

## 6 Creating a human rights culture

This chapter discusses the importance of creating a human rights culture in the Australian community and ways of doing that. In the Committee's view, human rights can be protected and promoted effectively only if an understanding of, and commitment to, those rights are a part of everyday life for all members of the community and for government, the private sector and non-government organisations.

### 6.1 The importance of a human rights culture

The need to create in Australia a culture in which human rights are better understood and are respected, protected and promoted was a central theme emerging from the Consultation. A considerable number of the submissions the Committee received referred to the need for greater human rights education and for the development of a human rights culture in the community.

Many who participated in the Consultation saw the introduction of a federal Human Rights Act as a fundamental component of creating a human rights culture. They noted that over time implementation of a Human Rights Act by politicians, public sector agencies and the courts would probably lead to a greater awareness of human rights among members of the community and greater consideration of and adherence to human rights principles by all sectors of society. Whether or not participants supported the introduction of a federal Human Rights Act, there was strong support for the notion that it is necessary to create a human rights culture in our community.

Improving people's understanding of what human rights are, how they are protected and what they mean in terms of individual and collective responsibilities appears to be vital to developing a human rights culture. Participants echoed this sentiment throughout the country, saying, 'People need to know what their rights are and how to access them'.<sup>1</sup> The Committee accepts the view that if a community has a greater understanding of human rights its members will start to see themselves as 'rights-holding entities' and, in turn, will be better able to assert their rights and be more likely to respect the rights of others. In the words of a young person cited in one

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<sup>1</sup> Darwin, Community Roundtable.

submission, ‘If people are more aware of their own rights, they are less likely to violate others’ [rights]’.<sup>2</sup>

The Committee also notes the words of the former UN High Commissioner for Human Rights, the late Sérgio Vieira de Mello:

The culture of human rights derives its greatest strength from the informed expectations of each individual. Responsibility for the protection of human rights lies with states. But the understanding, respect and expectation of human rights by each individual person is what gives human rights its daily texture, its day-to-day resilience.<sup>3</sup>

Many people who participated in the Consultation considered that improved education was fundamental to an improved community understanding of and commitment to human rights. For example, the UN Youth Association of Australia noted:

While there is general support for the notion of human rights in Australia, a thriving culture of human rights is lacking. There is limited understanding and awareness of human rights amongst both young people and the broader community, existing human rights protection mechanisms are rarely accessed and human rights do not form a large part of the Australian political discourse except in particular issue areas ...<sup>4</sup>

The Australian Centre for Human Rights Education submitted that one of the ways of better protecting and promoting human rights in Australia is by ‘making sure that those who are most marginalised and most vulnerable are seen, their voices heard, and that they participate in decisions about their own future’.<sup>5</sup> This accords with what the Committee heard from members of the community who find themselves in vulnerable positions. Claims such as ‘The system is designed for functional people’<sup>6</sup> and ‘The whole system falls down if you can’t communicate what you need’<sup>7</sup> were regularly heard from marginalised people. The Australian Centre for Human Rights Education noted further:

The development of a human rights culture in wider society will contribute substantially over time to addressing the recalcitrant features of social inequality

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<sup>2</sup> UN Youth Association of Australia, Submission.

<sup>3</sup> S Vieira de Mello, *Statement to the Opening of the 59th Session of the Commission on Human Rights*, Geneva, 17 March 2003.

<sup>4</sup> United Nations Youth Association of Australia, Submission.

<sup>5</sup> Australian Centre for Human Rights Education, Submission.

<sup>6</sup> Colmar Brunton Social Research, *National Human Rights Consultation—devolved consultation report* (2009).

<sup>7</sup> *ibid.*

and injustice by bringing into light ‘invisible victims’ whose life quality does not presently amount to ‘a fair go’.<sup>8</sup>

The Committee endorses this assessment.

## 6.2 The need for human rights education

A range of international human rights instruments contain provisions relating to education associated with human rights.<sup>9</sup> Such education has also been recognised as an aspect of the right to education under the Convention on the Rights of the Child.<sup>10</sup>

The World Programme for Human Rights Education ‘seeks to promote a common understanding of the basic principles and methodologies of human rights education, to provide a concrete framework for action and to strengthen partnerships and cooperation from the international level down to the grass roots’. The Federal Government has expressed support for this program.<sup>11</sup> The first phase of the World Programme (2005 to 2009) focuses on primary and secondary school systems. The Plan of Action notes:

Human rights education can be defined as education, training and information aiming at building a universal culture of human rights through the sharing of knowledge, imparting of skills and moulding of attitudes directed to:

- (a) The strengthening of respect for human rights and fundamental freedoms;
- (b) The full development of the human personality and the sense of its dignity;
- (c) The promotion of understanding, tolerance, gender equality and friendship among all nations, Indigenous peoples and racial, national, ethnic, religious and linguistic groups;
- (d) The enabling of all persons to participate effectively in a free and democratic society governed by the rule of law;
- (e) The building and maintenance of peace;

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<sup>8</sup> Australian Centre for Human Rights Education, Submission.

<sup>9</sup> For example, the Universal Declaration of Human Rights art. 26(2); the International Covenant on Economic, Social and Cultural Rights art. 13(1); the Convention on the Rights of the Child art.29(1)(b); the Convention on the Elimination of All Forms of Discrimination against Women art. 10; and the International Convention on the Elimination of All Forms of Racial Discrimination art. 7. In relation to Australia’s international human rights obligations, see, for example, Australian Human Rights Commission, Submission; Human Rights Law Resource Centre (Educate, Engage, Empower), Submission; National Association of Community Legal Centres, Submission.

