



Position Paper

Would an Australian Charter of Rights be good for business?

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Table of Contents

Executive Summary.....	3
1. Introduction	5
2. Why a Charter of Rights?	5
3. Which human rights would be protected by a Charter of Rights?	6
4. How would a Charter of Rights work?	6
4.1. The Federal Government must address Charter Rights when forming policy	6
4.2. The Federal Parliament must address Charter Rights when passing new laws.	7
4.3. Interpretation of laws compatible with Charter Rights	7
4.4. A ‘public authority’ must act compatibly with Charter Rights	7
5. When would business be bound by a Charter of Rights?	7
5.1. Business classified as a ‘public authority’	7
5.2. Contractual requirement	8
5.3. Opting in to a Charter of Rights	8
6. How would a Charter of Rights benefit business?	10
6.1. Protecting the rights of persons associated with the business	10
6.2. Improving the regulatory environment	11
6.3. The correlation between corporate social responsibility and business success	12
6.4. Benefits to society and the economy from a national Charter of Rights	13
6.5. Scope of a Charter of Rights	14
7. What will compliance with a Charter of Rights mean to business?	14
7.1. Direct impacts on business activities	15
7.2. Indirect ‘horizontal’ impact on business activities	16
8. Myths and misconceptions	16
8.1. “A Charter is unnecessary to protect human rights”	16
8.2. “A Charter undermines parliamentary supremacy”	17
8.3. “A Charter will be a <i>lawyers’ picnic</i> ”	18
8.4. “A Charter will be a Trojan horse for a constitutional bill of rights”	18
9. Why should business participate in the National Human Rights Consultation?	18
9.1. About the Consultation	18
9.2. Why participate?	19
9.3. How to participate?	19
9.4. Examples of questions relevant to a business submission	19
9.5. About the Australian Human Rights Group (AHRG)	20
Appendix I: Internationally-recognised rights and their relevance to business	21

Executive Summary

What is a Charter of Human Rights?

In December 2008, the federal Government launched a national public consultation, asking how human rights should be promoted and protected in Australia. The Consultation is considering whether Australia should enact a federal charter of human rights (**Charter of Rights**). This paper addresses whether an Australian Charter of Rights would be good for business.

The reform currently being considered is to introduce a Charter of Rights as an ordinary Act of Parliament. It would not involve amendment to the Constitution. For the purposes of this paper, we consider the dominant Charter model adopted in comparable jurisdictions, such as the United Kingdom, New Zealand, Victoria, the ACT and elsewhere. This model has three main features:

- (i) It would set out those human rights deemed fundamental in Australian society (**Charter Rights**).
- (ii) It would require the federal Parliament to consider the Charter Rights when making policy and law.
- (iii) It would require Australian laws to be interpreted compatibly with Charter Rights, and the executive branch of Government would be required to act consistently with the Charter Rights. This would be subject to some limited exceptions.

What obligations would a Charter impose on business?

Under a Charter of Rights, the primary responsibility for promoting and protecting human rights would remain with the Government. Generally speaking, a Charter of Rights would not *directly* impact business or the private sector. It is likely that a business would be required to comply with a Charter only when:

- *the business is classified as a 'public authority'*. This could occur when the business performs a public function on behalf of the Government through an outsourcing arrangement. The business would then be required to comply with the Charter only in respect of those government functions it performs (but not when acting as an employer or in a purely commercial capacity); **or**
- *the business takes steps to bind itself to a Charter*. This could occur if a business contractually agrees to comply with the Charter Rights, or if it opts to comply with the Charter, as part of its commitment to corporate social responsibility.

However, a breach of the Charter would not provide an individual with a new, freestanding right to seek damages.

Would a Charter have a positive or negative impact on business?

The business sector is likely to have two main concerns about the enactment of a Charter of Rights:

- **Cost of compliance.** Business is legitimately concerned that any new law not impose unreasonable costs of compliance. However, the imposition of a federal Charter of Rights would likely impose no compliance costs on the vast majority of businesses. Those few businesses bound by a Charter are likely to face only a minimal cost of compliance, and this is likely to be outweighed by the benefits of a Charter to these businesses.
- **Scope of the Charter.** A Charter would permit persons associated with a business (including its owners, directors, shareholders and other stakeholders) to exercise Charter Rights themselves. There is debate, however, about whether a corporation should itself be able to claim the direct protection of Charter Rights. On balance, it seems preferable for corporate rights not to be confused with human rights, which are different in character and foundation. However, this is a matter on which the business community should have its say.

Any negative impact of a Charter of Rights would be substantially outweighed by the benefits of a Charter to Australia generally, and to business specifically. These benefits include:

- **Economic benefits.** Savings in the Australian economy associated with minimising human rights breaches, and maximising economic participation, are likely to flow to Australian businesses in their capacity as the providers of goods and services, as employers, and in their dealings with the federal Government.
- **Corporate social responsibility.** 'Opting in' to a Charter of Rights regime would be a potent way for businesses to demonstrate their commitment to corporate social responsibility. A growing number of businesses in Australia and internationally are incorporating a human rights approach into their management practices. This makes economic sense, as research shows a direct correlation between a corporation's commitment to respect human rights and its long-term sustainability and financial success. This is manifested in a number of ways, including increased employee productivity and better relations with customers and shareholders.
- **Improved regulatory framework.** A Charter of Rights would improve Government decision making, enhancing due process and the level of transparency, responsiveness and accountability of government action. This would benefit business, because setting out a human rights framework for the operation of the public sector would provide a more stable regulatory environment. It would give added protection to individuals associated with a business in their dealings with the Government. For example, stronger protection of freedom of expression would benefit both journalists and media proprietors.

National Human Rights Consultation: participation by business

The Consultation Committee wants to hear from all Australians. The business community is an important stakeholder in this debate, given it is the economic driver of the country, human rights are relevant to its operations, and its actions directly affect all Australians. To ignore human rights is a significant business risk. Active engagement will allow business to help shape the debate and have its say.

Further information about engaging in the debate, along with up-to-date news about the consultation is available at the websites of the Consultation Committee (www.humanrightsconsultation.gov.au) and the Gilbert + Tobin Centre of Public Law (www.gtcentre.unsw.edu.au).

1. Introduction

Human rights apply to all individuals and are the basic, fundamental rights that are necessary to live with dignity and to participate in the community. International law requires countries to promote and protect human rights. In particular, the *Universal Declaration of Human Rights 1948 (UDHR)* provides a list of internationally-recognised human rights, and it describes them as 'a common standard of achievement for all peoples and nations'.¹ The Australian government has ratified a number of human rights treaties, committing to respect, protect, promote and fulfil specific human rights of its citizens and other individuals within and beyond its borders, including the *International Covenant on Civil and Political Rights 1966 (ICCPR)* and the *International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)*.²

Contrary to its obligations under international law, Australia has not yet fully implemented these treaties into Australian law. However, a number of the Australian States and Territories have conducted consultations to ascertain the views of their respective communities on how human rights should be protected.³ Victoria and the Australian Capital Territory (ACT) have each enacted legislation to promote and protect those human rights on which community consensus was reached – that is, the *Charter of Human Rights and Responsibilities Act 2006 (Vic) (Victorian Charter)* and the *Human Rights Act 2004 (ACT) (ACT Charter)*.⁴ The federal Government is lagging behind the states and territories in this respect. In December 2008, the federal Government launched a national public consultation on how best to promote and protect human rights and responsibilities in Australia, seeking the views of all Australians including the business community.⁵

This paper proposes that a Charter of Rights is the most effective mechanism for promoting and protecting human rights at the federal level. In fact, Australia is the only democratic nation in the world without a bill or charter of human rights.⁶ This paper considers whether an Australian Charter of Rights would make good business sense.⁷

2. Why a Charter of Rights?

The protection of human rights under current Australian law is ad hoc and limited.⁸ There are of course many legal mechanisms that the Government could adopt to improve the protection and promotion of human rights. In addition to a Charter of Rights, those options include: enhancing protections in the Australian Constitution; enacting laws to uphold specific rights (such as the right to privacy or the right to a freedom of religion); developing specific national programs designed to redress past human rights violations, or to prevent future violations; and implementing a national public education program about human rights.⁹ None of these options, on its own, would comprehensively protect human rights in Australia. In fact, some of these options should be pursued simultaneously to provide effective human rights protection; for example, the enactment of a federal Charter of Rights would most effectively achieve its aims alongside a national public education program about those human rights.

Regardless of what other options are implemented, we believe that a federal Charter of Rights would be the most effective legal mechanism to protect and promote human rights in Australia. A Charter of Rights would be an ordinary statute passed by the federal Parliament and would operate within our existing system of government without disturbing the balance between Parliament and the courts. It would not undermine parliamentary supremacy.¹⁰ This model is currently operating in the United Kingdom (*Human Rights Act 1998 (UK Charter)*),¹¹ New Zealand (*Bill of Rights Act 1990 (NZ Charter)*), Victoria and the ACT. This model of human rights protection would not involve incorporating human rights into the Australian Constitution (as with the US Bill of Rights). A constitutionally-enshrined Bill of Rights would differ in many respects from a Charter of Rights. In particular, a constitutional Bill of Rights would enable a court to invalidate a law that it finds to be inconsistent with the Bill of Rights. A statutory Charter of Rights would not permit this, nor would it be a 'Trojan horse' for a constitutional Bill of Rights.¹²

3. Which human rights would be protected by a Charter of Rights?

The human rights protected by a Charter of Rights would likely be those on which there has developed a national consensus during the Consultation (**Charter Rights**).¹³ Under the Victorian Charter, the human rights protected were expressly limited to a certain civil and political rights deriving from the ICCPR.¹⁴ Civil and political rights are those most fundamental to a democratic society, such as the right to life, freedom of expression, and the right not to be tortured. The Victorian Charter covers all people in Victoria (regardless of citizenship or other status).¹⁵

While the rights protected in the Victorian Charter are likely to be of importance to the Australian community more generally, a federal Charter of Rights would not necessarily protect exactly the same rights. It may be, for example, that the Australian community wishes to extend protection to economic, social and cultural rights (as set out in the ICESCR) or other third rights such as property or environmental rights.¹⁶ The rights might also extend to persons beyond Australia's territory but subject to Australian jurisdiction.

While the primary responsibility for promotion and protection of human rights would remain with the federal Government, all human rights may be relevant to business.¹⁷ To guide business in understanding the relevance to it of specific human rights, each of the ICCPR and ICESCR rights is listed in Appendix A along with examples of how the relevant right might impact business activities. Generally speaking, a business would only become legally bound to comply with Charter Rights to the extent that it performs 'functions of a public nature' as outlined in the part 5.1 of this paper. Also, of course, business must still comply with human rights to the extent that they are protected under national laws. That is, there is already extensive human rights law in Australia relating to discrimination, privacy, occupational health and safety and equal opportunity obligations in the employment sector.¹⁸ Also, individuals (including business representatives) must comply with some obligations under international criminal law or humanitarian law.¹⁹

4. How would a Charter of Rights work?

Human rights generally, and Charter Rights more specifically, are not absolute. Under the Victorian Charter, the rights may be limited by legislation, but only to such "*reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom*".²⁰ This means that the federal Parliament would still have the last word on how best to balance competing rights, distribution of public funds and protecting national security and public order.²¹

A Charter of Rights focuses the attention of parliament and the courts on the consistency of laws and governmental action with the Charter Rights. It would require the federal Government (and others deemed to be 'public authorities') to promote and protect the Charter Rights. These obligations are summarised in this part of the paper.

