



## **GUIDE TO RESEARCHING HUMAN RIGHTS LAW**

HRA Section 31 Interpretation of human rights states  
*International law, and the judgments of foreign and international courts and tribunals, relevant to a human right may be considered in interpreting the human right.*

In interpreting a human right contained in the *ACT Human Rights Act 2004* (HRA), international law, and the judgments of foreign and international courts and tribunals can be used. It is therefore important to have some understanding of the international human rights system and where to look for documentation about the interpretation of rights. This fact sheet aims to assist with that process.

### **WHAT IS INTERNATIONAL LAW?**

The Dictionary of the HRA defines international law as including:

- a) the International Covenant on Civil and Political Rights and any other human rights treaties to which Australia is party; and
- b) general comments and views of the United Nations human rights treaty monitoring bodies; and
- c) declarations and standards adopted by the United Nations General Assembly that are relevant to human rights.

### **Interpretation of Human Rights**

It should be noted that section 31(2) of the HRA qualifies reliance on such material, or any other material, and the weight that should be given to that material. In deciding whether such material should be considered, the following matters must be taken into account by courts and public authorities:

- a) the desirability of being able to rely on the ordinary meaning of this Act, having regard to its purpose and its provisions read in the context of the Act as a whole;
- b) the undesirability of prolonging proceedings without compensating advantage;
- c) the accessibility of the material to the public.

### **UNITED NATIONS HUMAN RIGHTS SYSTEM**

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The machinery used by the United Nations system to govern international human rights can be divided into two streams:

- 1) Charter based organs
- 2) Treaty based organs.

### **1) Charter Based Organs**

These are organs and sub-organs created under the UN Charter and include the following:

- General Assembly
- Human Rights Council (<http://www2.ohchr.org/english/bodies/hrcouncil/>)
- Commission on the Status of Women

Note that the Human Rights Council replaced the Commission on Human Rights in 2006 (GA Resolution 60/251). It assumed responsibility for special rapporteurs, investigative working groups and other special procedures previously overseen by the Commission.

### **2) Treaty Based Organs**

These are organs that have been created by one of the 8 human rights treaties adopted under UN auspices and which have been set up to monitor state compliance with their obligations under those treaties:

- Human Rights Committee
- Committee on Economic Social and Cultural Rights
- Committee on the Elimination of Racial Discrimination
- Committee on the Elimination of Discrimination Against Women
- Committee Against Torture (CAT) & Optional Protocol to the Convention Against Torture (OPCAT) – Subcommittee on Prevention of Torture
- Committee on the Rights of the Child
- Committee on Migrant Workers<sup>1</sup>
- Committee on the Rights of Persons with Disabilities<sup>2</sup>

The treaty based organs are likely to have the most useful material for the purpose of interpreting provisions of the HRA. The HRA specifically refers to the ICCPR as its primary source. It is the most relevant treaty for the purpose of interpretation.

Note that the jurisprudence of other human rights jurisdictions will also be persuasive.<sup>3</sup>

### **The International Covenant on Civil and Political Rights (ICCPR)**

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<sup>1</sup> Australia is not a signatory to the Convention on the Rights of All Migrant Workers and Members of their Families.

<sup>2</sup> Australia has signed the Convention on the Rights of Persons with Disabilities but not the optional protocol. As Australia has not yet ratified the convention, the full obligations of the treaty do not yet apply. However, since its 20<sup>th</sup> signature, the Convention will enter into force on 3 May, 2008. It may be considered to be part of international law for the purpose of interpretation, given that the Dictionary definition in the HRA is inclusive, rather than exhaustive.

<sup>3</sup> For example decisions of the European Court of Human Rights, though not directly applicable to Australia, provide a detailed examination of particular rights. UK cases which apply the *Human Rights Act 1998* (UK) are similarly persuasive (see <http://www.bailii.org/>).