<sup>10</sup> UN Committee on the Rights of the Child, *General Comment No 1: the aims of education* (2001).

<sup>11</sup> Australian Human Rights Commission, Submission.

- (f) The promotion of people-centred sustainable development and social justice.

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Human rights education encompasses:

- (a) Knowledge and skills – learning about human rights and mechanisms for their protection, as well as acquiring skills to apply them in daily life;
- (b) Values, attitudes and behaviour – developing values and reinforcing attitudes and behaviour which uphold human rights;
- (c) Action – taking action to defend and promote human rights.<sup>12</sup>

The Committee heard strong criticism of the extent of human rights education available in the Australian community. ‘We don’t know what our rights are’ and ‘We don’t know where to find out about human rights’ were common refrains when the Committee visited locations around Australia. One roundtable participant said, ‘I’ve spent 12 years, like most people, in schools, then university, etc, and not once did I see the promotion of human rights during my education, as is required by the UN declaration’.<sup>13</sup>

As discussed in Chapter 1, the Committee commissioned Colmar Brunton Social Research to undertake research so that the Committee might gain an appreciation of the level of interest in and knowledge and attitudes about human rights and their protection among a random sample of Australians who had not attended the community roundtables or presented a submission. Colmar Brunton Social Research was also commissioned to conduct a focus group study in order to learn more of the experiences and opinions of marginalised and vulnerable groups.

The Colmar Brunton Social Research report noted that focus group participants considered human rights important but that ‘better understanding and awareness of human rights would be desirable and that more education on the topic would be useful’.<sup>14</sup> The consultants obtained similar results in their telephone survey involving 1200 participants: only 45 per cent of respondents agreed that ‘people in Australia are sufficiently educated about their rights’.<sup>15</sup> Promotion of and education about rights were thought to be an important strategy for improving the protection of human rights. In addition, the consultants noted:

It was apparent that few people have any specific understanding of what rights they do have, underlining a real need as well as a perceived need for further education.

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<sup>12</sup> UNESCO and UN Office of the UN High Commissioner for Human Rights, *Plan of Action: World Programme for Human Rights Education: first phase* (2006).

<sup>13</sup> Tweed Heads, Community Roundtable.

<sup>14</sup> Colmar Brunton Social Research, *National Human Rights Consultation—community research phase* (2009).

<sup>15</sup> *ibid.*

Many participants in the research may have felt that education would demonstrate to them that their assumptions that rights were well protected was correct, and provide missing details. It is possible that if the real level of protection does not match expectations, then with greater education there would actually be a decrease in satisfaction with the current protections and views on necessary or desirable steps to improve protection could change.<sup>16</sup>

Colmar Brunton found a similar lack of awareness and understanding of human rights in its devolved consultation and noted that most participants thought this resulted from a lack of basic human rights education.<sup>17</sup>

Almost without exception, community roundtables expressed support for increased education about human rights. Increasing the level of human rights education in Australia was often what motivated people to attend a community roundtable. The Committee heard, 'We need to change the culture with human rights education starting from age five'<sup>18</sup> and that 'Human rights education should start in schools'<sup>19</sup> and 'continue into high school'<sup>20</sup> and should involve a 'public awareness campaign'.<sup>21</sup>

Submissions also revealed strong support for human rights education. The Child Rights Coalition submitted:

As a nation, we already possess a strong ethical and social commitment to equality and fairness. These values are consistent with a human rights culture. A broad-based community education strategy can influence, articulate and develop community understanding of concepts such as human rights. Australians have developed an understanding of the relatively complex concept of anti-discrimination law and rights over the last twenty years. Now is an appropriate time for the Australian Government to commit to a human rights education strategy.<sup>22</sup>

Many participants thought a human rights education program a necessary component of a federal Human Rights Act, in order to instil a human rights culture in the community.<sup>23</sup> Several submissions suggested adopting campaigns similar to those used in Victoria and the ACT before the introduction of their human rights Acts.<sup>24</sup>

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<sup>16</sup> *ibid.*

<sup>17</sup> Colmar Brunton Social Research, *National Human Rights Consultation: devolved consultation report* (2009).

<sup>18</sup> Dandenong, Community Roundtable.

<sup>19</sup> Darwin, Community Roundtable.

<sup>20</sup> Broome, Community Roundtable.

<sup>21</sup> Cairns, Community Roundtable.

<sup>22</sup> Child Rights Coalition, Submission.

<sup>23</sup> For example, Australian Council of Social Service, Submission; Amnesty International Australia, Submission; Redfern Legal Centre, Submission; Victorian Government, Submission.

<sup>24</sup> For example, Public Interest Law Clearing House, Submission; Law Council of Australia, Submission; ACT Human Rights Commission, Submission.

Some participants saw a Human Rights Act as a fundamental tool for better community education about human rights. The Australian Human Rights Commission noted that, if a clear statement of Australian rights and values and the means by which they are to be protected were set out, 'it could provide a clear focus for a human rights education and community awareness program across Australia'.<sup>25</sup> In particular, it 'could help people in Australia to identify their rights and their responsibilities to respect the rights of others. It could also explain what to do if these rights are not respected by public authorities'.<sup>26</sup> Professor George Williams submitted:

One major advantage of a charter of rights is it would provide the instrument necessary to begin a process of effective education in schools and elsewhere about human rights protection. The absence of such an instrument is a major hurdle to providing such education, whether it be for Australians or new citizens. I have seen first hand the difficulties of educating Australians about their human rights and the human rights of others in the absence of a clear Australian statement of those rights.<sup>27</sup>

It was noted, however, that, although human rights education would be integral to the implementation of a Human Rights Act, it could not be a suitable substitute for the legislation.<sup>28</sup> Associate Professor Simon Rice commented on the need for both education and legislation:

Reliance is commonly placed on education and awareness activity as a means of achieving community-wide attitudinal change particularly, in recent years in Australia, in relation to human rights. But in the absence of laws and their enforcement, no amount of education and awareness activity will achieve lasting change. Education and awareness activity alone do not prevent false and misleading commercial conduct, which is why we have fair trading laws, or prevent race discrimination, which is why we have anti-discrimination laws, or prevent erroneous decisions by bureaucrats, which is why we have laws that permit review.<sup>29</sup>

Nevertheless, there was support for a comprehensive human rights education plan, regardless of whether a federal Human Rights Act is enacted.