The structure of a federal Charter of Rights, if one is enacted, will be shaped by the community views expressed during the national consultation, the recommendations of the independent Committee led by Father Frank Brennan AO and, ultimately, the federal Parliament. However, for the purposes of this paper, we consider the dominant model for a Charter of Rights, which has been adopted in the comparable jurisdictions of the United Kingdom, New Zealand, Victoria, the ACT and elsewhere. In particular, we refer to relevant sections in the Victorian Charter, which came into full effect on 1 January 2008.

4.1. The Federal Government must address Charter Rights when forming policy

The executive branch of the federal Government – that is, public servants, government departments and other public authorities – would be required to apply existing government policy, and develop new policies, so as not to infringe Charter Rights.²²

4.2. The Federal Parliament must address Charter Rights when passing new laws.

Each new Bill introduced into federal Parliament would be accompanied by a statement setting out whether, in the opinion of the relevant Member of Parliament, the Bill is compatible with the Charter Rights. If the Member deemed the Bill incompatible, she or he would be required to outline the nature and extent of the incompatibility, giving reasons.²³ In the event of incompatibility, Parliament would still be able to pass the Bill, thereby preserving parliamentary supremacy. However, this reporting process increases transparency in the consideration of human rights by Parliament.²⁴

4.3. Interpretation of laws compatible with Charter Rights

A Charter of Rights would contain a provision that requires legislation to be interpreted in line with the Charter Rights. This builds on a longstanding common law rule that is designed to prevent laws being interpreted so as to violate human rights, except in the rare situation that Parliament intends for this to occur.²⁵ Under the Victorian Charter, for example, all statutory provisions must be interpreted in a way that is compatible with the Charter Rights, so far as it is possible to do so consistently with the purpose of the statutory provisions in question.²⁶

If there is a dispute as to the meaning of a statutory provision, and a court finds that the provision is fundamentally inconsistent with a particular Charter Right, the court will make a declaration to this effect.²⁷ This declaration does not invalidate the law in question; rather it requires the responsible minister to provide a written response to parliament.²⁸ Parliament then has the final say as to whether or not to amend the law.

To illustrate the operation of this interpretive rule, consider s 16(1) of the *Occupational Health and Safety Act 1991* (Cth), which states: “An employer must take all reasonably practicable steps to protect the health and safety at work of the employer’s employees”. A Charter of Rights might have an impact in interpreting the term “reasonably practicable steps”. For example, a court might determine that it would be compatible with the Charter Rights (and consistent with the purpose of the statute) to interpret this term as requiring the steps to be non-discriminatory. Take the following hypothetical example. Imagine an employer determines that employees need to wear a hair covering to operate a particular machine safely. Under a Charter, it might be deemed an inappropriate “step” for the employer to prohibit an employee from wearing a religious hair covering, if this would not interfere with the safe operation of the machine and would prevent the employee from exercising their religion.

4.4. A ‘public authority’ must act compatibly with Charter Rights

It is unlawful for a ‘public authority’²⁹ to act in a way that is incompatible with a Charter Right or, in making a decision, to fail to give proper consideration to a Charter Right.³⁰ In itself, this is unlikely to provide an independent right to recover damages in the event of a breach of a Charter Right. However, where a public authority breaches the Charter, this may be used as a further ground in an existing cause of action against the public authority (such as administrative review) and would assist in obtaining the corresponding remedies (such as injunctive relief).³¹ Given these restrictions, the dominant Charter of Rights model will not give rise to a “lawyer’s picnic”.³²

5. When would business be bound by a Charter of Rights?

The primary responsibility for promotion and protection of human rights remains with the federal Government, as is envisioned under international law.³³ Businesses would only become bound in the relatively uncommon situations identified in this section.

5.1. Business classified as a ‘public authority’

A business would likely be bound by a Charter of Rights if it is classified as a ‘public authority’. Under the Victorian Charter, public authorities include:

- *entities specified in the Charter*—such as Victoria Police; and

- *private sector bodies performing functions of a ‘public authority’*—where a private sector body performs the functions of a public authority, it will be bound by the Charter in respect of those public functions.³⁴ This means that where a business provides a public service on behalf of the government, it will likely be considered to be a public authority. This allows the Charter to respond to the “*diverse organisational arrangements* [modern governments utilise] *to manage and deliver government services*”.³⁵ These arrangements include outsourcing, privatisation and public private partnerships. In this way, the application of Charters of Rights can extend into areas such as prisons, utilities, transport, housing and facilities for the aged, intellectually or physically impaired – where private companies are providing services on behalf of the government. The purpose of this *functional* definition of ‘public authority’ is to ensure that the government does not contract out of its human rights obligations.³⁶

The question remains, however, precisely when a business will be considered to be a ‘public authority’. Certainly guidance can be obtained from the significant body of jurisprudence on similar provisions in Victoria, the ACT, the UK and New Zealand.³⁷ It is appropriate for business to have its say in how to strike the appropriate balance between ensuring all public functions are performed in a way that is compatible with the Charter Rights, and the legitimate concern of business that “*private enterprise remains just that*”.³⁸

In striking this balance, a Charter of Rights could, for instance, specifically exempt a business from being classified as a ‘public authority’:

- for acts or decisions of the business that are private in nature;³⁹ and
- where the business could not reasonably have acted differently – for example, where it must comply with a statutory provision that is incompatible with the Charter Rights.⁴⁰

In this way, a business that performs both public and private functions and is classified as a ‘public authority’ would likely be bound by the Charter of Rights only for those acts or decisions performed in the public sector and not for wholly private matters (such as when acting as an employer or in a purely commercial capacity).⁴¹

Of course, not all companies that do business with the Government would be required to comply with a Charter. Nor would all companies that perform a public function be required to comply with a Charter. For instance, under the Victorian Charter, a non-government school may be exercising functions of a public nature (educating pupils), but it is not bound by the Charter as it is not doing so *on behalf of the state*.⁴²

5.2. Contractual requirement

To overcome uncertainty about businesses’ human rights obligations (that is, whether or not a business would be classified as a ‘public authority’), certain contracts with the federal Government may require the private sector contractor to comply with the Charter Rights.⁴³ Further, it may become federal Government policy to prefer to enter contracts with businesses that comply with Charter Rights (either contractually or because the business has ‘opted-in’ to the Charter regime).

5.3. Opting in to a Charter of Rights

A business may be bound by the Charter voluntarily—that is, it may ‘opt in’ to the Charter regime. In this case, the business would agree to be bound by the Charter for all the acts and decisions it performs, both public and private (such as when acting as an employer or in a purely commercial capacity). The ACT Charter contains such an opt-in mechanism, which allows businesses to opt in to the ACT Charter, and also to opt out at any time. This provision commenced operation on 1 January 2009, although at the time of writing no business had yet ‘opted-in’.⁴⁴ The federal *Privacy Act* has a similar ‘opt-in’ mechanism for small business operators not otherwise covered by the Act and currently around 180 businesses are registered as having opted in.⁴⁵

There is a strong business case for 'opting in' to a Charter of Rights as a means of exhibiting corporate social responsibility, and this is supported by four main arguments.

First, there is an increasing awareness on the part of corporations both of human rights per se and also the impact of corporations on the enjoyment of human rights around the world. This growing awareness is reflected by the appointment in 2005 of Professor John Ruggie as Special Representative of the UN Secretary-General on Business and Human Rights (**UN Special Representative**), with a mandate including to "*identify and clarify standards of corporate responsibility and accountability ... with regard to human rights*".⁴⁶ According to the UN Special Representative, "*there are few if any internationally recognised rights business cannot impact – or be perceived to impact – in some manner. Therefore, companies should consider all such rights.*"⁴⁷ This stance is supported by the Business Leaders Initiative on Human Rights program (**BLIHR**) and United Nations groups.⁴⁸

Secondly, there has been growing recognition – especially in the last decade – of the importance of businesses acting in accordance with corporate social responsibility standards, which include respect for human rights. According to the BLIHR and United Nations groups, a business case for human rights is "*as much about realising new opportunities and managing risk as it is about meeting essential global standards*".⁴⁹

These standards include:⁵⁰

- the ILO *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (1977, revised 2006), to which Australia is a member. This recognises the important contribution a multinational enterprise can make to the "*enjoyment of basic human rights*" and calls for respect of the UDHR and corresponding UN International Covenants;⁵¹
- the OECD *Guidelines for Multinational Enterprises* (1976, revised 2000), to which Australia is a signatory. This provides a set of recommendations to multinational enterprises on "*responsible business conduct*" including respecting human rights;⁵²
- the United Nations *Global Compact* (2000), which seeks to align business operations and strategies with ten universally accepted principles, including respecting the protection of internationally proclaimed human rights and not being complicit in human rights abuses;⁵³
- the *Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights* (2003), developed by the UN Sub-Commission on the Promotion and Protection of Human Rights, and which provides a set of human rights for which businesses should bear responsibility;⁵⁴
- the UN Special Representative's policy framework, intended as a baseline from which to guide the business and human rights debate, as set out in his 2008 report to the UN Human Rights Council. One of the core principles of this framework is the responsibility of corporations to respect all internationally-recognised human rights;⁵⁵
- the International Finance Corporation's (ie, the private sector arm of the World Bank) *Performance Standards on Social and Environmental Sustainability* (2006).⁵⁶ These standards are not strictly voluntary given they set out the requirements for clients of IFC to receive and retain IFC financing for their projects. The IFC considers that the Performance Standards are consistent with the emerging roles and responsibilities of the private sector in respecting human rights as an important aspect of corporate social responsibility.⁵⁷

Thirdly, even though the standards described above are largely voluntary and not legally binding, a growing number of businesses in Australia and internationally are voluntarily committing to respect human rights. For example:

- Over 4700 businesses have endorsed the principles in the UN *Global Compact*, including 41 Australian businesses across a range of industries such as BHP Billiton, Westpac Banking Corporation, RMIT University, Foster's Group Ltd, Intrepid Travel and Futureye;⁵⁸
- A number of businesses founded the BLIHR in 2003 to find practical ways of applying the UDHR within a business context and to inspire other businesses to do likewise. Today the BLIHR has 14 member businesses including Barclays, Ericsson, Hewlett-Packard,

General Electric and the Coca-Cola Company.⁵⁹ The BLIHR supports the UN Special Representative's policy framework.⁶⁰

Mary Robinson

Mary Robinson is the chair of BLIHR. She is also a member of The Elders, which has joined with partner organisations around the world to launch the *Every Human Has Rights* campaign in recognition of the 60th anniversary of the UDHR.⁶¹ Ericsson's CEO, Carl-Henric Svanberg, has publicly pledged his support to raise awareness of the 60th anniversary of the UDHR and the *Every Human Has Rights* campaign.⁶²

- Certain industry groups are adopting voluntary standards designed to promote responsible practices in that industry with respect to their impacts on society and the environment, including on human rights. For example, the Equator Principles have been developed for the finance industry (based on the IFC Performance Standards) (2003) to set out principles for their project financing activities and have been adopted by over 60 institutions including ANZ, National Australia Bank and Westpac Banking Corporation.⁶³ Also, the Voluntary Principles on Security and Human Rights have been developed for the extractive industry (2000) "*to guide Companies in maintaining the safety and security of their operations within an operating framework that ensures respect for human rights and fundamental freedoms*". Its participants include governments, NGOs and 18 companies including BHP Billiton, BP, and Shell.⁶⁴
- According to the Business and Human Rights Resource Centre, over 200 organisations across a range of industries refer explicitly to human rights in their policy statements, over half of which refer to the UDHR, indicating that senior management are turning their minds to human rights.⁶⁵ Further, a 2006 survey of the Global Fortune 500 companies by the UN Special Representative found that 90% of the 102 companies who completed the survey reported having an explicit set of human rights principles or management practices in place.⁶⁶

