conventions or treaties between member states

### ↳ INTERNATIONAL COURTS

#### **INTERNATIONAL COURT OF JUSTICE**

- The **judicial arm** of the UN and thus is used by UN member states not individuals to prosecute other states
- Individuals have no standing to bring an action against the state in the ICJ
- Indirectly promotes and upholds human rights

#### **INTERNATIONAL CRIMINAL COURT**

- Listens to jus cogens crimes arising from war crimes, genocide or other crimes against humanity
- Independent of the UN and it directly upholds human rights
- Allows individuals to be prosecuted
- Seeks to judge the most serious cases of human rights abuse
- Accusations of political agendas which limit its effectiveness

### ↳ REGIONAL COURTS

- Regional courts are associated with the relevant ICO
- Very powerful in enforcing human rights protections as their decision are binding on member states
  - European Court of Human Rights
  - Inter-American Court of Human Rights
  - The African Court of Human And People's Rights

### ↳ ADHOC TRIBUNALS

**Adhoc Tribunals:** Temporary human rights courts, which are only constituted to hear human rights abuses occurring in particular places over a particular time

- Once the matters are heard, the tribunals will be disbanded
- Hear matters relevant to particular localised conflicts
- Often shrouded in political controversy and some have claims they are resource inefficient
  - International Criminal Tribunal of Yugoslavia
  - International Criminal Tribunal of Rwanda
  - Extraordinary Chambers in the Courts of Cambodia

## NON-GOVERNMENT ORGANISATION

**NGOs:** Organisation that have a specific purpose or special interest and are generally funded without the support of any government

- Articulate and expose human rights issues and abuses – use media very effectively
- Independent of government; criticise government and expose their abuses
- UN Charter allows that NGOs can be consulted when relevant

### ↳ INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC)

- Administers the *Geneva Conventions* as well as the *Additional Protocol I and Additional Protocol II*
  - *Geneva Conventions* are agreed to by every state in the world
- Plays a humanitarian role in most of the conflicts that have taken place around the world
- Continuously worked to persuade States to expand the legal protection of war victims, to limit suffering
- Private organisation governed by Swiss law and strictly independent in its governance and operational decisions
- Responds rapidly and efficiently to the humanitarian needs of people affected by armed conflicts or by natural disaster occurring in a conflict area

### ↳ HUMAN RIGHTS WATCH (HRW)

- Independent body which utilises the media to expose human rights abuses perpetrated by national gov.
- Non-profit, non-governmental human rights organisation made up of more than 280 staff members
- Established in 1978; known for its accurate fact-finding, impartial reporting, effective use of media and targeted advocacy
- Meets with governments, the UN, regional groups, financial institutions and corporations
  - Press for changes in policy and practice and promote human rights and justice
- Each year HRW publishes more than 100 reports and briefings on HR conditions in 90 countries

### ↳ AMNESTY INTERNATIONAL (AI)

- Uses both print and electronic media to great effect
- Exposes human rights abuses perpetrated by national governments through research and publications
  - Raising awareness about prisoners of conscience – people being held on made up charges or being held on account of their advocacy for free speech
  - Creates dialogue and promote human rights
- Campaign to end grave abuses of human rights
- Independent of any government, political ideology, economic interest or religion and are funded mainly by membership and public donations
- Extremely critical of asylum seekers and has an avid campaign to abolish capital punishment

### ↳ MEDICINS SANS FRONTIERES (MSF)

- International, independent, medical humanitarian organisation that delivers emergency aid to people

- Affected by armed conflict, epidemics, natural disasters and exclusion from healthcare
- Medical ethics and principles of neutrality and impartiality
- Does not take sides in armed conflicts, provides care on the basis of need
- Pushes for independent access to victims of conflict as required under IHL

- To investigate the actions of government, institutions and businesses and expose abuses of power and human rights (as investigator and exposé of human rights abuses)
  - Exposé, name and shame and place real moral pressure on a national government
  - Pressure on other governments to act against a government that is breaching human rights

<b>Advantages</b>	
√	Expose human rights abuses
√	Embarrass governments into changing their legislations/decisions
√	Raise human rights issues of international significance
√	Create awareness for the international community and government to act
<b>Disadvantages</b>	
×	Invasive government may respond through controlling the media
×	Censorship, an outright ban or even through covertly authorising the assassination of journalists and reports