### **Human rights in the education system**

The Committee heard strong support for better human rights education in schools and other educational institutions. This, it was said, would have direct benefit for young people by helping them understand and assert their rights and would be an

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<sup>25</sup> Australian Human Rights Commission, Submission.

<sup>26</sup> *ibid.*

<sup>27</sup> G Williams, Submission.

<sup>28</sup> ACT Human Rights Commission, Submission.

<sup>29</sup> S Rice, Submission.

essential building block for developing a broader human rights culture in the wider community.<sup>30</sup>

In 2008 all Australian Ministers responsible for education issued the Melbourne Declaration on Educational Goals for Young Australians. The declaration speaks of ‘a commitment to supporting all young Australians to become active and informed citizens, and it sets the direction for Australian schooling over the next ten years’.<sup>31</sup> Concern has, however, been expressed that human rights are not sufficiently integrated into this framework<sup>32</sup> and that a coherent approach to ‘human rights’ in other curricula is lacking.<sup>33</sup>

The Human Rights Law Resource Centre noted that recent research on ‘human rights education in Australian schools has found it to be ad hoc and “well short of what is mandated by Article 29 of CROC [the Convention on the Rights of the Child]”<sup>34</sup> and ‘that more than 80% of surveyed students did not receive any human rights education during their formal years of schooling’.<sup>35</sup> The centre submitted that the available evidence ‘indicates that Australia has not achieved a systematic and integrated approach to human rights education’.<sup>36</sup>

The Committee was informed that reasons ‘for Australia’s poor human rights education in schools include a crowded educational curriculum; the lack of a government mandate and corresponding resources; and a lack of training’.<sup>37</sup> The Law Institute of Victoria suggested, ‘Any mandate for human rights education would need to address impediments to its implementation’.<sup>38</sup>

A number of submissions emphasised the importance of making human rights education part of the curriculum for all primary and secondary school students and of ensuring that all pre-service and in-service teachers receive human rights

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<sup>30</sup> For example, Youthlaw, Submission; UN Youth Association of Australia, Submission.

<sup>31</sup> Australian Human Rights Commission, Submission.

<sup>32</sup> For example, UN Youth Association of Australia, Submission; Amnesty International Australia, Submission.

<sup>33</sup> Australian Human Rights Commission, Submission.

<sup>34</sup> Human Rights Law Resource Centre (Educate, Engage, Empower), Submission, citing P Gerber, ‘From convention to classroom: the long road to human rights education’ in C Newell and B Offord (eds), *Activating Human Rights in Education: exploration, innovation and transformation* (2008).

<sup>35</sup> *ibid.* citing F Hill, ‘An education revolution for ‘the common good’—the role of human rights education’, in C Newell and B Offord (eds), *Activating Human Rights in Education: exploration, innovation and transformation* (2008).

<sup>36</sup> Human Rights Law Resource Centre (Educate, Engage, Empower), Submission.

<sup>37</sup> Law Institute of Victoria, Submission, citing P Gerber, ‘From convention to classroom: the long road to human rights education’ in C Newell and B Offord (eds), *Activating Human Rights in Education: exploration, innovation and transformation* (2008).

<sup>38</sup> Law Institute of Victoria, Submission.

education and training.<sup>39</sup> Some suggested that the former is necessary if the Federal Government is to comply with its obligations under international law.<sup>40</sup>

Dr Nina Burridge submitted, 'Schools are ideally situated to teach about the history of human rights; to explore what constitutes human rights for the ordinary citizens and to discuss human rights violations both in a historical context and in the current context, nationally and internationally'.<sup>41</sup> Dr John Tobin, however, stressed the need:

... to avoid the missionary zeal that all too often accompanies human rights education. Instead a critical and reflective approach to human rights education should be developed in which the difficulties in resolving tensions between competing rights should be explored and discussed. Attention would need to be focused on both the entitlements and burdens that attach to all individuals under a model of human rights that was grounded in the international standards.<sup>42</sup>

The Victorian Equal Opportunity & Human Rights Commission suggested that a national human rights instrument could:

... act as a catalyst for reflecting upon how we educate children around the notion of citizenship in a community that aspires to a culture of human rights, and further, it provides an objective benchmark or framework of values on which to plan and centre future education strategies directed toward this goal.<sup>43</sup>

## **Community human rights education**

The Committee heard that efforts to raise awareness of human rights should be made not only through formal education but must also be part of a broader community awareness campaign if the level of the Australian community's understanding of human rights is to be effectively and meaningfully improved.

Among the functions of the Australian Human Rights Commission are promoting understanding, acceptance and public discussion of human rights; conducting research and educational programs on behalf of the Federal Government in order to promote human rights; and publishing guidelines on avoiding acts or practices by the federal government that could breach human rights.<sup>44</sup> The commission has, however, raised concern about its ability to perform its human rights education role given the resources it currently has.<sup>45</sup> A variety of other bodies, including non-government organisations, also engage in some form of human rights-related

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<sup>39</sup> For example, Human Rights Law Resource Centre, (Educate, Engage, Empower) Submission; Jesuit Social Services, Submission; Youthlaw, Submission.

