

The Human Rights and Equal Opportunity Commission

One of the goals of the Committee is that all Australians have an opportunity to learn about the human rights values of mutual respect, individual dignity and equal opportunity.

The *Human Rights and Equal Opportunity Commission Act 1986* (Cth) establishes the Human Rights and Equal Opportunity Commission and gives it a wide range of functions, including educating and raising awareness in the community of human rights issues, complaint handling, the provision of advice on human rights compliance and assistance to the Government on human rights policy and legislative development. The Act enables individuals to lodge complaints of unlawful discrimination, for example under the Age, Sex, Racial and Disability Discrimination Acts, to lodge complaints of unlawful discrimination in employment and to lodge complaints about acts or practices of the Australian Government that are alleged to breach a person's human rights.

Human rights institutions in Australia

The Human Rights and Equal Opportunity Commission – the national body

The Human Rights and Equal Opportunity Commission is Australia's national human rights body. It is an independent statutory authority established by the Australian Commonwealth Parliament and meets the criteria for independent human rights institutions set out in the *Paris Principles* (adopted under UN General Assembly Resolution 48/134). The Commission plays an important national role in promoting awareness of, and a respect for, human rights in the community. The Commission has functions under the Human Rights and Equal Opportunity Commission Act, the Racial Discrimination Act, the Sex Discrimination Act, the Disability Discrimination Act and the Age Discrimination Act.

The functions of the Commission include public education and human rights awareness functions and the power to investigate and conciliate individual complaints. It also has broader policy and promotional functions, including:

- advising the Government on human rights questions
- examining the potential domestic impact of draft treaties rights principles
- conducting research into human rights issues, and
- inquiring into, and if possible conciliating, complaints made under the Human Rights and Equal Opportunity Commission Act, the Racial Discrimination Act, the Sex Discrimination Act, the Disability Discrimination Act and the Age Discrimination Act.

If a complaint of unlawful discrimination under the Racial Discrimination Act, the Sex Discrimination Act, the Disability Discrimination Act or the Age Discrimination Act cannot be conciliated, the President of the Commission will terminate the complaint. The complainant can then take the matter to the Federal Magistrates Court or the Federal Court for determination. A small filing fee is payable, which can be waived in cases of hardship. The Commission can also inquire into complaints concerning alleged breaches of human rights by the Australian Government or Government authority, or discrimination in the area of employment on numerous grounds, including political opinion, age, sexual preference or trade union activity. Such

complaints, which cannot be resolved by conciliation, can be the subject of a report by the Commission to the Australian Attorney-General, who in turn must table the report in Parliament.

State and Territory anti-discrimination commissions

Each State and Territory has established an anti-discrimination or equal opportunity commission. Although the functions of each commission vary according to the respective legislation under which it is established, common functions include:

- the determination or conciliation of complaints of discrimination brought under legislation operating in the particular jurisdiction, and
- developing and conducting human rights education and awareness initiatives.

P 29. The Government believes firmly that Australian multicultural policy provides a framework of national unity and a coherent ethos for a diverse and vibrant Australia, while also further developing respect for the basic civic structures and principles which underwrite our democratic society. The strategic directions of the multicultural policy focus on community harmony; access and equity; and productive diversity. **They are designed to raise awareness and understanding of the benefits of Australia's cultural diversity, counter myths and misunderstandings and promote behaviour patterns and attitudes that foster inclusiveness and respect for difference.** A central feature of Australia's multicultural policy is the principle of social equity whereby all Australians are entitled to equality of treatment and opportunity. **Its aim is to enable every Australian to contribute to the social, political and economic life of Australia, free from discrimination on the grounds of race, culture, religion, language, location, gender or place of birth. Subject to the law, all Australians have the right to express their own culture and beliefs and, in turn, are obliged to accept the rights of others to do the same.**

P 17. Under Article 62 of the United Nations Charter, the Economic and Social Council (ECOSOC) may make **recommendations to promote respect for, and observance of, human rights and fundamental freedoms.**

P 22. The Rule of Law, based on the principles of transparency and accountability, underpins Australia's legal system. **In Australia, all people and bodies, including governments, can have the lawfulness of their actions scrutinized in a court of law, and can be held accountable for any activity deemed to be inconsistent with the law.** The Government recognizes the importance of ...on-going professional development of judicial officers.

The Australian Government will keep working with State and Territory governments pursuant to a Memorandum of Understanding signed by all governments to ensure the adoption of consistent laws for the regulation of the legal profession in Australia.