**Assassination of Anna Politkovskaya (2006)**

- Russian journalist, writer and human rights activist
- Assassination was discussed by the media in connection with the deaths of other critics of Vladimir Putin

**Border Force Act: Latest secretive attempt to mask treatment of asylum seekers, Amnesty International, 2015**

- New law, introduced as part of the Border Force Act 2015 gives the government the power to imprison doctors, nurses and child welfare professionals who feel compelled to speak out about the abuse of innocent people in immigration detention
- Amnesty International believes this is nothing short of censorship, threatening people who are speaking out against the injustices they witness abuses that would otherwise be completely hidden from public view
- This also has knock on effects for the rights of people held in detention as their rights to be free from abuse are compromised

**THE MEDIA**

- Deliver and disseminate information to the public either through print or electronically
- Can be very persuasive and influential

↳ **THE ROLE OF THE MEDIA**

- To report news from an ‘objective’ point of view (as informer)
  - To inform the public
  - Reporting as an “eyewitness”
  - However, sometimes this role is moderated through the effect of media and press releases issued by governments, IGOs, and NGOs

# HUMAN RIGHTS IN AUSTRALIA

## INCORPORATION OF HUMAN RIGHTS INTO DOMESTIC LAW

- HR is incorporated into domestic law through:
  - The Constitution – express rights
  - Statute Law
  - Common Law

## THE CONSTITUTION

- Supports human rights protection through different means including:
  - The separation of powers doctrine
  - The division of powers between the Commonwealth and the States
  - Express and implied rights
  - Constitution as a document that is difficult to amend/change; referendum

### ↳ SEPARATION OF POWERS

- Does not state that governance should be separated into three distinct arms of power
- But the structure of the Constitution does strongly imply that is the intention of document
- Upholds the full expression of human rights of citizens
- Enables a system of checks and balances
  - No system of government has unfettered power
  - Government is subject to limitations on its power
  - Government decisions can be reviewed through an independent judiciary

### CHAPTER 1: THE PARLIAMENT

- Outlines the structure of the parliament, detailing the bicameral system
- Roles of the lower (House of Reps) and the upper house (Senate)
- Upper house acts as a house of review and can amend or change proposed laws
- Better able to reflect the needs of more people of society

### CHAPTER 2: THE EXECUTIVE GOVERNMENT

- Authorises the setting up of an executive with a view to create self-governance in Australia
- Powers of the executive are derived from the powers allocated to the Commonwealth in s51

### CHAPTER 3: JUDICATURE

- Carries out independent enforcement of the law through the imposition of sanction
- Appointment of the judiciary is independent and must have bipartisan support from main political parties

### ↳ DIVISION OF POWERS

- Allocation of law-making powers to the Commonwealth and to the States
- Three categories:
  1. Exclusive powers of the Commonwealth (s51)
  2. Residual powers that rest with the States
    - Powers that were historically the states before federation
  3. Concurrent powers that are shared by Commonwealth and the States
- Ensures that the states retain their powers and can pass laws on a more localised level
  - Relevant to the people living within the States
- Each state is able to retain its own identity because it can pass laws with respect to:
  - Transport, housing
  - Health, education
  - Policing
  - Other State matters

### ↳ EXPRESS AND IMPLIED RIGHTS

**Express rights:** Rights that are explicitly written down and can be enforced because they are evidenced in writing

- Right to vote in the House of Representatives and Senate (s7 & s24)
- Right to own property (s51)
- Right to trial by jury for an indictable offence (s80)
- Right to freedom of religion (s116)
- Right to be free from discrimination on the basis of which State a person lives in; right to be treated equally regardless of residential location (s117)

**Implied rights:** Rights that are 'read into' the Constitution and usually are clarified by judicial decision

- Right to freedom of political communication or 'freedom of speech' (s7 and s24)
  - Clarified by the courts as necessary as people are to 'freely choose' their representatives
  - People must know what these representatives stand for
  - Need political communication to discuss and critique different positions