Case study: BHP Billiton

BHP Billiton's Sustainable Development Policy, signed by BHP Billiton's CEO, Chip Goodyear, states that wherever BHP Billiton operates it will "ensure [it] ... understand[s], promote[s] and uphold[s] fundamental human rights within [its] sphere of influence, respecting the traditional rights of Indigenous peoples and valuing cultural heritage".⁶⁷ In addition, BHP Billiton states that it has made a number of voluntarily public commitments to human rights including the UDHR, UN Global Compact and US-UK Voluntary Principles on Security and Human Rights for the extractive sector.⁶⁸

- In 2004, a Corporate Responsibility Index was launched in Australia and New Zealand to assist companies to identify their non-financial risk and benchmark their impact on society and the environment (though it does not expressly refer to human rights). In 2007-08, 40 companies participated representing almost a million employees and more than A\$600 billion revenue.⁶⁹

Finally, as outlined in part 6.3 of this paper, research shows a direct correlation between a human rights approach and the success of a business. While the standards discussed above are voluntary, they help to define the social expectations forming a company's "*social licence to operate*". Non-compliance may impact on a business' success and is not without cost.⁷⁰

6. How would a Charter of Rights benefit business?

6.1. Protecting the rights of persons associated with the business

Even where a business cannot itself claim the direct protection of a Charter of Rights, persons *associated* with the business (such as the owners, shareholders, employees, customers and

other stakeholders) would be able to invoke their individual rights.⁷¹ Examples include the following:

- *Owners.* The European Court of Human Rights found that the right of an individual to a fair trial extends to “*all proceedings the result of which is decisive for private rights and obligations*”. This includes decisions with an economic impact on the enjoyment of civil rights, such as control over the right of owners to develop their land and licensing schemes.⁷² Similarly, the European Court of Human Rights has held that an individual can invoke the right to a fair trial to protect their commercial interests.⁷³
- *Directors and Officers.* In the case of *Re AWB Limited*,⁷⁴ civil penalty proceedings against five former directors and officers of AWB Limited were stayed by the Supreme Court of Victoria on the basis that criminal proceedings were threatened against them for substantially the same conduct. Whilst not needing to be decided on the basis of the Victorian Charter, had the stay not been granted, the defendants’ right to a fair hearing may have been breached.⁷⁵
- *Shareholders.* Shareholders of Northern Rock (a failed mortgage lender) brought a claim in the High Court of England and Wales arguing that the terms of the Government’s compensation scheme for the shareholders on the nationalisation of Northern Rock had violated their right to the protection of property under the UK Charter (namely the value of the shares they owned), because compensation was negligible and not related to the value of property acquired.⁷⁶

6.2. Improving the regulatory environment

A Charter of Rights would enhance federal government decision making, by improving transparency, responsiveness and accountability.⁷⁷ These improvements would indirectly benefit business by setting out a human rights framework for operation of the public sector, in the development of policy, legislation, judicial interpretation and decision making.

Such a framework would provide a more stable regulatory environment for business, enabling:⁷⁸

- *costs savings in change management.* The impact of a Charter of Rights when Bills of Parliament are being considered by Parliament can foster more balanced laws. This can help eliminate the need for frequent legislative amendment, and the costs that this imposes on business. Take, for example, the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth), which profoundly changed the regulation of industrial relations in Australia. Had this reform process been carried out under a Charter of Rights framework, the potential impact of this change in the law on the human rights of Australian employees might have been more openly and thoroughly debated within the federal Parliament *before the law was passed*. This would have promoted a more balanced legislative reform at the time that these changes were first considered. If those laws had been more balanced, there might have been no need for two major reforms in industrial relations law, in a short space of time. This would have meant that business would not have had to bear the cost of transitioning to two new industrial relations regimes in such a short space of time; and
- *a more level playing field of opportunities in the public sector.* For example, a Charter of Rights would foster greater openness and accountability in government tendering processes.

In addition, the Charter Rights themselves and their protections may indirectly benefit the business community. Examples include:

- *the right to a fair trial.* As discussed in part 6.1 of this paper, this right has been found to extend to proceedings that are determinative of private rights and obligations, under the European Convention (and by incorporation the UK Charter) and would include issues arising under contract law and commercial law;⁷⁹
- *freedom of expression.* The law of defamation protects a person’s right not to have their reputation unfairly attacked. Defamation law must, therefore, strike a balance between protecting people’s reputation and not unduly restricting expression. Defamation law can

restrict the material that media organisations publish, the content of press releases, advertising and so on. It is generally accepted that Australian defamation law is especially restrictive of expression, particularly as compared to equivalent laws overseas.⁸⁰ Under a Charter of Rights, defamation laws might be interpreted in a way that impinges to a lesser degree on freedom of expression. This would have an impact on many people, including journalists and media organisations.

6.3. The correlation between corporate social responsibility and business success

For business, adopting a human rights approach can be a means of demonstrating corporate social responsibility. According to the UN Global Compact: “*The ‘why’ for business is as much about the ‘social licence to operate’ and maintaining a sustainable and longer-term business model that factors in human rights-related risks as it is about the benefits of empowering communities to articulate their rights*”.⁸¹

This reflects an understanding of the direct correlation that has been found to exist between a corporation adopting a human rights approach and its commercial success. By way of illustration, Goldman-Sachs has established GS SUSTAIN, a global equity strategy that incorporates an environmental, social and governance (ESG) framework into its long-term industrial and returns-based analyses amongst 6 sectors, to identify long-term investment opportunities. The ESG framework incorporates, to the extent possible, the 10 principles of the UN Global Compact including human rights. Goldman-Sachs has reported success in using this strategy and “*believe[s] that leadership on these issues is crucial*”.⁸²

The correlation between businesses that respect human rights and those that are financially successful is reflected as follows:⁸³

- A corporation’s social responsibility to respect human rights has been described as being part of a company’s “*social licence to operate*”.⁸⁴ As such, maintaining a business reputation and brand image that respects human rights, and is not complicit in human rights abuses, can have a direct positive impact on the share price of a business, shareholder confidence, customer loyalty, ability to attract and retain investors and good quality employees and access to new markets. For example, Westpac Banking Corporation and NIKE Inc have both cited public image (and associated long-term sustainability) as important factors that influenced their decisions to integrate corporate social responsibility (including human rights) into their business practices.⁸⁵

Case Study: Westpac⁸⁶

Westpac went from financial crises in 1992 to regaining financial health in 1998 through practices such as branch closures (particularly in regional areas) and sharp reductions in employee numbers. Such practices led to “*public outrage ... in what [the community] saw as unethical behaviour of banks*” and impacted on its ability to attract and retain staff and customers. In addition, the bank was the target of protests against its provision of custodian and other services to the Jabiluka uranium mine, located on Aboriginal lands within a world-heritage listed area of the Northern Territory. According to CEO David Morgan: “*what we had produced was too narrow and too short-term to be sustainable... Unless we really were delivering for all of our stakeholders, then our licence to operate was under threat.*”

Westpac sought to address this issue in various ways. For example, it established a social responsibility committee of its Board, and publicly committed to the UDHR and the UN Global Compact. It also established the Regional Banking Group and Indigenous Working Group to manage Westpac’s relationships with regional and Indigenous people, and it entered into a partnership with Cape York Aboriginal communities, which involved staff secondees and annual social impact reports.⁸⁷ The partnership is said to have “*contributed to restoring [employees’] pride*” in Westpac.

- Embedding human rights into core business practices can have a direct, positive impact on the ability of a business to retain and motivate good quality employees. It can also

enhance risk assessment and management of human rights breaches, improve quality of service delivery, foster greater productivity, improve relations with local community stakeholders and provide more sustainable business relationships. This simultaneously minimises the risk of litigation and the damaging effects of hostile public campaigns on the reputation of a business.

Case Study: Starbucks⁸⁸

Starbucks identified opportunities for the protection of human rights with its internal coffee sourcing program, the Coffee and Farmer Equity (C.A.F.E.) Practices program. The program awards points to coffee suppliers based on a set of social and environmental criteria (including hiring and employment policies and working conditions). Based on these points, a coffee supplier may receive a financial premium for their coffee and obtain preferred supplier status. The program is designed to promote enduring relationships with suppliers, securing long-term improvements and improving lives of coffee-growing communities (which Starbucks considers to be within its sphere of influence). In addition, Starbucks has been able to use this program to brand and promote its coffee, allowing it positively to differentiate itself from other coffee retailers, among socially conscious consumers.⁸⁹

Case Study: Volkswagen⁹⁰

Volkswagen's Declaration on Social Rights and Industrial Relationships (**Social Charter**) commits the company to respect certain human rights that apply to employees worldwide, including freedom of association, non-discrimination and occupational health and safety.⁹¹ Pursuant to this Social Charter, in 2004, Volkswagen (in partnership with the International Labour Organisation and the German Corporation for Technical Cooperation) launched a project for Better Health and Safety for Suppliers. Some select members of Volkswagen's supplier chain in Brazil, Mexico and South Africa participated in the project. At the time of writing the case study, over 2 years into the project, *"the goals of improving quality and productivity in the supply chain and ensuring timely delivery by taking measures to prevent occupational accidents and work-related diseases have been realized, at least in part"*.

- Creating a body of human rights knowledge and experience can help to win government and commercial contracts that require such expertise, both internationally and within Australia – as is already the case under the Victorian Charter and ACT Charter.

6.4. Benefits to society and the economy from a national Charter of Rights

Human rights breaches damage the social fabric of Australian communities, reduce business productivity (due to their harmful effects on employees, including absenteeism, staff turnover and grievances) and cost the overall national economy in increased government expenditure in areas such as health, welfare and the justice system. This link has been highlighted in Australian reports relating to domestic violence,⁹² discrimination,⁹³ and the life expectancy gap between Indigenous and non-Indigenous Australians.⁹⁴

In particular, two of these reports by Access Economics have estimated:

- the economic cost of domestic violence to the Australian economy from 2002-03 as \$8.1 billion, of which \$175 million was borne by employers and \$848 million by the federal Government; and
- closing life expectancy gap between Indigenous and non-Indigenous Australians, estimated by Access Economics to be 19 years,⁹⁵ by 2029, would boost national income by around \$10 billion (as a result of a 1% increase in the GDP with increased Indigenous employment) and improve state and federal Government budgets by \$8.3 billion due to associated increases in government revenue and savings in government expenditure.⁹⁶

Delivering public services within a human rights framework has also been shown in the UK to save government expenditure by reducing the risk of complaints and litigation relating to those services.⁹⁷

A Charter of Rights provides a human rights framework for operation of the public sector, thereby providing a mechanism for addressing and minimising human rights breaches. Associated savings in the overall Australian economy are likely to flow to businesses—especially through the enlarging of markets for their goods and services, in their capacity as employers and in their dealings with the federal Government more generally.

6.5. Scope of a Charter of Rights

It is generally, but not universally, accepted that non-human entities (like corporations) cannot claim the direct protection of human rights. This is based on the premise that human rights are designed to protect 'human dignity'. Self evidently, this can only apply to humans.⁹⁸ Protecting the rights of commercial entities, such as corporations, is also crucial to the social and economic wellbeing of any liberal democracy. However, in the drafting of the Victorian Charter for example, it was decided that those rights are better addressed in other areas of law.⁹⁹

This is the dominant approach in Australian law. The Australian Law Reform Commission recently reinforced this position, arguing that to ascribe human rights to corporations undermines fundamental principles of commercial law (including the protection to corporations and their members of separate legal personality), as well as the core principles of human rights law.¹⁰⁰ In addition, the Victorian Court of Appeal commented that a claim by Channel 9 to benefit from the freedom of expression set out in the Victorian Charter, in its appeal against a suppression order to prevent the airing of the television series 'Underbelly', was "*highly unlikely*" to be upheld by the Court.¹⁰¹ The Court also commented that, if Channel 9 had been able to claim the freedom of expression protected in the Victorian Charter, this right would have been temporarily curtailed so as to guarantee a fair trial for the defendant.