*****P 27. The statutory power of HREOC to intervene in ongoing court cases involving human rights issues also has an educative component, particularly for the legal profession.** Other community education activities directed at the legal profession include the regular publication of the *Legal Bulletin*, and a book, *Federal Discrimination Law 2004*.

P 50. The Government has established a number of initiatives aimed at eliminating discrimination and violence against women. The principal mechanisms that enshrine anti-discrimination measures are the *Sex Discrimination Act 1984* and the Human Rights and Equal Opportunity Commission (HREOC).

Australia was an active participant in the special session of the United Nations General Assembly on ‘Women 2000: Gender Equality, Development and Peace for the Twenty-First Century’, held in New York from 5–9 June 2000 (known as “Beijing Plus Five”, sponsored by the UN Commission on the Status of Women to identify and address the needs of women around the world). To support the outcomes of Beijing Plus Five, the Australian Government developed the Beijing Plus Five Action Plan 2001-2005 in consultation with key stakeholders.

The Action Plan identifies key areas of collaborative work across government agencies, businesses and the community. **A key aspect of the Action Plan is to eliminate stereotypical attitudes and behaviours and to encourage men and boys to take greater responsibility for changing harmful attitudes and behaviours towards women and girls, and actively advance gender equality.**

P 55. The Government is committed to ensuring that all members of the Australian judiciary can access education programs that increase their awareness of community attitudes and of the impact of their decisions on women. Judicial education programs are being funded by the Government through the Australian Institute of Judicial Administration (AIJA). The first gender awareness conference developed by the AIJA was held in October 1995. Since then the Government has funded several educational programs to identify and address gender bias in the legal system.

P 56. National Agenda for Early Childhood

The Government has identified supporting early childhood as one of its key priorities. **The Government recognises that the early years profoundly influence the development of children and their likelihood of progressing into happy, healthy, socially adept, productive adults. Responsibility for early years investment is shared between the Australian Government, State and Territory governments and local governments. Consequently the Australian Government is leading the development of a National Agenda for Early Childhood, to help bring early childhood services and policy into a common framework. The Agenda will focus on children aged 0–5 years. The Australian Government works with State and Territory governments to develop and implement national plans around child protection and early intervention strategies.**

P 59. National action plans include:

- The National Plan of Action Against Commercial Sexual Exploitation of Children. The Plan focuses on eliminating the factors that contribute to the commercial sexual exploitation of children and young people, by identifying the roles and responsibilities of the Australian Government, and State and Territory governments, in supporting Australian families and addressing future directions.
- The Australasian Police Ministers Council (APMC) National Child Sex

Offender Register. The register is used to track the movements of convicted child sex offenders around the country. Only those with criminal convictions will be included on the register and the information will only be available to police for operational purposes.

- The National Action Plan for Foster Children, Young People and their Carers.

The National Plan aims to achieve high quality outcomes for children and young people in foster care. It focuses on areas where jurisdictions can work together to establish national standards, share information on best practice and improve national consistencies and cross-jurisdictional collaboration.

The Magellan project is a Family Court initiative, involving intensive case management by Australian Government and State/Territory agencies, of family law proceedings relating to children that involve allegations of serious physical and/or sexual abuse. The project has the potential to improve coordination between Australian Government and State/Territory agencies in family law cases by improved case management. The Australian Government supports the national rollout of the Magellan project, and is contributing to funding the overall evaluation of the rollout.

Indigenous children are over-represented in cases of child protection agency involvement. The reasons for this are complex. They include: poverty, family separation in the past, alcohol and substance use, incarceration and cultural differences in child rearing.

At an international level Australia has signed the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Australia was an active participant in the development and negotiation of the text of the Optional Protocol and intends to pursue ratification as a priority.

P 61. *Enhancing the family law system*

Implementation of the Family Law Pathways Report

The Australian Government is dedicated to building an integrated family law system that is flexible and builds individual and community capacity to achieve the best possible outcomes for separating families. The Government recognises that despite the large number of high quality services that are available to separating families, there is a need to develop a more co-ordinated approach to helping families in distress.

The Government established the Family Law Pathways Advisory Group to provide advice in that context. The Pathways Report, *Out of the Maze – Pathways to the Future for Families Experiencing Separation*, was launched in August 2001. It made a number of significant recommendations on how to develop a more co-ordinated family law system, to help families make earlier, more informed decisions and agreements and to increase the focus on the needs of the children involved.

The Australian Government Response to the Report, released in May 2003, supported the recommendations and allocated \$27.8 million over four years to enhance services for families around Australia.