### ↳ OTHER RIGHTS IN THE CONSTITUTION

- **Section 109** deals with the inconsistency between State and Commonwealth laws
  - If there is a conflict between the laws of the Cth and the states, the Cth law shall prevail
- **Section 128** deals with changing the constitution
  - Can only be changed through a referendum that requires a successful vote in favour of the change
  - Majority of the voters and the states

## STATUTE LAW

- Legislation made by parliament
- Capacity to frame community standards and values; law reform
- Statute law predominates over common law when there is an inconsistency
- Provides a clear legal framework for the protection of human rights
- All laws arguable protect human rights to some extent
  - > E.g. Fair Work Act 2010 (Cth) protects the rights at work and the various criminal laws seek to protect people from the harmful acts of others
- Good indication about the development of understandings of human rights
- Increased understanding about the nature of different issues can lead to the passing of laws
- Breaches of these four laws (Race, Sex, Disability, Age) can be brought to the
  - Under the Australian *Human Rights Commission Act 1986*, the AHRC oversees the application of these laws

### Legislation protecting human rights in Australia

#### COMMONWEALTH LAWS

- Australian Human Rights Commission Act 1986
- Racial Discrimination Act 1975
- Sex Discrimination Act 1984
- Racial Hatred Act 1995
- Disability Discrimination Act 1992
- Age Discrimination Act 2004
- Public Interest Disclosure (Whistleblower Protection) 2012

#### NSW STATE LAWS

- Anti Discrimination Act 1977
- Public Interest Disclosures Act 1994

### Anti-Discrimination Act 1977 (NSW)

Outlaws discrimination on the basis of: race, sex, marital or domestic status, disability, a person's responsibilities as a carer, homosexuality and age

- Also outlaws various categories of vilification
- Anti-Discrimination Act is supported by the Anti Discrimination Board which hears allegations of breaches of the act

### Public Interest Disclosure Act 1994 (NSW)

- Statutory protections for whistleblowers

**Whistleblower:** Person who is/was a public official and has come across serious maladministration and sought to have it addressed within the government department

- If there is no follow up, it may be in the public interest to expose that maladministration by going to a journalist
- Will be protected under these laws if they do so

## COMMON LAW

- Judge made law which can adjust to changes in community standards and expectations
- Role: to interpret and apply legislation in accordance with the intention of the parliament
- Sometimes, what the parliament intended may be unclear
- Application of the law may lead to unjust outcomes
  - As the law is old or out of step with contemporary values and social norms

### DOCTRINE OF PRECEDENT

- Requires the application of judicial decision in higher courts to similar matters in the lower courts
- Gives the law consistency and predictability
- When a new area of law is being questioned, judges can make decisions which change the course of the law
- Precedent is a very powerful agent of change, particularly when it comes from the HCA

#### Dietrich v The Queen 1992 HCA

- Established a limited right to legal aid
- If a case was likely to lead to an unfair outcome without the provision of legal counsel, then the court should not hear the matter
- Established a threshold for fairness

## COURTS AND TRIBUNALS

### THE COURTS

- Judicial review is available for people whose human rights are adversely affected
  - Tort (negligence, defamation, false imprisonment), breach of contract or crime
- Courts can apply various remedies for such breaches: damages, compensation and apology
- Courts are also available when breach of rights is so severe that statutory authorities refer the matters to the courts
- Evidence Act 1995 is a guide to judges in what can be admissible in a court case – upholds HR
  - Ensure certainty about what can be admitted and what will be excluded
    - > E.g. a person's prior conviction cannot be brought up during a trial – only considered during sentence; prejudice jury

### ROLE OF NATURAL JUSTICE

- Courts must adhere to rules of natural justice/procedural fairness
  - Fair hearing rule
    - Heard by independent arbitrator
    - Necessary time to prepare case
    - Access to their legal counsel
  - No Bias rule
    - Actual bias: person favours a particular side and is not side
    - Apprehended bias: looked as though a person would or could be biased
  - Right to reasons for a decision

- Justification can come under scrutiny
- Decision can be tested against reasons given
- Right to an appeal; lawful and correct decision

## ↳ **TRIBUNALS**

- Do not carry the same legal status as courts and are called ‘quasi’ or semi judicial