<sup>40</sup> For example, Human Rights Law Resource Centre, (Educate, Engage, Empower) Submission; Child Rights Coalition, Submission.

<sup>41</sup> N Burridge, Submission.

<sup>42</sup> J Tobin, Submission.

<sup>43</sup> Victorian Equal Opportunity & Human Rights Commission, Submission.

<sup>44</sup> *Australian Human Rights Commission Act 1986* (Cth) s. 11.

<sup>45</sup> Australian Human Rights Commission, Submission.

community education, but their efforts appear to be ad hoc and constrained by limited resources.<sup>46</sup>

Although these initiatives are valuable, the limited nature of the Australian community's understanding of matters to do with human rights suggests that more needs to be done. Participants in a number of community roundtables acknowledged that they had an inadequate understanding of how our democracy works; indeed, one said, 'I couldn't even tell you what's in the Constitution'.<sup>47</sup> The Wirringa Baiya Aboriginal Women's Legal Centre submitted:

What are human rights, and the value of having them, should then be sold to the Australian public via a national public education campaign. Such an education program should be a permanent fixture and not a one off campaign. Ongoing multi media messages should aim to fix human rights issues into the public consciousness.<sup>48</sup>

Submissions supported broader community education about human rights and argued that this would help foster among all Australians a better understanding of their rights and ways of enforcing them, as well as creating more respect for the human rights of others. For example, the Australian Human Rights Commission submitted:

Broad education about human rights, and the relevance of human rights to people's lives, should lead to a culture of increased tolerance and respect. Education should focus on ensuring that all people in Australia understand their own rights and their responsibility to respect the rights of others.<sup>49</sup>

Submissions noted the need to ensure that human rights education is delivered in a way that is easily understood by all members of the community and is easily accessible. Some who participated in the Colmar Brunton Social Research project said 'a written document outlining the rights of all groups in society' was 'a necessary step before any rights [can] be consistently protected'.<sup>50</sup> The need for specific human rights education for specific groups in the community was also recognised. For example, a variety of submissions highlighted the importance of human rights education for young people and sectors that often interact with young people—for example, Centrelink and housing and transport authorities.<sup>51</sup> Others pointed to a particular need for human rights education in rural and remote

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<sup>46</sup> For example, UN Youth Association of Australia, Submission.

<sup>47</sup> Mount Isa, Community Roundtable.

<sup>48</sup> Wirringa Baiya Aboriginal Women's Legal Centre, Submission.

<sup>49</sup> Australian Human Rights Commission, Submission.

<sup>50</sup> Colmar Brunton Social Research, *National Human Rights Consultation—community research phase* (2009).

<sup>51</sup> Youth Justice Coalition, Submission; Child Rights Coalition, Submission; UN Youth Association of Australia, Submission.

communities<sup>52</sup> and among older people.<sup>53</sup> One recently arrived immigrant said, 'I just want something that tells me what rights I have when I get to Australia'.<sup>54</sup>

A view often expressed was that a greater willingness to engage in human rights dialogue at the community level will help with creating a culture in which human rights offer a legitimate way for people to speak out about disadvantage, discrimination and marginalisation and will clarify the community's thinking in this regard.

## Resources for human rights education

The Committee heard that non-government organisations play an important role in human rights education. There is, however, little collaboration in the development of these materials, and there is no single 'clearing house' for resources for human rights education.<sup>55</sup> The UN Youth Association of Australia expressed support for a government-initiated comprehensive audit of and central repository for human rights resources.<sup>56</sup>

### 6.3 A national human rights education plan

During 2009 the UN Human Rights Committee recommended that Australia 'consider adopting a comprehensive plan of action for human rights education', which should be incorporated at every level of general education and include training programs for public officials, teachers, judges, lawyers and police officers on the rights protected under the International Covenant on Civil and Political Rights (and its first optional protocol).<sup>57</sup> The UN Committee on Economic, Social and Cultural Rights made a similar recommendation in relation to the rights expressed in the International Covenant on Economic, Social and Cultural Rights.<sup>58</sup>

The Committee learnt that there is strong support for the development of a comprehensive human rights education plan.<sup>59</sup> Those in favour of such a measure

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<sup>52</sup> Australian Human Rights Commission, Submission.

<sup>53</sup> Seniors Rights Victoria, Submission.

<sup>54</sup> Colmar Brunton Social Research, *National Human Rights Consultation—devolved consultation report* (2009).

<sup>55</sup> See, for example, Australian Human Rights Commission, Submission.

<sup>56</sup> UN Youth Association of Australia, Submission.

<sup>57</sup> See Human Rights Committee, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant: concluding observations of the Human Rights Committee—Australia* (7 May 2009).

<sup>58</sup> Committee on Economic, Social and Cultural Rights, *Consideration of Reports Submitted by States Parties under Articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights—Australia* (22 May 2009).