A cross-portfolio Taskforce, chaired jointly by the Attorney-General's Department and the Department of Family and Community Services, is responsible for the continuing implementation of Pathways initiatives and, in consultation with key stakeholders, developing a coordinated and consistent policy framework for the future delivery of services for separating families and families in conflict.

In addition to the funds provided by the Australian Government to support services for separating families, Government and non-government service providers have been developing and implementing other initiatives aimed at addressing the recommendations in the Pathways Report.

These include:

- convening a national forum of 120 representatives from the family law system to help build working relationships and reinforce those already established
- collaborative development of information products
- provision of one-off seed funding to support the establishment of local family pathways networks at State and Territory level
- development of a number of methods to better integrate service delivery by community agencies, the Family Court, the Child Support Agency and others
- reference of Pathways recommendations about multi-disciplinary judicial and tertiary education to the National Judicial College and the Council of Australian Law Deans
- consideration of how best to progress the development of a national research agenda in family law and separation issues as recommended by Pathways, including holding a workshop for researchers, service providers and other interested agencies in June 2003, and
- national expansion of the Family Court's Magellan project—the successful case management system aimed at earlier resolution of matters involving child abuse.

Family Law Amendment (Child Protection Convention) Act 2002

The Government supports the widest possible ratification of the Hague Convention on the Protection of Children 1996 to ensure the enforceability of parental responsibility court orders and cross border cooperation on child protection cases. Australia ratified the 1996 Convention on 29 April 2003 and it entered into force for Australia on 1 August 2003. ***The Family Law Amendment (Child Protection Convention) Act 2002 amended the Family Law Act 1975 to enable Australia to ratify the Convention. Each State and Territory will also implement the Convention through model legislation relating to child protection matters.***

Continued support for Family Law Council

The Australian Government recognises the importance of strengthening the family law system, including the operation of the Family Law Act and related legislation, and ensuring that people have appropriate access to legal aid in relation to family law matters.

The Government will continue to fund the Family Law Council, which is an independent statutory body, to continue its work on a range of projects including issues arising from the Family Law Pathways Advisory Group's report such as:

- how best to recognise Indigenous kinship systems, child rearing practices and the right of Indigenous children to know their culture, religion and language
- **the development, in conjunction with family law practitioners, of guidelines for family lawyers, and**
- the use of separate children's legal representatives.

Child custody

The Commonwealth Parliament House of Representatives Standing Committee on Family and Community Affairs' Report on its inquiry into child custody arrangements in the event of family separation, *Every Picture Tells a Story*, was released on 29 December 2003. The Report recommended implementing a series of measures to reform child custody arrangements, to minimise the negative impact on children of custody decisions.

On 29 July 2004 the Government released a statement of reforms to the family law system to respond to the Committee's report. The proposed reforms include a network of Family Relationship Centres across the country to help separating families resolve disputes and agree on parenting arrangements without going to court. **The proposed reforms demonstrate the Government's commitment to improving outcomes for separating families and ensuring that the focus is on the best interests of the children involved.** The Government is consulting the community on the implementation of the reforms.

The Family Court is also currently undertaking a pilot program of 100 cases, which began on 1 March 2004, that gives judges more control of child-related cases and encourages a less adversarial approach to resolving disputes in the Court. To this end, it is necessary for there to be a departure from some traditional features of the adversarial process and various provisions of the *Evidence Act 1995* (Cth) such as the admissibility of hearsay evidence, and for all the parties to the proceedings to provide informed consent to this departure. **The approach is focussed on the best interests of the child and the parties' proposals for the future of the child rather than the past history of the parties' relationships.** It is believed that the removal of some technical rules will greatly assist in achieving this focus.

Improving primary dispute resolution practices

The Australian Government is committed to increasing the quality of Primary Dispute Resolution services in family law matters. The Primary Dispute Resolution provisions of the Family Law Act are being reviewed to ensure consistency in the use of Primary Dispute Resolution terminology and to assess the need for legislative reform. Specific projects have been funded by the Australian Government to improve Primary Dispute Resolution practices. An approval process for primary dispute resolution practitioners under the Family Law Act is being developed.

Professional development programs for mediators and lawyers to encourage child-focused practices have been developed and are available as a resource to the sectors.

Research into the outcomes of child-inclusive mediation, to ensure that the voice of the child is heard, has commenced.

