

A) Which human rights (including corresponding responsibilities) should be protected and promoted?

A summation of all the human rights and corresponding responsibilities which should be protected and promoted in Australia is a difficult, if not impossible task. This section attempts to examine one civil and political right and one economic, social and cultural right and why those particular rights should be protected in Australia.

Article 3 of the ICCPR¹ states that parties to the covenant seek to “ensure the equal right of men and women to the enjoyment of all civil and political rights [stated].”² This right promotes equality between both men and women, to enjoy rights equally. Given the 2009 budget which states that women who earn under \$150,000.00 may be eligible for maternity leave of 18 weeks³, this particular right, of equality between both men and women, should be both protected and promoted. If it is not promoted then young women, when they are looking for employment may be at a disadvantage, as the new budget may be a factor considered by prospective employers and result in discrimination against women.

Article 15(1(a)) of the ICESCR⁴ recognizes the rights of all humans to “take part in cultural life.”⁵ When Prime Minister Kevin Rudd said ‘sorry’ to the Aboriginal community for the stolen generation incidents⁶, he made a statement that the Australian people would not consciously engage in events which occurred to the stolen generation. This demonstrates that the cultural life individual Australians prescribe to, they should be

¹ *International Covenant on Civil and Political Rights*, (General Assembly resolution 2200A (XXI) of 16 December 1966).

² *International Covenant on Civil and Political Rights*, (General Assembly resolution 2200A (XXI) of 16 December 1966) Article 3.

³ *Budget 2009: Super salary sacrifice cap halved*, The Australian Newspaper Website, <<http://www.theaustralian.news.com.au/specials/0,,5017014,00.html>> at 15 May 2009.

⁴ *International Covenant on Economic, Social and Cultural rights*, (General Assembly resolution 2200A (XXI) of 16 December 1966).

⁵ *International Covenant on Economic, Social and Cultural rights*, (General Assembly resolution 2200A (XXI) of 16 December 1966) Article 15(1(a)).

⁶ *Speech by Prime Minister Kevin Rudd to the Parliament on 13 February 2008*, Australian government department of Foreign Affairs and Trade Website, <http://www.dfat.gov.au/indigenous_background/rudd_speech.html> at 15 May 2009.

allowed to enjoy. The protection and promotion of this right helps to ensure that the ‘stolen generation’ and other potential human rights violations will not occur again in Australia.

Ranking rights:

Rights are protection from violations of rights, and in some case a legally protected right results in the violation of another right. For example, the freedom of political communication is protected in Australia⁷, and under section 9 of the Victorian Charter of Human Rights and Responsibilities every Victorian has an “arbitrary right to life”⁸. These two rights can conflict. For example; a person may politically seek the extermination of the Jewish community, resulting in the right to life for Jewish people not being enforced. There needs to be further law which states that in the event of a conflict between rights, the superior right, say the right to life should be preserved before the freedom of political communication.

B) Are these human rights currently sufficiently protected and promoted?

There are two parts to this question, and the answers to these parts are:

- 1) Human rights in general, as well as those specifically mentioned in part A) are not sufficiently protected.
- 2) In order for human rights to be promoted, they need to firstly be protected, because of this it is impossible to say that human rights are sufficiently promoted.

To substantiate answer one, an examination of how human rights are currently protected in Australia is now briefly made.

At a state level the ACT⁹ and Victoria¹⁰ have passed Human Rights Acts. The Victorian charter “focuses on civil and political rights...other rights protected by the charter include,

⁷ *Lange v Australian Broadcasting Corporation*(1997) 189 CLR 520.

⁸ *The Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic) section 9.

⁹ *Australian Capital Territory Human Rights Act 2004* (ACT).

¹⁰ *The Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic).

protection from forced work, the right to privacy, the right to a fair trial [and] cultural rights.”¹¹ Although the Victorian Charter does focus on Political and Civil Rights it is not a source of protection for all Australians, and therefore can not be adequate protection for all Australians.

The Australian Constitution¹² is another form of protection. Although it was not designed to protect human rights¹³, the Australian Constitution has been found at common law to be a source of protection for implied rights. In the case of *Lange v Australian Broadcasting Corporation* an implied right to freedom of political communication was found¹⁴. Arguments have also been made that there is an implied right to vote¹⁵ inherent in the Australian Constitution.