<sup>59</sup> For example, Australian Human Rights Commission, Submission; UN Youth Association of Australia, Submission; Australian Lawyers for Human Rights, Submission; Child Rights Coalition, Submission; ACT Disability, Aged and Carer Advocacy Service, Submission; Youth Justice Coalition, Submission; Queensland Working Women's Service Inc., Submission; Youthlaw, Submission; Regional Office for the Pacific, UN Office of the High Commissioner for Human Rights, Submission.

say it would be an integral part of any human rights culture and would help Australia meet the requirements of the UN World Programme for Human Rights Education. The Australian Human Rights Commission proposed that there be an audit of all human rights education initiatives in Australian education systems before a national plan is developed.<sup>60</sup>

The ACT Disability, Aged and Carer Advocacy Service summarised the potential scope of a comprehensive education program. It submitted that the program should operate on a number of levels:

- To raise general community awareness of the protected rights, how they are balanced and the available enforcement mechanisms
- To raise the awareness of government, business and community service decision-makers about compliance responsibilities
- To educate children and young people about rights so that the next generations automatically think about issues from a rights perspective
- To educate specific population groups about how the human rights framework can operate to assist them to assert their interests and have their needs met.<sup>61</sup>

Apparently effective human rights education plans were cited. For example, the Victorian Equal Opportunity & Human Rights Commission has developed a human rights education plan in relation to the state's *Charter of Human Rights and Responsibilities Act 2006*.<sup>62</sup> It noted:

Human rights education targeting non-government sectors, the general community and increasingly, local government and other public authorities has been the focus of our educative work under the Charter for the past 2½ years. The Commission has successfully delivered an integrated, creative and responsive human rights education strategy that has engaged a range of communities and other educators. The success of our approach has been built upon simple messages, numerous applied resources, and proactive and targeted community engagement strategies that have increased understanding about the implications of a potentially powerful but complex legislative tool.<sup>63</sup>

The Committee heard a range of suggestions for the content of a national human rights education plan. These included incorporating human rights education in the curriculum for primary and secondary schools and human rights training in all tertiary institutions and professional and technical training programs<sup>64</sup>; improved

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<sup>60</sup> Australian Human Rights Commission, Submission.

<sup>61</sup> ACT Disability, Aged and Carer Advocacy Service, Submission.

<sup>62</sup> For example, Australian Lawyers for Human Rights, Submission.

<sup>63</sup> Victorian Equal Opportunity & Human Rights Commission, Submission.

<sup>64</sup> For example, Child Rights Coalition, Submission.

teacher training in human rights education; human rights awareness programs in the community; a 'rights-based' approach to schooling<sup>65</sup>; 'increased production, distribution and promotion of human rights education curriculum materials'<sup>66</sup>; sponsoring and encouraging debate about human rights in a variety of arenas; and 'better resourcing bodies that protect and promote human rights (such as the Australian Human Rights Commission, non-governmental organisations and community legal centres)'.<sup>67</sup>

In addition, at community roundtables many Indigenous Australians voiced grave concern at non-Indigenous Australians' lack of knowledge of Indigenous customary laws and practices and their intent, value and importance. Similar concern was expressed in submissions. Accordingly, the Committee considers that a national human rights education plan should include education about Australia's occupation and pre-occupation history: this would help improve the levels of acceptance and engagement between Indigenous and non-Indigenous Australians and would reinforce a human rights culture.

The Australian Federation of Disability Organisations emphasised the importance of ensuring that any human rights education program is accessible to people with disabilities and portrays people with disabilities in a respectful way.<sup>68</sup>

There was also support for making the Australian Human Rights Commission or another independent institution primarily responsible for human rights education and awareness at the federal level.<sup>69</sup>

## 6.4 Social inclusion

The Committee was informed that a Human Rights Act would have only limited capacity to improve the standard of living and access to services for disadvantaged Australians. The Australian Council of Social Services submitted, 'Human rights compliance may not always be an adequate benchmark by which to measure the effectiveness and equity of policies and laws, although [it] will be an important one'.<sup>70</sup> In its view, 'Laws and policies that are not only consistent with human rights, but also socially inclusive, must play a central role in improving the lives of disadvantaged Australians'.<sup>71</sup> It argued that, in addition to a federal Human Rights Act, the Federal Government should develop a comprehensive social inclusion

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<sup>65</sup> UN Youth Association of Australia, Submission.

<sup>66</sup> Australian Human Rights Commission, Submission; Human Rights Law Resource Centre (Educate, Engage, Empower), Submission.

<sup>67</sup> ANU National Centre for Indigenous Studies, Submission.

<sup>68</sup> Australian Federation of Disability Organisations, Submission.

<sup>69</sup> For example, Australian Lawyers for Human Rights, Submission; J Tobin, Submission.

<sup>70</sup> Australian Council of Social Service, Submission.

<sup>71</sup> *ibid.*

strategy. In this case, a human rights legal framework would complement and reinforce ‘a broader range of socially inclusive laws and policies’.<sup>72</sup>

The Committee notes that the Federal Government has appointed a Social Inclusion Board, the board’s brief being to give all Australians the opportunity to:

- secure a job
- gain access to services
- connect with family, friends, work and their local community
- deal with crises
- have their voices heard.

The Committee considers that this strategy of social inclusion could, and should, be developed and implemented with an emphasis on human rights and responsibilities, regardless of whether or not a decision is made to enact a Human Rights Act.

## 6.5 **Creating a culture of human rights in the public sector**

During the Committee’s consultations it became clear that many of the human rights difficulties that do arise occur when ordinary members of the public have contact with public sector decision makers and service providers. Be it the Centrelink office, a police station, an aged care facility, a hospital outpatients department or an immigration centre, the public sector has an important role to play in safeguarding human rights, and this is not always acknowledged.

The Colmar Brunton Social Research report noted that participants in the research project placed considerable emphasis on the role of government in protecting and promoting human rights.<sup>73</sup> This was often reiterated during the community roundtables, and the sentiment that public officials should have to ‘think about human rights’ and treat people fairly and respectfully when exercising discretion or making decisions was strong. There was also strong support for accountable and transparent decision making, and participants often pointed to the need for public sector employees to take human rights into account when engaging in their work.

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<sup>72</sup> *ibid.*

<sup>73</sup> Colmar Brunton Social Research, *National Human Rights Consultation—community research report* (2009).