In contrast, in some other countries, certain human rights have been found to extend to corporations. For example, under the *Canadian Charter of Rights and Freedoms*, the right to freedom of expression was found to extend to commercial expression by corporations.¹⁰² Similarly, under South Africa's constitutionally-entrenched *Bill of Rights 1996*, 'other legal persons' (such as corporations) can claim the direct benefit of the rights provided for, but only to the extent required, taking into account the nature of the right and the entity claiming protection.¹⁰³

This is a matter on which the business community should voice its opinion. There is a real risk, of course, that to extend the protection of human rights to non-human entities would introduce uncertainty into the application of a Charter.¹⁰⁴ In addition, the protection of business rights under a Charter might interfere with the legitimate regulation of commercial activity by the government for matters such as improving public health, consumer protection and the environment.¹⁰⁵ For example, in Canada, freedom of commercial expression was successfully relied upon by tobacco manufacturers in a case in which the Supreme Court of Canada struck down a Canadian law that broadly prohibited all advertising and promotion of tobacco products subject to specific exceptions.¹⁰⁶

7. What will compliance with a Charter of Rights mean to business?

Generally speaking, a Charter of Rights would not directly impact business or the private sector. A Charter would only apply to a business if it is classified as a 'public authority' or it takes steps to bind itself to the Charter (either contractually or by opting in to the Charter regime).¹⁰⁷ This means that businesses are very unlikely to be required to comply with a Charter in their day-to-day activities. Nevertheless, a Charter of Rights may have some direct and indirect impacts on the activities of the businesses.

7.1. Direct impacts on business activities

If a business is required to comply with a Charter of Rights, this will mean that, when acting in its capacity as a 'public authority', it will need to give due consideration to Charter Rights.¹⁰⁸ As already noted, under the dominant model, breach of a Charter Right will not provide a freestanding right to damages.

Nevertheless, the business sector would be understandably concerned if even this level of compliance caused unreasonable costs. In relation to the right to privacy, the business community saw the cost of compliance as a major impediment when reforms were introduced in 1999 to require the private sector to respect the privacy rights of individuals.¹⁰⁹ The exact nature and size of such costs will vary greatly depending on factors including: the particular regime imposed; the type of business operations involved; and the extent to which business already protects human rights.¹¹⁰ However, as was the case in the reforms to federal privacy law, these costs need to be weighed against:

- (i) the direct and indirect benefits to the Australian community more generally of a human rights approach, including those benefits to business outlined in part 6 of this paper; and
- (ii) the fact that all other comparable overseas jurisdictions – including the United Kingdom, New Zealand and Canada – have a national charter of rights and there is no evidence to suggest that this has placed an unreasonable burden on business.¹¹¹

For the vast majority of businesses, there is no evidence to suggest that the imposition of a federal Charter of Rights would impose *any* cost of compliance. This is because the Charter will impose no obligations on the vast majority of businesses.

Under a Charter of Rights, those relatively few businesses that act as public authorities would be required not to violate Charter Rights when acting pursuant to statute. This is highly unlikely to impose anything other than minimal additional compliance costs. There are several reasons for this. First and foremost, irrespective of the existence of a Charter of Rights, most businesses do not infringe human rights, and have no intention of doing so. Secondly, the vast majority of businesses are already subject to regulation that prohibits them from breaching human rights – even if this is not the language that the regulation uses. Thirdly, it is likely that, if Australia adopted a Charter of Rights, the Government would follow the lead of other jurisdictions by ensuring that there is freely available advice to explain to business their rights and obligations.

For example, a number of organisations – including the BLIHR and International Business Leaders Forum (IBLF) at an international level, and the Victorian Equal Opportunity and Human Rights Commission with respect to the Victorian Charter – have developed guidance to assist the integration of human rights into business practice. That guidance includes:¹¹²

- *an explanation of human rights fundamentals.* This provides assistance in understanding the business case for human rights and why corporations might want to integrate human rights into their activities. It is informed by factors such as its relevant aims and objects, legal and funding requirements and the needs, demands and requirements of the various stakeholders in its sphere of influence.¹¹³ Obtaining the full support of senior management is critical in making sustainable progress on human rights within the business, along with shared understanding among the staff of the advantages of a human rights approach and active participation in its implementation;¹¹⁴ and
- *advice on how to implement a human rights approach.* This would involve:
 - developing a human rights strategy informed by the human rights-related risks (related to breaches of human rights) and opportunities (in protecting human rights) relevant to the business and priorities for action;
 - incorporating the human rights approach into policies, processes and procedures;
 - communicate the human rights approach both internally and externally (including via training and reporting);¹¹⁵

- the provision of training to ensure a shared understanding of the human rights approach and its importance to the business;
- measuring human rights impacts across the business (including via audits);
- reporting business performance on the human rights approach to enhance transparency; and
- providing grievance mechanisms for the various stakeholders in the business' sphere of influence.

Case Study: Hewlett-Packard (HP)¹¹⁶

In its human rights policy, HP “*supports and respects the protection of international human rights within the sphere of [its] influence*”. HP developed a supply chain Social and Environmental Responsibility (**SER**) conformance program, with a view to extending its commitment to corporate social responsibility and human rights to its global supply chain. This included developing the HP Supply Chain SER Policy,¹¹⁷ and then co-developing an Electronic Industry Code of Conduct (**EICC**). The EICC sets out standards for the electronics industry global supply chain, including for workers’ rights, health and safety and supplier’s management, audits and ethics. The EICC has been adopted by a number of electronics manufacturers, including Cisco, Dell, HP, IBM, Microsoft and Sony.¹¹⁸ According to HP, “[s]trengthening the social and environmental performance of our suppliers yields significant benefits for HP. It protects our reputation and keeps our lines of supply open. It also can create efficiencies, decrease costs and strengthen partnerships”. This was supported by a case study of three of HP’s suppliers in China, which were focussed on achieving full SER compliance.¹¹⁹ Two of these suppliers reported “quick wins” by improving health and safety practices, in the reduction of the number of days of lost productivity. There was also reported to be a longer-term view among many personnel interviewed that SER labour practices which improved workplace conditions, could help to reduce or limit attrition in the future, with the possibility of significant cost savings.¹²⁰

7.2. Indirect ‘horizontal’ impact on business activities

Businesses may be indirectly impacted by a Charter of Rights, given the human-rights framework a Charter imposes on the operation of the public sector. As noted above, Charters of Rights generally include an ‘interpretive provision’, which requires that other laws be interpreted compatibly with Charter Rights – wherever possible and consistently with the purpose of the other law in question. In this way, a Charter of Rights can have some ‘horizontal effect’¹²¹ in proceedings between private (or non-government) parties.

In this way, Charter-compliant federal law may affect business activities, such as laws relating to occupational health and safety, industrial relations, trade practices and consumer protections. Complying with these laws will require the business to ensure that its policies, practices and procedures are compatible with the specific laws in question.

8. Myths and misconceptions

8.1. “A Charter is unnecessary to protect human rights”

Some have argued that an Australian Charter of Rights is unnecessary because the combination of existing legislation, the common law and Australia’s robust democracy do the job already. For example, the former Commonwealth Attorney-General Daryl Williams emphasised the special role of the common law in protecting human rights, stating that recourse to the common law is “*the traditional method by which the courts have provided justice to individuals in disputes with each other or with governments*”.¹²²

However, the common law provides insufficient, patchy human rights protection.¹²³ Moreover, the gaps in human rights protection in Australia are so significant that these claimed protections are insufficient. Current Australian human rights laws are ad hoc, limited and selective, protecting some human rights but not others. It is also hard to navigate, being

scattered through many instruments, including the Constitution (which contains limited rights to jury trial in federal offences and some implied rights, like the freedom of political communication) and primary legislation (such as laws on anti-discrimination, privacy, occupational health and safety and equal opportunity obligations, criminal procedural and evidence).¹²⁴

There is no single legal instrument that articulates the human rights held by all persons in Australia. In prosperous economic times, the vast majority of people may take their human rights for granted. However, for more disadvantaged groups, and more broadly in an economic crisis, the protections granted by a legally recognised and protected set of human rights become increasingly important. Comprehensive human rights protection is especially important for marginalized and disadvantaged people in the Australian community. This is especially so, given that many – including children, people who are homeless, a large number of Indigenous people, people with mental illness or disabilities, elderly people and asylum seekers – have inadequate resources to enforce their rights.¹²⁵

Australia is one of the wealthier nations in the world and does not have an overt culture of human rights violations. Nevertheless, Australia does not have a perfect record on human rights, nor are human rights adequately protected against future violation. Human rights problems in Australia include: discriminatory practices in health and housing; inadequate protection of the rights of people in aged or other care; the mandatory detention of asylum seekers; mistaken detention under immigration laws (such as Cornelia Rau); mandatory sentencing for minor property crimes in the Northern Territory (disproportionately affecting Indigenous peoples); prisoners denied the right to vote; and the enactment of poorly balanced anti-terrorism laws (fostering dramatic restrictions on personal liberties).¹²⁶ Further, since 1990, the UN Human Rights Committee has heard almost 50 complaints against Australia and in 17 of these cases it found Australia had violated human rights under the ICCPR.¹²⁷

For all Australians, a national Charter of Rights has the potential to improve public services and enhance government decision making by improving transparency, responsiveness and accountability in government.¹²⁸ This presents benefits to business both in terms of the corresponding savings to the overall national economy, and the improvement in the regulatory environment within which business functions.¹²⁹

8.2. “A Charter undermines parliamentary supremacy”

Some, such as former NSW Premier Bob Carr, have expressed concern that a Charter of Rights would undermine the doctrine of parliamentary supremacy, giving too much power to the judiciary at the expense of the democratically-elected parliament.¹³⁰ However, there is almost no evidence to suggest that the dominant Charter of Rights model would do any such thing. First, under this model, the courts would not be given the power to ‘strike down’ or invalidate legislation. While in cases of irreconcilable inconsistency between the Charter of Rights and another statutory provision, a higher court may make a declaration to this effect (as discussed in part 4.3), this would not usurp the power of Parliament. It would simply require a response from the relevant responsible minister, with the federal Parliament retaining the final say as to whether to amend the law or not. In addition, under the dominant Charter of Rights model the courts and tribunals would be unlikely to have the power to award damages (as discussed in part 4.4).

As such, a Charter of Rights would not undermine the democratic process, but instead may “*improve quality of democracy by requiring human rights standards to be taken into account in governmental actions and policy*”.¹³¹

Early evidence shows that the Victorian and ACT Charters have “*primarily affect[ed] the development of government policy, the drafting and adoption of legislation, and the delivery of services to the community*” with the courts playing a vital but secondary role.¹³²

8.3. “A Charter will be a *lawyers’ picnic*”

Concern has been expressed that the only real beneficiaries of a Charter of Rights would be lawyers, because the introduction of a Charter would lead to an increase in the work that they would be able to do – and charge for.¹³³ However, in the past 20 years, a number of jurisdictions in the Commonwealth have enacted charters of rights. There is no evidence suggesting that this has led to a flood of litigation (and consequent increase in lawyers’ fees). Research, following the early years of operation of the ACT Charter, Victorian Charter and UK Charter, shows that the introduction of a Charter has resulted in only a statistically-insignificant increase in litigation.¹³⁴

Rather than pursuing human rights through the courts and tribunals, the greatest impact of a Charter of Rights would most likely be beyond the court room in “*challenging the rigid application of policies in ways that ignore the realities of human lives*”.¹³⁵ Case studies collected by the British Institute of Human Rights show the successful challenges that have been made (outside the courts) to policies that breached the rights of vulnerable persons with mental and physical disabilities, residing in care homes and asylum seekers.¹³⁶

8.4. “A Charter will be a Trojan horse for a constitutional bill of rights”

Some concern has been expressed that a Charter of Rights is merely a ‘Trojan horse’ for a constitutional bill of rights.¹³⁷ However, this argument seems ungrounded in fact. A Charter is not proposed as a means of obtaining all the features of a constitutional bill of rights without following the legal procedure for constitutional amendment, including a national referendum.¹³⁸ On the contrary, there are marked differences between a statutory Charter of Rights and a constitutionally-entrenched bill of rights. The most significant of these is that a constitutional bill would give substantially more power to the courts to invalidate non-compliant laws.