### **AUSTRALIAN HUMAN RIGHTS COMMISSION (AHRC)**

- Commission has a responsibility to monitor Australia’s performance in meeting its international HR commitments
- Provides advice and recommendations so that these standards are reflected in domestic law and policies/programs developed by government
- Statutory responsibilities to investigate and conciliate complaints of alleged discrimination/ HR breaches

#### ***The Forgotten Children: National Inquiry into Children in Immigration Detention (2014)***

- The AHRC conducted a 10-month inquiry into children in detention
- Report stated that the "prolonged, mandatory detention of asylum seeker children" was in breach of Australia's international obligations and the use of force to transfer some children had breached their human rights
- It further stated that the Minister for Immigration and Border Protection had failed in his responsibility to act in the best interest of unaccompanied children
- The Commission recommended that all children be released into community detention with their families or into the community on bridging visas
- It also called for legislation to be put in place to ensure children detained under immigration laws are only held for "so long is necessary for health, identity and security checks."

#### ***Did Gillian Triggs hit a raw nerve with her report? – Malcolm Fraser, SMH, 4/2/15***

- Increase of arbitrary powers, not subject to appeal or judicial review the government has granted its own ministers
  - Government is not concerned about the separation of powers of judiciary/executive
- Government has further extended the powers of ASIO curtailing basic human rights and freedoms
- “HRC even more important to safeguard remaining freedoms and prevent a full introduction of a police state”
- “The commission has made recommendations, which the government can accept or reject”

### **OTHER TRIBUNALS**

- Administrative Appeals Tribunal – concern about a Cth government decision that is unfavourable
- Administrative Decisions Tribunal – concern about state government decision

- NSW Anti-Discrimination Board – hearing allegations of breaches of human rights under the Anti-Discrimination Act 1977 (NSW)

### **COMPLAINT-BASED SYSTEM OF HUMAN RIGHTS PROTECTION**

- Reactive, rather than proactive approach to managing alleged breaches of HR law
- Complaint-based system requires that a person believe their rights are being breached
  - Must also understand what their rights entail
  - Know how to effectively make a complaint against a party instigating alleged breach
- Many people who have rights breached are amongst the most marginalised in society
  - Do not have the confidence or requisite education to know how to make an effective complaint
- Proactive approach of random inspections of businesses, government agencies and institutions → ensure compliance with legislation
  - Require positive investment in programs that would prove adherence to all relevant laws

### **CONCILIATION-APPROACH SYSTEM TO CONFLICT RESOLUTION**

- Once a complaint has been lodged → conciliation-based approach to resolve
- Involves the complainant and the party meeting face-to-face to discuss issue
  - Complainant may feel very disconcerted and discouraged by this process
- Conciliation can result in an apology, reinstatement in job, compensation for loss of wages, changes to a policy - fairly light
- Undermine the protection of HR (writing, compensation)

### **NON-GOVERNMENT ORGANISATIONS**

- Lobby for human rights protection by articulating and exposing HR abuses through media
- Independent of government and often have a special-interest nature

#### ***Human Rights Council of Australia (HRC)***

- Organisation of people committed to promoting universal HR for all without discrimination
- Goals include to improve Australia’s human rights policies and Australia’s human rights performance
- Activity in areas of refugee rights, indigenous issues, refugee issues, business and HR, sport and human rights, international human rights system

### **THE MEDIA**

**Media:** Organisations that communicate and disseminate information about what is happening in society and around the world

- Can independently expose human rights abuses

- Place pressure on perpetrators to improve their human rights record
- Pressure governments to change decisions where an obvious right has been breached
- Used by governments, institutions, businesses and statutory authorities, NGOs to promote their own views on issues
- However, bias is always alleged
  - ABC is often characterised as supporting the ALP
  - Commercial media (NewsLimited) is often characterised as favouring the LNP
- Media in Australia is not heavily censored
  - Media blackout surrounding the issue of asylum seeker boat arrivals has assisted the government to avoid scrutiny over their activities

## A CHARTER OF RIGHTS (ARGUMENTS FOR AND AGAINST)

- Australia is the only Western democracy without a Bill of Rights/Charter of Rights
- Can be statutory in nature of Constitutional (entrenched)