One roundtable participant argued that public sector accountability ‘is the linchpin for human rights legislation’.<sup>74</sup>

Many submissions stressed the importance of human rights education in the public sector<sup>75</sup>, including to support the effective implementation of a federal Human Rights Act. For example, the Law Institute of Victoria noted the importance ‘of human rights action plans designed to create an understanding and culture of human rights compliance at all stages of public decision-making, and in the application of law and policy’ and ‘the instruction of decision-makers and public authorities in their obligations’ under any such legislation (see Chapter 8 for details about these obligations).<sup>76</sup> It cited the Victorian Department of Justice’s guide for legislation and policy officers as an example of such instruction.<sup>77</sup>

There was, however, also a view that such education and training are important regardless of whether a federal Human Rights Act is enacted.

## Indigenous Australians

A lack of engagement and meaningful understanding was a particular focus of concern in relation to Indigenous Australians, both in Torres Strait and in remote mainland communities. In community roundtables health and social workers in Northern Territory communities subject to the Northern Territory Emergency Response (the ‘Intervention’), as well as Thursday Island residents, spoke forcefully about the harmful and counterproductive consequences that too frequently resulted from poor engagement and the execution of well-intentioned programs. A clinical psychologist attending a community roundtable in Katherine recounted:



Kalgoorlie Magistrate Elizabeth Langdon describes the human rights deficit in the bush

Indigenous people’s perception is that this is a new oppressive policy like the Stolen Generations. Human rights and ethics get lost when politicians abandon the rule of law, even temporarily, in the name of ‘closing the gap’—but you can’t just suspend it for a discrete part of the population. It goes against everything we’ve known.<sup>78</sup>

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<sup>74</sup> Cronulla, Community Roundtable.

<sup>75</sup> For example, Australian Human Rights Commission, Submission; Australian Council of Social Service, Submission; Amnesty International Australia, Submission; ACT Human Rights Commission, Submission; Victorian Equal Opportunity & Human Rights Commission, Submission.

<sup>76</sup> Law Institute of Victoria, Submission.

<sup>77</sup> *ibid.*

<sup>78</sup> Katherine, Community Roundtable.

Policy and decision makers were often seen to concentrate on the symptoms rather than the cause when the cause was glaringly obvious to the people affected by these policies. A participant in the Katherine community roundtable noted, 'Most of the government business managers that were sent up to the communities—they don't work well in the communities, they don't consult with the community or deliver what the community needs'.<sup>79</sup> Another participant, at Yirrkala, advised that before the Intervention 'They should have sat down with each community and asked what are the problems that we face here and work on them together'.<sup>80</sup>

## National security and policing

The Committee was also made aware of particular concerns about implementation of the national security legislation enacted in response to the 11 September 2001 terrorist attacks. Since then we have seen the enactment of new legislative powers and authorities that in different circumstances would have been widely recognised as excessive, unacceptably intrusive on human rights, and paying insufficient regard to due process. Many who participated in the Consultation felt this legislation has eroded individual rights that should remain sacrosanct and reflects an overreaction on the part of the legislators to the problems and dangers being faced.

Even Consultation participants who agreed that there was a need for more powerful investigation- and detention-related legislation frequently expressed concern about the lack of transparency and independent scrutiny of process. A common view was that even in times of crisis human rights should be suspended only in extreme and specific circumstances and only after the people most likely to be affected by the new provisions are consulted.<sup>81</sup> In Tweed Heads one participant described how he felt about the current national security laws:

We need to overcome the knee-jerk reaction that's immediate whenever we talk about terrorism and the fear that comes with that. We're essentially back in Tudor England ... people are able to be detained with no ability to contact family or lawyers for quite a period of time. These laws impinge on every single aspect of our society, our rights ... There needs to be greater transparency as to what these powers really mean to us. Any one of us can be scape-goated and targeted.<sup>82</sup>

During community roundtable discussions anxiety was expressed about public officials being able to exercise powers of arrest and detention and perform other duties potentially impinging on the rights and freedoms of ordinary Australians.<sup>83</sup> Greater human rights education for public officials is therefore desirable. In cases

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<sup>79</sup> *ibid.*

<sup>80</sup> Yirrkala, Community Roundtable.

<sup>81</sup> For example, Queanbeyan (1), Community Roundtable; Nhulunbuy, Community Roundtable; Adelaide, Community Roundtable; Katherine, Community Roundtable.

<sup>82</sup> Tweed Heads, Community Roundtable.

<sup>83</sup> For example, Katherine, Community Roundtable; Palm Island, Community Roundtable.

where powers of arrest and detention are involved, there was a strong view that the processes applied should be transparent, subject to independent review and demonstrably justifiable.<sup>84</sup> There is obviously a lack of public confidence in the willingness or ability of public authorities to consistently exercise these powers with integrity and in accordance with the law.

Public confidence in the operation of mandatory, coercive or similarly intrusive powers of investigation and detention has been shaken by the events of recent years. In the Committee's view, the situation would be much improved if there were clear evidence of appropriate education and training, quality assurance and oversight of the officers who exercise those powers.

Victoria Police appears to provide a good example of the public sector incorporating human rights in its day-to-day activities. It submitted that it 'is confident that human rights protection is synonymous with good policing in liberal democratic societies'.<sup>85</sup> The submission outlined the human rights education programs Victoria offered in partnership with specialist human rights services and the university sector when the Victorian Charter of Human Rights and Responsibilities was introduced and added that one of the most significant outcomes of its education programs and audits has been the introduction of a human rights framework that includes decision making. In Victoria Police's view, 'The education undertaken by employees has provided a better understanding of human rights by those responsible for the delivery of policing services directly to the community'.<sup>86</sup>



Victoria Police Commissioner Simon Overland speaks in favour of the Victorian Charter.