There seems a general consensus among advocates of enhanced human rights protection in Australia that a Charter of Rights provides the appropriate vehicle for achieving this as it can be more easily “*updated and improved with the benefit of experience and in line with changing community thinking*”.¹³⁹ A constitutional bill of rights tends to be resistant to change and becomes outdated due to the difficulties in obtaining majority support for its amendment.¹⁴⁰ A Charter of Rights would likely include a mechanism for review and change over time.¹⁴¹

9. Why should business participate in the National Human Rights Consultation?

9.1. About the Consultation

The Government has appointed an independent Committee, chaired by Father Frank Brennan AO, and composed also of Mary Kostakidis, Mick Palmer AO APM and Tammy Williams. Their brief is to implement a broad Australia-wide community consultation that asks the following questions:

- Which human rights (including corresponding responsibilities) should be protected and promoted?
- Are human rights currently sufficiently protected and promoted?
- How could Australia better protect and promote human rights?

The Committee will consider, among other things, whether Australia should have a statutory Charter of Rights. Submissions to the Committee are due by 15 June 2009 and the Committee will make its recommendations to the Australian Government by 31 August 2009. Further information along with up-to-date news about the consultation is available at the Consultation website: www.humanrightsconsultation.gov.au.

9.2. Why participate?

The Consultation Committee wants to hear from all Australians. Since business is the economic driver of the country, it has an important perspective to contribute to the debate. Human rights breaches impact the sphere in which business operates, including business productivity and the overall national economy.¹⁴² In addition, as highlighted by Telstra's submission to the Consultation Committee, it is important for business to participate in this debate as its actions directly affect the lives and livelihoods of all Australians including its owners, employers, customers and other stakeholders who represent or interact with business.¹⁴³

Given the increasing awareness of human rights both internationally and within Australia and the impact that corporations have on these rights all around the world (as discussed in part 5.3 of this paper), it is important that the business community engages with these issues. To ignore human rights is a business risk,¹⁴⁴ with the potential for lost opportunities.

Finally, active engagement will allow business to contribute to shaping the debate and have its say. This paper is designed to inform business about the Consultation and how a federal Charter of Rights would work and impact business. The evidence indicates that a federal Charter of Rights makes good business sense. However, whether or not a business agrees with this analysis, it is important that it participates in this consultation.

Case Study: Telstra Corporation Limited (Telstra)¹⁴⁵

Telstra has lodged a submission with the Consultation Committee. In its submission, Telstra considers it unremarkable that companies (large and small) contribute to the human rights debate, given that these companies occupy a core part in the Australian economy, play an integral role in the protection and promotion of human rights and their actions directly affect the lives and livelihoods of all Australians. Telstra submits that human rights are worth protecting and that the principle of responsible government alone has not been sufficient to protect them. It submits that Australians would benefit from a Charter to provide greater clarity about the protection of human rights in Australia, and enhance scrutiny of the federal Government. It considers the UDHR is a "*useful touchstone*" for considering which rights should be protected, but notes that it is particularly interested in due process and free speech due to its heavy regulation. Telstra considers a Charter can engender a culture in the governmental sphere characterised by administrative accountability and transparency.

9.3. How to participate?

The Government seeks the views of all Australians and so it is important that your business has its say. Your business may:

- lodge a submission that answers the Consultation's key questions as outlined above, based on the experiences of your business, its members and clients and the sector of the Australian community your business is involved in; and/or
- register to attend and participate in the Committee's community town hall-style meetings, (the details for those meetings are set out on the 'Calendar of events' page of the website: www.humanrightsconsultation.gov.au).

9.4. Examples of questions relevant to a business submission

There are a number of questions that the Consultation Committee must address, and on which the business community have specific expertise and experience. These questions, in particular, are the ones on which the business sector could be of greatest assistance to the Committee, and have the most significant impact in this reform process. Such questions include:

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

- Which human rights are most relevant to your business?

- Are there any responsibilities that should be recognised in law or by other means?
- (b) *Are human rights currently sufficiently protected and promoted?*
- In the experience of your business, are there certain human rights that are inadequately protected? Can you give specific examples of this?
 - Who should be able to claim the direct protection of a Charter of Rights? For example, how should a Charter of Rights impact business?
- (c) *How could Australia better protect and promote human rights?*
- How can human rights be better protected in Australia? For example, should a Charter of Rights be enacted federally?
 - What should be the corresponding roles of the public and private sectors in better protecting human rights? For example, if a Charter of Rights were enacted federally, to what extent should it apply to the private sector? How broad should be the definition of ‘public authority’?¹⁴⁶
 - In the experience of your business, if a person’s human rights are breached, what avenues of complaint and corresponding remedies should be available to them?

9.5. About the Australian Human Rights Group (AHRG)

The AHRG is a network of organisations and individuals committed to enhancing Australia’s legislative protection of human rights. It provides assistance to organisations that are interested in the National Human Rights Consultation, and in the human rights law reform process. The AHRG’s core aims and beliefs are:

1. Australia needs better legislative protection of human rights;
2. The AHRG aims to enable the community to share their views on how best to protect human rights in Australian law; and
3. The Australian Parliament should pass a comprehensive Human Rights Act.

To obtain further information about the AHRG, please contact the the AHRG’s campaign coordinator (Julie Walsh) at ahrg.info@gmail.com.

Appendix I: Internationally-recognised rights and their relevance to business

The materials presented in this appendix are derived from the resources developed by the following organisations:

- the Castan Centre for Human Rights Law, the International Business Leaders Forum, the Office of the United Nations High Commissioner for Human Rights and the UN Global Compact Office¹⁴⁷ (for understanding the relevance to business of international human rights law); and
- the Victorian Equal Opportunity & Human Rights Commission¹⁴⁸ for understanding the business relevance of the Victorian Charter.

The following table sets out provisions in the ICCPR and ICESCR (excluding articles concerned with overarching principles, procedural or organisational matters) and their relevance in a business context. The business activities listed are for example only and are not definitive. The fact that they may be relevant to a corresponding right does not in itself mean that the right in question will be breached or unreasonably limited.¹⁴⁹

International Covenant on Civil and Political Rights (ICCPR)

Article Number	Human Rights	Business activity that may be impacted	In Victorian Charter? ¹⁵⁰
	All ICCPR human rights	<ul style="list-style-type: none"> • <u>offshoring</u>: conducting activities in countries that violate these human rights and is complicit or derives a benefit from the violations.¹⁵¹ 	
1	Right of self-determination Includes the right of peoples: <ul style="list-style-type: none"> • to pursue social, economic and cultural development; • to dispose of their land's natural resources and wealth; • not to be deprived of their own means of subsistence. 	<ul style="list-style-type: none"> • <u>respect of cultural property</u>: conducting activities on lands that have traditional significance to the peoples that inhabit the area, with government approval, but without consultation and consent of those peoples, such as building facilities on that land or extracting natural resources from that land.¹⁵² 	X
6	Right to life	<ul style="list-style-type: none"> • <u>workplace conditions</u>, including occupational health and safety and security measures; • <u>manufacture of products</u>: products are sold with lethal flaws or are misused by buyers in ways the business could or should have foreseen would impinge on the right to life;¹⁵³ • <u>service delivery</u>: including the accessibility of services if they impact on the right to life and engaging in services that involve the management of persons held in your care.¹⁵⁴ 	√
7	Right not to be subjected to torture, cruel, inhumane or degrading treatment or punishment and against medical	<ul style="list-style-type: none"> • <u>workplace conditions</u>, including occupational health and safety: subjects staff to severe harassment or dangerous working conditions 	√

Article Number	Human Rights	Business activity that may be impacted	In Victorian Charter? ¹⁵⁰
	or scientific experimentation without free consent	<p>causing serious mental distress and anguish;¹⁵⁵</p> <ul style="list-style-type: none"> • <u>medical or scientific research</u>, especially on children and other vulnerable people: conducts experimentation without consent; • <u>service delivery</u>: removes or restricts the right to complain about service delivery; conducts activities in a manner that may cause serious physical or mental pain or suffering, or humiliate or debase a person; authorises and/or conducts personal searches.¹⁵⁶ 	
8	Right not to be subjected to slavery, servitude or forced labour	<ul style="list-style-type: none"> • <u>workplace conditions</u>: makes direct use of slaves, forced, bonded or involuntary prison labour or benefits from their use by suppliers or subcontractors; compels the provision of labour under threat of a penalty.¹⁵⁷ 	√
9	Rights to liberty and security of person	<ul style="list-style-type: none"> • facilitates the arbitrary or unlawful detention of persons;¹⁵⁸ • <u>workplace conditions</u> including occupational health and safety and security measures: provides inadequate security and staff are physically attacked; threatens staff with physical violence; is complicit in instances of severe harassment by others such as contracted security personnel or other employees.¹⁵⁹ 	√
10	Right of detained persons to humane treatment	<ul style="list-style-type: none"> • <u>service delivery</u>: engages in operation of detention facilities including management services for prisons or psychiatric hospitals.¹⁶⁰ 	√
11	Right not to be subjected to imprisonment for inability to fulfil a contract	Directed to government and unlikely to be relevant to business activities.	√
12	Right to freedom of movement Includes the right to: <ul style="list-style-type: none"> • enter one's own country; • move freely throughout the country; • choose where to live within the country; • leave the country. 	<ul style="list-style-type: none"> • conducts activities that require the relocation of communities;¹⁶¹ • <u>workplace conditions</u>: withholds employee's passport or travel documents;¹⁶² • <u>workplace conditions or service delivery</u>: limits the ability of a person to choose where to live in Australia; performs surveillance of a person's movements; limits a person's ability to move through, remain in, enter or depart from public spaces or their private land.¹⁶³ 	√
13	Right of aliens to due process when facing expulsion	Directed to government and unlikely to be relevant to business activities.	X
14	Right to a fair trial	Directed to government and unlikely to be directly relevant to business activities but should be considered in formation of policies, procedures and practices related to disputes with third parties (such as clients and	√