The full text of the ICCPR can be found here:  
[http://www.unhchr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhchr.ch/html/menu3/b/a_ccpr.htm)

Article 28 of the ICCPR created a body named the Human Rights Committee, its function being to monitor State parties' compliance with the rights contained in the covenant. The Committee's functions are the following:

### **1) Concluding Observations**

Article 40 requires States which are party to the Covenant to submit periodic reports to the Committee on the measures they have adopted to give effect to the rights recognised by the Covenant. Concluding Observations are the Committee's responses to these reports, and they contain useful comments on human rights. The full text of all Concluding Observations can be found at the UN's Treaty Body Database here:  
<http://www.unhchr.ch/tbs/doc.nsf> or more accessibly at <http://www.bayefsky.com>

### **2) Adoption of General Comments**

The Committee provides comments on its interpretation of the human rights provisions of the ICCPR in the form of General Comments on thematic issues, State reporting obligations, or on particular rights such as the right to a fair trial. A complete list of the Committee's General Comments can be found here:  
<http://www2.ohchr.org/english/bodies/hrc/comments.htm> or here:  
<http://www1.umn.edu/humanrts/gencomm/hrcomms.htm><sup>4</sup>

### **3) Communications**

The Committee considers and makes decisions on communications from individuals who complain that their rights have been violated. The ability to make individual applications to the Committee is derived from Article 2 of the First Optional Protocol to the ICCPR.<sup>5</sup> Note that a country must be a party to both the Covenant and the Optional Protocol before a complaint about the State's treatment of an individual can be made. Article 2 requires that the individuals have exhausted all available domestic remedies before submitting a communication to the Committee. The decisions of the Committee in relation to these communications are not legally binding in the same way as a judicial decision, on the State against whom the complaint is made, but they offer an authoritative view on international human rights law.

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<sup>4</sup> Also includes an introduction to General Comments and their purpose.

<sup>5</sup> Optional Protocol to the International Covenant on Civil and Political Rights  
General Assembly resolution 2200A (XXI) of 16 December 1966

## OTHER RESOURCES

- **The Office of the High Commissioner for Human Rights** provides a list of all the charter based and treaty based bodies with web-links for each body:  
<http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>
- The Universal Index of United Nations Documents is an easy access research tool for UN documents. It can be searched by country, body or by a particular right.  
<http://www.universalhumanrightsindex.org/>
- United Nations Home Page ([www.un.org](http://www.un.org)) provides detailed information about the organisation of the UN. Follow the links to the UN Treaty Collection (<http://untreaty.un.org/English/overview.asp>) to access treaties lodged with the UN.
- Chapter 6 of Carolyn Evans & Simon Evans' "Australian Bills of Rights; the Law of the Victorian Charter and ACT Human Rights Act" (2008) provides an excellent guide to the International Human Rights System.
- The UN's Dag Hammarskjöld Library has a useful guide to researching UN documentation <http://www.un.org/Depts/dhl/resguide/spechr.htm>
- The World Legal Information Institute has a comprehensive search facility of international and multi-national court and tribunal decisions, including a specific human rights courts and tribunals database: <http://www.worldlii.org/int/cases/>
- The British and Irish Legal Information Institute is also a useful search tool and includes a search facility for European Union Case Law <http://www.bailii.org/>
- Austlii also has links to case law on the New Zealand Bill of Rights Act <http://www.nzlii.org/databases.html>
- The Human Rights Law Resource Centre is a community legal centre, which aims to provide legal services and resources to promote human rights. The centre also publishes a monthly bulletin with the latest human rights news and case notes for human rights decisions across a range of jurisdictions  
[http://www.hrlrc.org.au/html/s01\\_home/home.asp](http://www.hrlrc.org.au/html/s01_home/home.asp)
- The ACT Human Rights Act Research Project is documenting the impact of the Act over the first five years of its life. The website has a comprehensive database of cases that have made reference to the Act in the ACT and has links to useful resources <http://acthra.anu.edu.au/index.html>
- The Supreme Court Library has a selection of human rights resources and is open to the public.