## 6.6 **Creating a culture of human rights in other sectors**

Traditionally, international law has imposed human rights obligations on non-State actors only in exceptional circumstances—such as the prohibition of slavery and genocide. States do, however, have an international obligation 'to protect against

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<sup>84</sup> For example, Tweed Heads, Community Roundtable; Mt Gambier, Community Roundtable.

<sup>85</sup> Victoria Police, Submission.

<sup>86</sup> *ibid.*

the commission of human rights violations by non-State actors', which includes private sector organisations.<sup>87</sup>

## The private sector

A number of community roundtables and submissions discussed the need for greater recognition of the responsibilities of corporations. For example, the Queensland Public Interest Law Clearing House noted, 'As the influence of corporations has increased and the potential of corporations as human rights violators has grown it is now important to consider mechanisms for engaging business in the human rights dialogue'.<sup>88</sup>

Professor John Ruggie, Special Representative of the UN Secretary-General on Business and Human Rights, submitted that government should adopt the 'Protect, Respect and Remedy' framework that he proposed in 2008 and that was unanimously welcomed by the UN Human Rights Council. The framework provides that under international law States have a duty to protect against human rights abuses by non-State actors (including business), that business should act with due diligence to avoid infringing human rights, and that States are under a duty to provide access to remedies for breaches by non-State actors.<sup>89</sup>

Professor Ruggie argued that one of the most effective ways of promoting rights compliance is to develop corporate cultures in which respecting rights is seen as an integral part of doing business.<sup>90</sup>

Other submissions supported the adoption of his framework and suggested a range of measures that could be implemented to develop a corporate culture of human rights compliance. There was support for requiring businesses to report on their observance of human rights and for establishing industry-specific complaints mechanisms.<sup>91</sup> Among the more specific proposals were the following:

- incorporating human rights provisions in government contracts<sup>92</sup>
- requiring 'businesses to produce a compliant human rights policy, implementation plan and/or compliance reports as a condition of doing business with government'<sup>93</sup>
- including requirements for human rights impact assessments for large projects involving public-private partnerships<sup>94</sup>

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<sup>87</sup> Human Rights Law Resource Centre (Educate, Engage, Empower), Submission.

<sup>88</sup> Queensland Public Interest Law Clearing House, Submission.

<sup>89</sup> J Ruggie, Submission.

<sup>90</sup> *ibid.*

<sup>91</sup> Australian Council for International Development, Submission.

<sup>92</sup> For example, *ibid.*; Human Rights Law Resource Centre (Educate, Engage, Empower), Submission.

<sup>93</sup> Queensland Public Interest Law Clearing House, Submission.

- encouraging professional bodies and large corporations ‘to set aspirational human rights targets to meet or be measured against’<sup>95</sup>
- providing resources and support for the use of ‘socially responsible share market indices and certification programs’ and taking them into account in procurement practices<sup>96</sup>
- funding the Australian Human Rights Commission to establish a unit dedicated to promoting human rights in business<sup>97</sup>
- increasing awareness of the OECD National Contact Point ‘complaints’ system as a mechanism for responding to complaints against corporations<sup>98</sup>
- including an ‘opt in’ clause in a federal Human Rights Act (see Chapter 14 for details).

## Non-government organisations

There was also support for more meaningful engagement between government and organisations involved in protecting and promoting human rights in the community.<sup>99</sup> The Human Rights Law Resource Centre suggested the following measures for achieving this goal:

- establishing and funding an annual summit for human rights NGOs
- holding an ‘annual conversation’ between the Federal Government and human rights NGOs, which could be coordinated by the Department of the Prime Minister and Cabinet on a ‘whole-of-government’ basis
- establishing a Human Rights Leadership Group—including government decision makers, local government, human rights NGO representatives, human rights experts, and representatives of human rights advocacy organisations—to provide leadership and support for the promotion of human rights
- improving funding for NGOs—for example, by amending taxation legislation to include ‘the promotion and protection of human rights’ as a charitable purpose and reviewing and revising funding to human rights organisations and specific human rights grants for these organisations.<sup>100</sup>

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<sup>94</sup> Human Rights Law Resource Centre (Educate, Engage, Empower), Submission.

<sup>95</sup> Queensland Public Interest Law Clearing House, Submission.

<sup>96</sup> Human Rights Law Resource Centre (Educate, Engage, Empower), Submission.

<sup>97</sup> *ibid.*

<sup>98</sup> *ibid.*

<sup>99</sup> For example, World Vision Australia, Submission.

<sup>100</sup> Human Rights Law Resource Centre (Educate, Engage, Empower), Submission.

## 6.7 The Committee's findings

Human rights are not well understood by the Australian community, and there is a need for better education about human rights generally and the way in which they are protected and promoted.

In recent years the global climate of uncertainty and insecurity has given rise to a fear of change and 'difference' that has frequently been evident in the majority community attitude to minority groups such as asylum seekers, ethnic minorities, different religious groups and Indigenous Australians. The Committee notes the remarks of Julian Burnside QC:

I think Australians are generally in favour of the idea of human rights in the abstract, but as a nation our thinking on the subject is not very developed. This might be in part because we have never had to fight to secure our human rights. Many Australians appear to be concerned about their own rights, but less concerned about the rights of those they fear or hate ... it is plain to see that many were untroubled about the plight of David Hicks, or the stolen generations (or the plight of aborigines generally) or asylum seekers in detention centres. To tolerate these things with unconcern (or to be actively in favour of them while believing in the importance of human rights), is cognitive dissonance of a high order. It rests on an unconscious division of people into human beings like us (whose rights matter) and others (whose rights do not matter).<sup>101</sup>

To the extent it exists, this level of antipathy, lack of interest or complacency is in direct conflict with the normal Australian commitment to 'a fair go' for all. In the Committee's view, any meaningful change to human rights protection and a fair go for everyone depends on improving the level of understanding and reducing the levels of fear and ignorance that surround many aspects of life. Amidst this apathy are strong calls for change, respect, and progress towards realising a better human rights culture in Australia.