Article Number	Human Rights	Business activity that may be impacted	In Victorian Charter? ¹⁵⁰
		employees) including grievance mechanisms and litigation and staff disciplinary actions and termination.	
15	Freedom from retroactive criminal law	Directed to government and unlikely to be relevant to business activities.	√
16	Right to recognition as a person before the law	Directed to government and unlikely to be directly relevant to business activities but should be considered in applying policies, procedures and practices to persons (including clients and employees) in a way that does not discriminate socially, culturally or economically.	√
17	<p>Right to privacy</p> <p>Includes right to protection against:</p> <ul style="list-style-type: none"> • arbitrary or unlawful interference with privacy, family or correspondence; • unlawful attacks on honour and reputation. <p>Note a broad approach has been taken to the meaning of 'private life' in the European Convention (and by incorporation the UK Charter) such that intrusions into the public sphere through environmental damage may interfere with an individual's private life.¹⁶⁴</p>	<ul style="list-style-type: none"> • <u>workplace conditions or service delivery</u>: manages collection, access, use and disclosure of personal information (including of clients, employees, patients); performs surveillance of a person (such as closed-circuit television, CCTV).¹⁶⁵ 	√
18	<p>Freedom of thought, conscience and religion</p> <p>Note a narrow interpretation has been taken of the right to manifest one's belief in the context of employment contracts in the European Convention (and by incorporation the UK Charter).¹⁶⁶</p>	<ul style="list-style-type: none"> • <u>workplace conditions</u>: unreasonably restricts the capacity of employees to comply with the requirements of their religion (such as the ability to pray during breaks from work); disadvantages an employee on the basis of their opinions, thoughts or beliefs on a matter; requires certain types of conduct that may conflict with an employee's religion or beliefs (such as unreasonable dress codes);¹⁶⁷ • <u>workplace conditions or service delivery</u>: imposes conditions on receiving a benefit, which prevents a person from adhering to their religion or belief.¹⁶⁸ 	√
19	Freedom of opinion and expression	<ul style="list-style-type: none"> • <u>workplace conditions</u>: imposes an unreasonable dress code; disadvantages an employee on the basis of their opinions;¹⁶⁹ • <u>service delivery</u>: in particular, where media, internet and communications businesses engage in the delivery of information 	√

Article Number	Human Rights	Business activity that may be impacted	In Victorian Charter? ¹⁵⁰
		services that unreasonably regulates or restricts a person's access to information (including access to material on the internet) or unreasonably censors or regulates the format of a person's expression (such as blogs), except as required by law. ¹⁷⁰	
20	Freedom from war propaganda, and freedom from incitement to racial, religious or national hatred	<ul style="list-style-type: none"> • <u>workplace conditions</u>: turns a blind eye to an employee's use of 'hate speech' where it is likely to affect another employee;¹⁷¹ • <u>service delivery</u>: engages in the operation of media, internet and communications businesses involved in public communications.¹⁷² 	X
21	Freedom of assembly	<ul style="list-style-type: none"> • <u>workplace conditions or service delivery</u>: limits the ability of a person or group of persons to protest peacefully or to come together for a common purpose.¹⁷³ 	√
22	Freedom of association Note that this right has been interpreted in the European Convention (and by incorporation the UK Charter): <ul style="list-style-type: none"> • to include a right to non-association;¹⁷⁴ • but not prevent the compulsory membership of professional regulatory bodies set up by the state.¹⁷⁵ 	<ul style="list-style-type: none"> • <u>workplace conditions or service delivery</u>: treats people differently on the basis of their membership of a group or association (including political parties, religious societies, sporting clubs and trade unions); prohibits or compels membership of a group or association.¹⁷⁶ 	√
23	Rights of protection of the family and the right to marry	<ul style="list-style-type: none"> • <u>workplace conditions</u>: hinders the ability of employees to adopt a healthy work/life balance and spend adequate time with family;¹⁷⁷ • <u>service delivery</u>: engages in services that regulate obligations between family members (including guardianship of children) and family contact arrangements (including intervention orders).¹⁷⁸ 	√
24	Rights of protection of the child	<ul style="list-style-type: none"> • <u>workplace conditions</u>: not observe minimum ages for employment; engage children to do work that is hazardous or arduous; deny children the opportunity of education;¹⁷⁹ • <u>service delivery</u>: engages in services that regulate obligations between family members (including guardianship of children) and family contact arrangements (including intervention orders).¹⁸⁰ 	√
25	Right to participate in public life	<ul style="list-style-type: none"> • <u>workplace conditions</u>: limits employee's ability to vote;¹⁸¹ • <u>service delivery</u>: in particular media businesses, ensuring balanced reporting (such as not restricting the airing of diverse political opinions); offers kickbacks or bribes to politicians or their parties.¹⁸² 	√

Article Number	Human Rights	Business activity that may be impacted	In Victorian Charter? ¹⁵⁰
26	Equality before the law, equal protection of the law and rights of non-discrimination	<ul style="list-style-type: none"> <u>workplace conditions</u>: recruitment, pay and training of employees discriminates socially, culturally or economically; employees disciplined without fair practices.¹⁸³ <u>service delivery</u>: delivery of service or relationship with business partners discriminates socially, culturally or economically.¹⁸⁴ 	√
27	Rights of minorities Includes recognising the rights of ethnic, religious or linguistic minorities to enjoy their culture, to practise their religion and to use their own language.	<ul style="list-style-type: none"> <u>workplace conditions or service delivery</u>: limits a person's ability to observe their religious or cultural practices or to declare their affiliation to a particular racial, religious or cultural group; limits or prohibits communication in languages other than English; interferes with Indigenous people's relationship with land, water and resources.¹⁸⁵ 	√

International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article Number	Human Right	Business activity that may be impacted	In Victorian Charter? ¹⁸⁶
	All ICESCR human rights	<ul style="list-style-type: none"> <u>offshoring</u>: conducts activities in countries that violate these human rights and is complicit or derives a benefit from the violations.¹⁸⁷ 	
1	Right to self-determination	See discussion on Article 1 (Right to self-determination) of the ICCPR.	X
6	Right to work Does not guarantee everyone a job but that full employment be an explicit aim of the government promoted through steps such as vocational guidance and training. ¹⁸⁸	<ul style="list-style-type: none"> <u>workplace conditions</u>: dismiss staff arbitrarily or unfairly.¹⁸⁹ 	X
7	Right to enjoy just and favourable conditions of work Includes the right to a fair wage, equal pay; safe and healthy working conditions and holidays with pay.	<ul style="list-style-type: none"> <u>workplace conditions</u>: does not observe minimum wage, equal opportunity and occupational health and safety policies.¹⁹⁰ 	X
8	Right to form trade unions and join a trade union, and the right to strike	<ul style="list-style-type: none"> <u>workplace conditions</u>: prevents union membership and activity amongst employees.¹⁹¹ 	√ [as part of ICCPR Art 22]
9	Right to social security, including social insurance	Directed to government and unlikely to be directly relevant to business.	X
10	Right to a family life	<ul style="list-style-type: none"> <u>workplace conditions</u>: hinders the ability of employees to adopt a 	√ [as part of

Article Number	Human Right	Business activity that may be impacted	In Victorian Charter? ¹⁸⁶
	Includes: <ul style="list-style-type: none"> widest possible protection and assistance for families; maternity leave (paid or with social security benefits); prohibits the economic and social exploitation of children including work that is harmful to morals/health, dangerous or likely to hamper normal development. 	<p>healthy work/life balance and spend adequate time with family; not observe minimum ages for employment; engage children to do work that is hazardous or arduous; deny children the opportunity of education;¹⁹²</p> <ul style="list-style-type: none"> <u>service delivery</u>: engages in services that regulate obligations between family members (including guardianship of children) and family contact arrangements (including intervention orders).¹⁹³ 	ICCPR Art 23; ICCPR Art 24]
11	Right to adequate standard of living Includes: <ul style="list-style-type: none"> adequate food, clothing, housing and continuous improvement of living conditions; and has been interpreted to extend to sufficient water and sanitation.¹⁹⁴ 	<ul style="list-style-type: none"> <u>workplace conditions</u>: provide basic needs for workforce or local community that is inadequate (including housing, food, water);¹⁹⁵ <u>service delivery</u>: engage in relocations or forced evictions; core business is the supply of food or water services that are inadequate; pollute or otherwise interfere with local supplies of food or water.¹⁹⁶ 	X
12	Right to health Includes the right to the highest attainable standard of physical and mental health.	<ul style="list-style-type: none"> <u>workplace conditions</u>, including occupational health and safety: conditions inadequate and harmful to employees health;¹⁹⁷ <u>manufacture of products</u>: products are sold with lethal flaws or are misused by buyers in ways the company could or should have foreseen would impinge on the right to health;¹⁹⁸ <u>service delivery</u>: including the accessibility services if they may impact on the right to health and engaging in services that involve the management of persons held in its care.¹⁹⁹ 	X
13-14	Right to education	<ul style="list-style-type: none"> <u>workplace conditions</u>: provision of education to children of workers respects equality of access to education;²⁰⁰ <u>service delivery</u>: engages in operation of educational services.²⁰¹ 	√ [as part of ICCPR Art 24]
15	Right to participate in cultural life, to benefit from scientific progress and the right to protection of moral and materiel interests of authors and inventors	<ul style="list-style-type: none"> <u>workplace conditions or service delivery</u>: limits a person's ability to observe and take part in their cultural practices; interferes with Indigenous people's relationship with land, water and resources.²⁰² 	√ [as part of ICCPR Art 27]

Endnotes

- ¹ Department of Justice (Victoria), *Rights, Responsibilities and Respect. The Report of the Human Rights Consultation Committee* (2005) 3.
- ² See <http://www.ohchr.org/EN/ProfessionalInterest/Pages/InternationalLaw.aspx> for the full text of these international instruments. A summary is provided in Appendix A.
- ³ See: ACT Department of Justice and Community Safety, *Towards and ACT Human Rights Act: Report of the ACT Bill of Rights Consultative Committee* (2003); Department of Justice, *Rights, Responsibilities and Respect. The Report of the Human Rights Consultation Committee* (2005); Department of the Attorney General (WA), *A WA Human Rights Act, Report of the Consultation Committee for a Proposed WA Human Rights Act* (2007); Tasmanian Law Reform Institute, *A Charter of Rights for Tasmania* (2007).
- ⁴ Both the Tasmanian Law Reform Institute and the Western Australian Consultation Committee recommended the adoption of a Charter of Rights in their respective states.
- ⁵ Further discussed in part 9.1 of this paper.
- ⁶ George Williams, *A Charter of Rights for Australia* (2007) 51.
- ⁷ In this paper, unless stated otherwise, the term 'business' is intended to encompass corporations, as well as other commercial entities and associations of people.
- ⁸ As discussed in part 8.1 of this paper.
- ⁹ Australian Human Rights Commission, *Let's talk about rights: A toolkit to help individuals and groups participate in the Australian Government's National Human Rights Consultation* (2009) 10-11.
- ¹⁰ As explained in part 8.2 of this paper.
- ¹¹ The United Kingdom Act incorporates the *European Convention for the Protection of Human Rights and Fundamental Freedoms* (**European Convention**), which contains many of the same human rights as the ICCPR.
- ¹² As discussed further in part 8.4 of this paper.
- ¹³ This was the case in the Victorian Charter. See Department of Justice, *Rights, Responsibilities and Respect. The Report of the Human Rights Consultation Committee* (2005) iii. Also refer to part 9.1 of this paper for a discussion on the Consultation.
- ¹⁴ Explanatory Memorandum. *Charter of Human Rights and Responsibilities Bill 2006* (Vic) 1.
- ¹⁵ See Victorian Charter s 6(1). Also see Department of Justice, *Rights, Responsibilities and Respect. The Report of the Human Rights Consultation Committee* (2005) 50-51.
- ¹⁶ See Kevin Gray, "There's No Place Like Home!" (2007) 11(1) *Journal of South Pacific Law* 73, which discusses property rights and the debate on the extent to which governments should be able to impinge on these rights for a public purpose. See also House of Lords and House of Commons Joint Committee on Human Rights, *A Bill of Rights for the UK?* (2008), 57-59, about including the right to a healthy and sustainable environment in a UK Bill of Rights.
- ¹⁷ Professor John Ruggie, UN Secretary-General's Special Representative on Business and Human Rights, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Rights to Development* (2008) 15.
- ¹⁸ ACT Human Rights Commission, *Public Authorities Factsheet*, 15, available at <www.hrc.act.gov.au>.
- ¹⁹ United Nations Global Compact and The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 9. See also discussion in John Sherman and Chip Pitts, *Human Rights Corporate Accountability Guide: from law to norms to values* (2008) 7-10, available at <www.blihr.org>.
- ²⁰ See Victorian Charter s 7(2).
- ²¹ George Williams, *A Charter of Rights for Australia* (2007) 82; Castan Centre for Human Rights Law, the International Business Leaders Forum, the Office of the United Nations High Commissioner for Human Rights and the UN Global Compact Office, *Human Rights Translated: A Business Reference Guide* (2008) x.
- ²² See George Williams, *A Charter of Rights for Australia* (2007) 84.
- ²³ See Victorian Charter s 38(1).
- ²⁴ Explanatory Memorandum. *Charter of Human Rights and Responsibilities Bill 2006* (Vic) 1.
- ²⁵ *Coco v The Queen* (1994) 179 CLR 427.
- ²⁶ Victorian Charter s 32(1).
- ²⁷ See Victorian Charter s 36.
- ²⁸ In Victorian Charter s 37, this response must be provided within 6 months.
- ²⁹ Classification as a 'public authority' is discussed in part 5.1 of this paper.
- ³⁰ See Victorian Charter s 38(1).