### ↳ STATUTORY CHARTER

- Legislative – Act of Parliament
- Relatively easy to create and amend over time
- Process of changing the document would involve the same processes as amending any other law
  - Might be too easy to change – may be changed for the worse if there is a majority in both houses
- Relatively cheap to amend and could keep in step with evolving community standards/expectations and changing understandings of rights
- Judges only attempt to interpret laws to be compatible with human rights; they can only make a declaration about the incompatibility to Parliament

### ↳ ENTRENCHED CHARTER

- Constitutional in nature – embedded into the Constitution of Australia
  - Referendum would be only way to change this type of Charter
- More stable document because it is very hard to amend or change
  - Difficult in changing would also make it hard to amend and change to reflect changing understandings/values
- Process of adapting the Charter incredibly expensive and resource intensive
- Constitutional model allows judges to invalidate laws that are incompatible with human rights, which have been democratically enacted

### FOR

- Charter of Rights would bring the human rights protections together in a single document
- Clearly define and protect human rights to reduce disparity and inconsistency in the legal system

- All statutes passed must be assessed against the clauses within the Charter
  - All laws must be consistent with the charter
- Immediate and ongoing effect in the drafting of all laws from the time it is implemented
- Charter of Rights would make it much more easy for people to know their rights and to educate all people as to their rights – easily available & accessible
- International HR could be recognised in Charter
- Governments would be more accountable
- HR would be less abstract and better understood
- Most other democratic nations have Bills of Rights in some form: Great Britain, NZ, USA, South Africa

### AGAINST

- × Definition of legal rights in charter limits the rights protected to those listed; could potentially devalue other rights
- × Current system (Constitution, Statute, Common) is adequately protecting HR
- × Cost of changing the system would be very expensive; resource inefficient
- × Can bring uncertainty and instability if the system is changed
- × Little effect on the incidence of breaches of human rights
- × Undermine the sovereignty of parliament which has been a tradition → representatives pass laws consistent with public opinion
- × Alleged breaches would be heard by the judiciary who are unelected → step out of public values

### BILL OF RIGHTS DESIRABLE BUT NOT URGENT: VOTERS – SMH, JOEL GIBSON (10/10/09)

- Father Frank Brennan's five-person committee, which was commissioned by the Government - National Human Rights Consultation
- The report's key recommendation for a federal Human Rights Act in Australia
- The committee opted for an approach known as the "dialogue model" where courts will attempt to interpret laws consistently with the rights set out in the Human Rights Act
- If the HCA makes a finding, it will only be able to issue a "declaration of incompatibility" rather than invalidating the law
- A cost-benefit analysis by Allen Consulting said it would require months of education for public servants with the Victorian Government estimating a \$6.5 million cost over four years to implement
- Committee received over 35,000 submission in which 87% were in favour of the human rights act

### AMNESTY CALLS FOR IMPLEMENTATION OF HUMAN RIGHTS ACT (8/10/09)

- Human Rights Act that protects civil, political, economic, cultural and social rights
- Human Rights Act is necessary to guarantee national, uniform legal protection of the human rights of everyone living in Australia, but only if the Act truly reflects our international obligation



### **HUMAN RIGHTS ACT PROMISES A 'FAIR GO' -**

#### **JONATHAN PEARLAM - 9/10/09**

- Should introduce a human rights act to prevent discrimination, enshrine individual freedoms, enshrine rights already expected under international obligations
- Review committee – **National Human Rights Consultation report** – set up by the Rudd Government and chaired by Frank Brennan found existing protections were a “patchwork quilt” that could be improved through national HR legislation
- Judges could not strike down laws and politicians could breach the list of human rights but would be required to justify their actions
- Bob Carr – “vast shift of power from the elected Parliament to the unelected judiciary”
- Opposition has called for a final decision to be made from a nationwide referendum as the act would hand powers to unelected judges

### **HUMAN RIGHTS REPORT POISONED CHALICE - PAUL**

#### **KELLY, THE AUSTRALIAN- 10/10/09**

- University of Sydney professor Helen Irving says:  
"The proposed HRA is much closer to the sort of act that creates real powers of judicial review and allows the courts to encroach upon the legislature. The erosion of the separation of powers, as we know it, will follow."