International Laws are put in place to protect human rights. Australia agreed to the adoption of the Universal Declaration of human rights¹⁶ and has ratified the two major covenants which protect human rights. These were produced in 1966 by the United Nations and are entitled the International Covenant on Civil and Political Rights¹⁷ (ICCPR) and the International Covenant on Economic, Social and Cultural rights¹⁸ (ICESCR). Each covenant seeks to protect rights relevant to that which their title implies. When attempting to argue that the ICCPR and the ICESCR are a form of protection for Australians the doctrine of dualism should be examined. “Dualism,...holds that they [national and international law] are separate systems operating in different fields.”¹⁹ This means that although Australia has ratified both the ICCPR and the ICESCR they are not binding on Australian courts until they are domestically implemented in to legislation. However, in the case of *Minister for Immigration and*

¹¹ *The Victorian Charter of Human Rights and Responsibilities Act 2006* (Vic).

¹² *Commonwealth of Australia Constitution Act 1900* (Cth)

¹³ Jeffrey Goldsworthy ‘The High Court, Implied Rights and Constitutional Change’, *Quadrant*, March 1995.

¹⁴ *Lange v Australian Broadcasting Corporation*(1997) 189 CLR 520

¹⁵ A Twomey, “The federal constitutional right to vote in Australia” (2000) 28 *Federal Law Review* 125.

¹⁶ Rhonda Smith, *International Human Rights* (3rd ed, 2007) 36.

¹⁷ *International Covenant on Civil and Political Rights*, (General Assembly resolution 2200A (XXI) of 16 December 1966).

¹⁸ *International Covenant on Economic, Social and Cultural rights*, (General Assembly resolution 2200A (XXI) of 16 December 1966).

¹⁹ E Martin and J Law, *Oxford Dictionary of Law* (6th ed, 2006) 346.

Ethnic Affairs v Teoh it was said that “ratification of a convention is a positive statement...to the world and to the Australian people that the executive government and its agencies will act in accordance with the convention.”²⁰

C) How could Australia better protect and promote human rights?

A Statutory Bill of Rights is the answer. The Constitution gives parliament power to construct laws for “The people of any race for whom it is deemed necessary to make special laws.”²¹ This gives parliament the right to create and enforce a Statutory Bill of rights.

This method of enforcement of human rights for all Australians is best because it can meet the needs of an ever changing and multicultural community. In 1949 Australian citizenship was granted to 2,493 people²² from places including;

- i) Italy,
- ii) Poland,
- iii) Greece, and
- iv) Germany²³

This highlights the fact that Australia is changing, and includes more features from other cultures external to Australia. A Statutory Bill of Rights has the advantage of being able to be changed if needed in the future, whilst still having legal effect and being enforceable when it has been created.

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²⁰ *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

²¹ *Commonwealth of Australia Constitution Act 1900* (Cth) Section 51 (xxvi).

²² *Australian Citizenship Statistics*, Australian Government Department of Immigration and Citizenship Website, <<http://www.citizenship.gov.au/resources/facts-and-stats/stats.htm>> at 20 May 2009.

²³ *Australian Citizenship Statistics*, Australian Government Department of Immigration and Citizenship Website, <<http://www.citizenship.gov.au/resources/facts-and-stats/stats.htm>> at 20 May 2009.

Bibliography:

Books:

Martin, E and Law,J, *Oxford Dictionary of Law* (6th ed, 2006)

Smith, Rhonda *International Human Rights* (3rd ed, 2007)

Journal Articles:

Goldsworthy, Jeffrey ‘The High Court, Implied Rights and Constitutional Change’,
Quadrant, March 1995

Twomey,A “The federal constitutional right to vote in Australia” (2000) 28 *Federal Law Review* 125

Websites:

Australian Citizenship Statistics, Australian Government Department of Immigration and
Citizenship Website, <<http://www.citizenship.gov.au/resources/facts-and-stats/stats.htm>>
at 20 May 2009.

Budget 2009: Super salary sacrifice cap halved, The Australian Newspaper Website,
<<http://www.theaustralian.news.com.au/specials/0,,5017014,00.html>> at 15 May 2009.

Speech by Prime Minister Kevin Rudd to the Parliament on 13 February 2008, Australian
government department of Foreign Affairs and Trade Website,
<http://www.dfat.gov.au/indigenous_background/rudd_speech.html> at 15 May 2009.

Cases:

Minister for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273.

Legislation:

Australian Capital Territory Human Rights Act 2004 (ACT)

Commonwealth of Australia Constitution Act 1900 (Cth) Section 51 (xxvi)

International Covenant on Economic, Social and Cultural rights, (General Assembly
resolution 2200A (XXI) of 16 December 1966)

International Covenant on Civil and Political Rights, (General Assembly resolution
2200A (XXI) of 16 December 1966)

The Victorian Charter of Human Rights and Responsibilities Act 2006 (Vic)