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- ³¹ See Victorian Charter s 39; George Williams, *A Charter of Rights for Australia* (2007) 84.
- ³² As explained in part 8.3 of this paper.
- ³³ United Nations Global Compact and The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 9.
- ³⁴ See Victorian Charter s 4(1).
- ³⁵ Explanatory Memorandum. *Charter of Human Rights and Responsibilities Bill 2006* (Vic) 4.
- ³⁶ See discussion in Andrew Byrnes, Hilary Charlesworth and Gabrielle McKinnon, *Bills of Rights in Australia history, politics and law* (2009) 121 and 162.
- ³⁷ See Victorian Equal Opportunity & Human Rights Commission, *The Meaning of “Public Authority” under the Charter*, available at <www.humanrightscommission.vic.gov.au>; ACT Human Rights Commission, *Public Authorities Factsheet*, available at <www.hrc.act.gov.au>. Note that the UK jurisprudence to date has taken a narrow approach but the Victorian Equal Opportunity & Human Rights Commission does not consider this to be directive for interpretation of the Victorian Charter which offers a more detailed definition: see Victorian Equal Opportunity and Human Rights Commission, *The Meaning of “Public Authority” under the Charter*, 18.
- ³⁸ See discussion in Victorian Equal Opportunity and Human Rights Commission, *The Meaning of “Public Authority” under the Charter*, 14.
- ³⁹ See Victorian Charter s 38(3).
- ⁴⁰ See Victorian Charter s 38(2).
- ⁴¹ Department for Constitutional Affairs, UK, *A Guide to the Human Rights Act 1998* (3rd ed, 2006) 9.
- ⁴² See Victorian Charter s 4(1)(c), Example A.
- ⁴³ See discussions in Nicolson, R. of Allens Arthur Robinson, *The Impact of the Charter of Rights on Corporations*, a paper for the LIV Conference on the Victorian Charter of Rights (2007) 10-11; Andrew Byrnes, Hilary Charlesworth and Gabrielle McKinnon, *Bills of Rights in Australia history, politics and law* (2009) 162.
- ⁴⁴ See ACT Charter s 40D.
- ⁴⁵ See *Privacy Act 1988* (Cth) s 6EA; Also see the webpage: Office of the Privacy Commissioner, *Register of businesses that have opted into the Privacy Act coverage*, available at <www.privacy.gov.au/business/register/index.html>, at 13 January 2009.
- ⁴⁶ The UN Special Representative’s appointment was renewed in 2008 with a mandate including to “elaborate further on the scope and content of the corporate responsibility to respect all human rights and to provide concrete guidance to business and other stakeholders”; See webpage: *Mandate of UN Special Representative on business & human rights*, <www.business-humanrights.org/Updates/Archive/SpecialRepresentativeMandate>, at 9 March 2009.
- ⁴⁷ Professor John Ruggie, UN Secretary-General’s Special Representative on Business and Human Rights, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Rights to Development* (2008) 15.
- ⁴⁸ See Business Leaders Initiative on Human Rights, United Nations Global Compact and The Office of The High Commissioner for Human Rights, *A Guide to Integrating Human Rights into Business Management* (2006) 4; Business Leaders Initiative on Human Rights response to Professor John Ruggie, available at <www.blihr.org/Reports/BLIHR-statement-Ruggie-2008.pdf>.
- ⁴⁹ Business Leaders Initiative on Human Rights, United Nations Global Compact and The Office of The High Commissioner for Human Rights, *A Guide to Integrating Human Rights into Business Management* (2006) 4.
- ⁵⁰ See discussion in Castan Centre for Human Rights Law, the International Business Leaders Forum, the Office of the United Nations High Commissioner for Human Rights and the UN Global Compact Office, *Human Rights Translated: A Business Reference Guide* (2008) vii - xvii; International Business Leaders Forum, *Human Rights: It is your business, The case for corporate engagement* (2005) 1; Professor John Ruggie, UN Secretary-General’s Special Representative on Business and Human Rights, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Rights to Development* (2008) 8.
- ⁵¹ Full text available at <www.ilo.org/public/english/employment/multi/download/declaration2006.pdf>.
- ⁵² Full text available at <www.oecd.org/dataoecd/56/36/1922428.pdf>.
- ⁵³ See United National Global Compact, *Corporate Citizenship in the World Economy* (2008); available at <www.unglobalcompact.org/docs/news_events/8.1/GC_brochure_FINAL.pdf>.
- ⁵⁴ Full text available at <www1.umn.edu/humanrts/links/commentary-Aug2003.html>.
- ⁵⁵ See Professor John Ruggie, UN Secretary-General’s Special Representative on Business and Human Rights, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Rights to Development* (2008) 8.
- ⁵⁶ Full text available at <www.ifc.org/ifcext/sustainability.nsf/Content/PerformanceStandards>.
- ⁵⁷ See International Finance Corporation, *International Finance Corporation’s Policy on Social & Environmental Sustainability* (2006) 2, available at <www.ifc.org>.
- ⁵⁸ See webpage: *UN Global Compact Participants*, UN Global Compact, <www.unglobalcompact.org/ParticipantsAndStakeholders/>, at 9 March 2009.

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- ⁵⁹ See webpage: *Business Leaders Initiative on Human Rights*, <www.blihr.org>, at 9 March 2009.
- ⁶⁰ See BLIHR, *Initial Statement by BLIHR in Response to the 2008 Report of the UN Special Representative on Business and Human Rights*, available at <www.blihr.org/Reports/BLIHR-statement-Ruggie-2008.pdf>.
- ⁶¹ See webpage: *Every Human Has Rights*, <www.everyhumanhasrights.org/learn-more-about-the-every-human-has-rights-campaign>, at 9 March 2009.
- ⁶² See webpage: *Enabling Human Rights*, Ericsson <www.ericsson.com/ericsson/corporate_responsibility/communication/enabling_human_rights>, at 9 March 2009.
- ⁶³ Full text of principles available at <www.equator-principles.com/principles.shtml>. Also see list of company participants at <www.equator-principles.com>, at 15 March 2009.
- ⁶⁴ Full text of the principles are available at <www.voluntaryprinciples.org/principles/index.php>. Also see list of company participants at <www.voluntaryprinciples.org/participants/companies.php>, at 15 March 2009.
- ⁶⁵ International Business Leaders Forum, *Human Rights: It is your business: The case for corporate engagement* (2005) 2; See also webpage: *Company policy statements on human rights*, Business & Human Rights Resource Centre, <www.business-humanrights.org/Documents/Policies>, at 9 March 2009.
- ⁶⁶ Professor John Ruggie, UN Secretary-General's Special Representative on Business and Human Rights, *Human Rights Policies and Management Practices: Results from questionnaire surveys of Governments and Fortune Global 500 firms* (2007) 20-27; available at <www2.ohchr.org/english/issues/trans_corporations/reports.htm>.
- ⁶⁷ BHP Billiton, *Sustainable Development Policy* (2005), available at <sustainability.bhpbilliton.com/2006/documents/common/SustainabilityPolicy.pdf>.
- ⁶⁸ See webpage: *Human Rights*, BHP Billiton, <sustainability.bhpbilliton.com/2006/community/ourApproach/humanRights.asp>, at 9 March 2009.
- ⁶⁹ See Corporate Responsibility Index 2007, *Executive Summary*, available at <www.corporate-responsibility.com.au/PDFs/exec_summary_2007.pdf>.
- ⁷⁰ See John Sherman and Chip Pitts, *Human Rights Corporate Accountability Guide: from law to norms to values* (2008) 11, available at <www.blihr.org>. This is further discussed in part 6.3 of this paper.
- ⁷¹ Andrew Byrnes, Hilary Charlesworth and Gabrielle McKinnon, *Bills of Rights in Australia history, politics and law* (2009) 82.
- ⁷² Mark Janis, Richard Kay and Anthony Bradley, *European Human Rights Law Text and Materials* (3rd ed, 2007) 743-744. This test was set in *Ringeisen v Austria* (1971) 1 EHRR 455.
- ⁷³ Mark Janis, Richard Kay and Anthony Bradley, *European Human Rights Law Text and Materials* (3rd ed, 2007) 743-744. See *Bentham v The Netherlands* (1985) 8 EHRR 1: Applicant was granted a licence by the municipal authority to operate a liquid gas petroleum delivery system at his garage. However, an appeal was lodged by the Regional Health Inspector to the Crown against the grant of the license. The appeal was considered by a state Administrative body and the license was subsequently revoked by a Crown Decree. The European Court of Human Rights found a civil right within the meaning of Article 6(1) was at stake given the grant of the license was 'closely associated with the right to use one's possessions in conformity with the law's requirements', the proprietary character of the license and the 'direct link' between the granting of the license and the applicant's commercial activities.
- ⁷⁴ Re *AWB Limited* [2008] VSC 473.
- ⁷⁵ See discussion in Human Rights Law Resource Centre Ltd, *Bulletin*, No 34 (2009) 8, available at <www.hrlrc.org.au>
- ⁷⁶ See Frances Gibb, *Rise in companies using human rights laws to sue*, <business.timesonline.co.uk> at 26 January 2009. Note that the High Court subsequently rejected the argument that the human rights of the shareholders had been breached, but this was because of the particular facts of the compensation scheme. The shareholders are reported to be considering an appeal. See *SRM Global Master Fund LP v Commissioners of HM Treasury; RAB Special Situations (Master) Fund Ltd v Same; Grainger and others v Same* [2009] EWHC 227 (Admin); [2009] WLR (D) 55.
- ⁷⁷ This benefit to a charter of rights was highlighted in Telstra's submission to the national human rights consultation: Telstra, *In Support of a Human Rights Charter for Australia* (2008) 2-3.
- ⁷⁸ See Business Leaders Initiative on Human Rights, United Nations Global Compact, The Office of The High Commissioner for Human Rights (2006) *A Guide to Integrating Human Rights into Business Management* 4.
- ⁷⁹ John Wadham, Helen Mountfield, Anna Edmundson and Caoilfhionn Gallagher, *Blackstone's Guide to The Human Rights Act 1998* (4th ed, 2007) 143.
- ⁸⁰ See, eg, Patrick George, *Defamation Law in Australia* (2006).
- ⁸¹ United Nations Global Compact, The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 9.
- ⁸² Goldman Sachs *GS SUSTAIN* report (2007) 38, available at <www.unglobalcompact.org/docs/summit2007/g_s_esg_embargoed_until030707pdf>. Also see webpage: *GS SUSTAIN*, <www2.goldmansachs.com/ideas/environment-and-energy/g-s-sustain/>, at 10 March 2009.
- ⁸³ See International Business Leaders Forum, *Human Rights: It is your business, The case for corporate engagement* (2005) 4-9; Professor John Ruggie, UN Secretary-General's Special Representative on Business and Human Rights, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Rights to Development* (2008) 16-17, 24; Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 7-10; Business Leaders Initiative on Human Rights, United Nations Global Compact, The Office of The High Commissioner for Human Rights (2006) *A Guide to Integrating Human*