P 67. Effective governance, human rights and sustainable development are closely linked. **Good governancealso creates an environment in which civil and political rights are respected and promoted (eg through open and fair elections and strong legal and judicial systems).** The exercise of civil and political rights through participatory processes reinforces sustainable development and good governance because it helps to ensure government accountability and effectiveness.

Corruption—the abuse of power or position for personal gain—is the antithesis of good governance. It can occur in the government, judiciary, among politicians, or in the private sector. Corruption exacerbates poverty, undermines nation building and security and compromises development (eg by reducing government revenues, distorting public sector investments and reducing their effectiveness).

Anti-corruption efforts are integral to Australia’s approach to good governance.

P 75. Independent Judiciary - equal recognition and protection before the law

ICCPR - Article 14

All persons shall be equal before the courts and tribunals...

ICCPR - Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law...

P 77. Equality, tolerance and respect

The Australian Constitution does not expressly confer on the Commonwealth Parliament any specific power to legislate in relation to human rights. However, it does contain a number of express or implied guarantees regarding non-interference by the Australian Government with the rights of citizens (eg the acquisition of property must be ‘on just terms’). One of the distinctive features of Australian society is the broad commitment to ‘a fair go for all’. Australia is a strongly egalitarian society and has a well-developed sense of social responsibility and respect for the dignity of others.

Achieving equality

ICCPR - 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.**

P 81. Appreciating diversity and the cultural rights of minorities

ICCPR - 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. Australian society is diverse, encompassing a wealth of cultures,

histories, religions and traditions, rural and urban, of Indigenous and other Australians. **The Government is committed to ensuring all Australians have the opportunity to be active and equal participants in Australian society, free to live their lives and maintain their cultural decisions.**

P 91. Personal freedoms

Australians have a very high level of personal freedom, which is protected through legislative, administrative and democratic institutions, and legal frameworks. Australians value highly their right to privacy, freedom of expression, freedom of religious belief and freedom of association. **Individuals are not coerced, encouraged or discouraged to change any view or belief, other than to ensure respect for the rights and freedoms of others.**

Freedom of expression

ICCPR - 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 (order public), or of public health or morals.**

In Australia, everyone has the right to hold opinions without interference. Every person also has the right to freedom of expression subject to certain laws to protect the rights of others, such as defamation, vilification on proscribed grounds and the classification of films, computer games and certain publications.

??? Media organisations in Australia enjoy a high degree of freedom and play a significant role in promoting a free exchange of ideas and information and encouraging public debate. The media are also free to report parliamentary proceedings and court decisions, which is vital to ensuring accountable, democratic governance.

P. 94 Freedom of association

ICCPR - 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. In Australia, there are few restrictions on the right to freedom of association, other than associations that advocate or encourage, by force or violence, the overthrow of the Constitution or established governments. Political groups and human rights organisations have the same freedom to associate as organisations formed for other purposes.

Freedom of religion

ICCPR - 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...

P. 110. Protection of children

ICESCR – Article 10(3)

The States Parties to the present Covenant recognize that... 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.

ICCPR - 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.

CROC - Article 3 (Is this called croc for a reason?!)

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration...

The Australian Government recognises that families have the primary responsibility for the development of Australia's children. **The Government believes strong families and cohesive community networks are the most effective social support to nurture children.** Australia fulfils its obligations under the UN Convention on the Rights of the Child by a range of laws and programs. **While the Australian Constitution places primary responsibility for children's matters with the State and Territory governments, the Australian Government has responsibility for:**

- **the development of integrated policy and programs to strengthen families, enhance the quality of parenting and prevent child abuse and neglect**
- maximising the potential for families to function cooperatively in the interests of children after separation
- income support and policy for those whose primary role is caring for children, such as Family Tax Benefit payments and Child Care Benefit subsidies, and
- national child care policy.

In 2002, the new position of Minister for Children and Youth Affairs was created to ensure an integrated government approach across the spectrum of Australian Government policies and programs for children and young people. **The primary objective of the**

***Family Law Act 1975* (Cth) when making a decision in relation to a child is to do what is in the child's best interests. The objectives of the *Family Law Act* and related government policy is to seek to balance many competing considerations such as, for example, the right of children to know and be cared for by both parents, parents' duty to share the responsibilities concerning the care, welfare and development of their children and the need to protect children from possible harm. For instance, in court proceedings where there are allegations of family violence, the court is required to consider the best interests of the child in relation to a possible risk of family violence as a primary consideration but will also take account of the right of children to be cared for by both parents, and other relevant considerations. This approach is fully consistent with the provisions of CROC.**