If Australians are to challenge and reconsider current attitudes, recognition of other people's dignity, culture and traditions and the fundamental importance of respecting the rights of those who are different must become better understood. This recognition and respect can then shape our values and our very selves. Additionally, if better human rights education is provided and a human rights culture is nurtured, members of our community will be better able to engage in their own human rights protection.

The Committee finds there is a need for a better understanding of and a commitment to human rights within government—in policy and legislative

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<sup>101</sup> J Burnside, Submission.

development and in service delivery—and within the community, to ensure that people can engage in their own protection and promotion and relate with respect and generosity to others in the community. Responsibilities should also be highlighted in any education and awareness campaign. The Committee notes the concerns of Australians warning against the development of a more selfish culture if the importance of responsibilities is not acknowledged. It is clear that, in order to successfully develop a stronger culture of human rights, responsibilities must form a central part of any education initiative. This is vital if we are to develop the true spirit of any human rights culture—one that will foster communitarian values. It is the capacity of those whose own rights are not at risk to consider and defend the rights of others that will result in greater protection of the rights of the individual or classes of individuals.

Accordingly, resources developed for educational purposes should not only take account of the rights agreed in international and domestic law but also place such rights in a context of purpose and means. A society that is to function cohesively requires in equal measure the commitment to rights and responsibilities.

A document needs to be developed that clearly lists the rights we are entitled to because we are human. It should also include responsibilities we have towards others and towards our community. Such responsibilities could include the following commitments:

- to respect the rights of others
- to support parliamentary democracy and the rule of law
- to uphold and obey the laws of Australia
- to serve on a jury when required
- to vote and to ensure to the best of our ability that our vote is informed
- to show respect for diversity and the equal worth, dignity and freedom of others
- to promote peaceful means for the resolution of conflict and just outcomes
- to promote and protect the rights of the vulnerable
- to acknowledge and respect the special place of our Indigenous people and acknowledge the need to redress their disadvantage
- to play an active role in monitoring the extent to which governments are protecting the rights of the most vulnerable
- to ensure that we are attentive to the needs of our fellow human beings and contribute according to our means.

There will be costs associated with the development of a comprehensive national human rights education plan—among them the cost of engaging broadly with the

community in order to develop the framework and the programs to support it and the costs involved in funding the Australian Human Rights Commission, the education system and other bodies so that they can implement the plan. The Committee is, however, convinced that the cost of not taking action will be far greater in terms of the potential damage to Australia's international reputation and the continuing human costs—including the creation of further domestic divisions, disadvantage and hostility—that will continue to be borne by the community as a whole and by individual members of it.

The main benefits of greater human rights education and the creation of a human rights culture will be greater understanding and better integration of human rights awareness in the community as a whole. Once a human rights culture has taken hold, fewer human rights violations will occur, and people will come to see human rights as synonymous with 'a fair go' and as incorporating the values of decency and respect, which individually and collectively all people should enjoy.

People will begin to see themselves, and others, as 'rights-holding entities'. In this way they will be more likely to assert their own rights and to refrain from violating the rights of others. In time, human rights will be integrated within the public sector to the extent that they become an everyday consideration when policy and legislation are being developed, decisions are being made and services are being delivered.

In addition, once a human rights culture has developed, there will be more robust responses when breaches of those rights do occur. In the absence of this, there is every chance that human rights violations will continue to be perpetrated in ways that might not attract media attention or any response at all. The community sent the Committee a forceful message that more needs to be done in this regard.

## **Recommendations**

### **Recommendation 1**

The Committee recommends that education be the highest priority for improving and promoting human rights in Australia.

### **Recommendation 2**

The Committee recommends as follows:

- that the Federal Government develop a national plan to implement a comprehensive framework, supported by specific programs, of education in human rights and responsibilities in schools, universities, the public sector and the community generally
- that human rights education be based on Australia's international human rights obligations, as well as those that have been implemented domestically (whether in a Human Rights Act or otherwise), and the mechanisms for enforcement of those rights
- that the Federal Government publish a readily comprehensible list of Australian rights and responsibilities that can be translated into various community languages
- that any education and awareness campaign incorporate the experiences of Indigenous Australians—with a particular focus on recent and historical examples of human rights concerns
- that the Federal Government collaborate with non-government organisations and the private sector in developing and implementing its national plan for human rights education.

### Recommendation 3

The Committee recommends that its proposed readily comprehensible list of Australian rights and responsibilities include commitments such as the responsibility:

- to respect the rights of others
- to support parliamentary democracy and the rule of law
- to uphold and obey the laws of Australia
- to serve on a jury when required
- to vote and to ensure to the best of our ability that our vote is informed
- to show respect for diversity and the equal worth, dignity and freedom of others
- to promote peaceful means for the resolution of conflict and just outcomes
- to acknowledge and respect the special place of our Indigenous people and acknowledge the need to redress their disadvantage
- to promote and protect the rights of the vulnerable

- to play an active role in monitoring the extent to which governments are protecting the rights of the most vulnerable
- to ensure that we are attentive to the needs of our fellow human beings and contribute according to our means.