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- Rights into Business Management*, p6; Castan Centre for Human Rights Law, the International Business Leaders Forum, the Office of the United Nations High Commissioner for Human Rights and the UN Global Compact Office, *Human Rights Translated: A Business Reference Guide* (2008) viii; United Nations Global Compact, The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 8.
- ⁸⁴ See Professor John Ruggie, UN Secretary-General's Special Representative on Business and Human Rights, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Rights to Development* (2008) 17.
- ⁸⁵ United Nations Global Compact, The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007).
- ⁸⁶ This case study of Westpac Banking Corporation (**Westpac**) is drawn from the United Nations Global Compact, The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 16-25.
- ⁸⁷ For further information on this project, see website: *Indigenous Enterprise Partnerships in Cape York*, Westpac Banking Corporation, <www.westpac.com.au/internet/publish.nsf/Content/WIWCCP+Enterprise+Partnerships>, at 15 March 2009.
- ⁸⁸ This case study of Starbucks Coffee Company (**Starbucks**) is drawn from the United Nations Global Compact, The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 136-143.
- ⁸⁹ See website: *Starbucks Shared Planet*, Starbucks, <www.starbucks.com/sharedplanet/>, at 15 March 2009.
- ⁹⁰ This case study of Volkswagen AG is drawn from the United Nations Global Compact, The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 167-174.
- ⁹¹ *Declaration on Social Rights and Industrial Relationships at Volkswagen* (2002), available at <www.volkswagenag.com>.
- ⁹² Access Economics Pty Limited, *The Cost of Domestic Violence to the Australian Economy* (2004), commissioned by Australian Government's Office of the Status of Women.
- ⁹³ VicHealth, *More than tolerance: Embracing diversity for health: Discrimination affecting migrant and refugee communities in Victoria, its health consequences, community attitudes and solutions – A summary report* (2007).
- ⁹⁴ Access Economics Pty Limited, *An overview of the economic impact of Indigenous disadvantage* (2008), commissioned by Reconciliation Australia.
- ⁹⁵ Note: the Australian Human Rights Commission recent estimated the life expectancy of Indigenous Australians to be 17 years lower than that of the Australian population as a whole: see the website, *Questions and Answers about Aboriginal and Torres Strait Islander People*, Australian Human Rights Commission, <www.hreoc.gov.au/racial_discrimination/face_facts/chap1.html>, at 17 March 2009.
- ⁹⁶ This does not include the cost of government programs designed to address problems of Indigenous disadvantage.
- ⁹⁷ See UK Audit Commission, *Human Rights: Improving public service delivery* (2003); Department of Health and the British Institute of Human Rights, *Human Rights in healthcare: a framework for local action* (2007); As discussed in Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 8-10.
- ⁹⁸ Department of Justice, *Rights, Responsibilities and Respect. The Report of the Human Rights Consultation Committee* (2005) 52.
- ⁹⁹ Department of Justice, *Rights, Responsibilities and Respect. The Report of the Human Rights Consultation Committee* (2005) 52, see submission of Professor Marcia Neave and Professor Spencer Zifcak. Relevant areas of law include laws aimed at controlling business competition (such as laws relating to protecting intellectual property in business information, brands etc and the law of contracts) and government regulation of money, credit, investment markets, taxes and trade practices: see Australian Law Reform Commission, *Privacy* (1983), Report No 22, Vol 1, p44.
- ¹⁰⁰ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (2007) [7.51 – 7.60].
- ¹⁰¹ *General Television Corporation Pty Limited v DPP & Anor* [2008] VSCA 49.
- ¹⁰² *Toy Ltd v Quebec (Attorney General)* [1989] 1 SCR 927: As discussed in *RJR-MacDonald Inc v Canada (Attorney General)* [1995] 3 SCR 199.
- ¹⁰³ Department of Justice, *Rights, Responsibilities and Respect. The Report of the Human Rights Consultation Committee* (2005) Victoria 52-53; Also see *Constitution of the Republic of South Africa 1996*, Ch 2 Bill of Rights, s 8(4).
- ¹⁰⁴ Department of Justice, *Rights, Responsibilities and Respect. The Report of the Human Rights Consultation Committee* (2005) Victoria 53.
- ¹⁰⁵ Department of Justice, *Rights, Responsibilities and Respect. The Report of the Human Rights Consultation Committee* (2005) Victoria 52.
- ¹⁰⁶ *RJR-MacDonald Inc v Canada (Attorney General)* [1995] 3 SCR 199. Note that in response to this decision the Canadian Parliament enacted further laws setting out specific (rather than broad ranging) prohibitions on advertising and promotion of tobacco products, for example forbidding lifestyle advertising and promotion and advertising appealing to young persons. These laws were again challenged by tobacco manufacturers in the case of *Canada (Attorney-General) v JTI-Macdonald Corp* 2007 SCC 30. However, this time the Supreme Court of Canada upheld

the tobacco advertising law, finding its limitation on the right to freedom of expression was ‘demonstrably justified in a free and democratic society’. The Court was influenced in part by the fact that attitudes to tobacco consumption had changed since 1995, with governments internationally implementing anti-tobacco measures and an increased awareness of the public health problems posed by tobacco consumption.

¹⁰⁷ As discussed in part 5 of this paper.

¹⁰⁸ For further explanation, see parts 4 and 5 of this paper.

¹⁰⁹ Similar concerns have been expressed in subsequent inquiries; see: Senate Legal and Constitutional Affairs Committee, Commonwealth, with respect to the introduction of privacy regulation of the private sector: *Privacy in the Private Sector: Inquiry into Privacy Issues, including the Privacy Amendment Bill 1998* (1999); Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (2008).

¹¹⁰ As was stated by the Senate Legal and Constitutional Affairs Committee, Commonwealth, with respect to the introduction of privacy regulation of the private sector: *Privacy in the Private Sector: Inquiry into Privacy Issues, including the Privacy Amendment Bill 1998* (1999) [8.5].

¹¹¹ A similar approach was taken by the Australian Law Reform Commission when considering the compliance costs associated with removal of the small business exemption to the *Privacy Act* 1988 (Cth): see Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (2008) [39.139 – 39.149]. See also, George Williams, *A Charter of Rights for Australia* (2007) 51.

¹¹² Business Leaders Initiative on Human Rights, United Nations Global Compact and The Office of The High Commissioner for Human Rights, *A Guide to Integrating Human Rights into Business Management* (2006); Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008); International Business Leaders Forum, *Human Rights: It is your Business* (2005); United Nations Global Compact and The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 10-11; Also see professor John Ruggie, UN Secretary-General’s Special Representative on Business and Human Rights, *Promotion and Protection of All Human Rights, Civil, Political, Economic, Social and Cultural Rights, including the Rights to Development* (2008) 17-19 and 24-25 where it discusses the requirements on companies to discharge their corporate responsibility to respect human rights through the process of due diligence and providing effective grievance mechanisms.

¹¹³ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 11-12 and Business Leaders Initiative on Human Rights, United Nations Global Compact and The Office of The High Commissioner for Human Rights, *A Guide to Integrating Human Rights into Business Management* (2006) 8: Sphere of influence is a concept used by the United Nations Global Compact and encompasses the breadth of a businesses impact on stakeholders moving from within the business itself (employees), to its contractors (suppliers, business partners), to the community and then to the government and society.

¹¹⁴ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 15; United Nations Global Compact and The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 6.

¹¹⁵ Case studies on companies incorporating human rights into its business management, have recognised the importance of communications and enhancing transparency in relation to company performance on human rights: see United Nations Global Compact and The Office of The High Commissioner for Human Rights, *Embedding Human Rights in Business Practice II* (2007) 6.

¹¹⁶ See webpage: *HP Human rights & labor policy*, Hewlett-Packard, <www.hp.com/hpinfo/globalcitizenship/humanrights.html?jumpid=reg_R1002_USEN>, at 11 March 2009.

¹¹⁷ *Supply Chain Social and Environmental Policy* (2002), available at <www.hp.com>.

¹¹⁸ *Electronic Industry Code of Conduct* (2007), available at <www.hp.com>.

¹¹⁹ Sonali Rammohan, Global Supply Chain Management Forum, Stanford Graduate School of Business, *Business Benefits to Hewlett-Packard Suppliers from Socially and Environmentally Responsible (SER) Practices in China, A Case Study* (2008), available at <www.hp.com>.

¹²⁰ Sonali Rammohan, Global Supply Chain Management Forum, Stanford Graduate School of Business, *Business Benefits to Hewlett-Packard Suppliers from Socially and Environmentally Responsible (SER) Practices in China, A Case Study* (2008) 2, available at <www.hp.com>.

¹²¹ See Department of Constitutional Affairs, *A Guide to the Human Rights Act 1998* (2006) 3rd ed, p37, which defines the term ‘horizontal effect’ as the effect whereby European Convention rights can be invoked in proceedings between private parties, to the extent that the courts are required to interpret legislation as far as possible compatibly with the European Convention Rights. It is contrasted with vertical proceedings brought by an individual to enforce obligations owed to him/her by the state.

¹²² Daryl Williams, ‘Recognising Universal Rights in Australia’ (2001) 24 *University of New South Wales Law Journal* 771, 773.

¹²³ See, eg, Dina Yehia, ‘Do we need a Charter of Rights’ (2007-2008) *Bar News* 17.

¹²⁴ George Williams, *A Charter of Rights for Australia* (2007) 35-50; Andrew Byrnes, Hilary Charlesworth and Gabrielle McKinnon, *Bills of Rights in Australia history, politics and law* (2009) 36.

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- ¹²⁵ Human Rights Law Resource Centre, *Brief: A federal Charter of Human Rights and a National Consultation on the Recognition and Protection of our Rights and Responsibilities* (2008) 5, available at <www.hrlrc.org.au>.
- ¹²⁶ George Williams, *A Charter of Rights for Australia* (2007) 18-33.
- ¹²⁷ See New South Wales Council for Civil Liberties webpage: *does Australia violate human rights?*, <www.nswccl.org.au/issues/hr_violations.php>, at 1 March 2009.
- ¹²⁸ Human Rights Law Resource Centre, *Brief: A federal Charter of Human Rights and a National Consultation on the Recognition and Protection of our Rights and Responsibilities* (2008) 5, available at <www.hrlrc.org.au>.
- ¹²⁹ See part 6 of this paper.
- ¹³⁰ See, eg, Bob Carr, '[Lawyers are already drunk with power](#)', *The Australian*, 24 April 2008.
- ¹³¹ Andrew Byrnes, Hilary Charlesworth and Gabrielle McKinnon, *Bills of Rights in Australia history, politics and law* (2009) 169.
- ¹³² Andrew Byrnes, Hilary Charlesworth and Gabrielle McKinnon, *Bills of Rights in Australia history, politics and law* (2009) 165.
- ¹³³ See, eg, Janet Albrechtsen, 'Beware, Charted waters can have murky depths', *The Australian*, 18 April 2007.
- ¹³⁴ See George Williams, *A Charter of Rights for Australia* (2007) 89; Human Rights Law Resource Centre, *Brief: A federal Charter of Human Rights and a National Consultation on the Recognition and Protection of our Rights and Responsibilities* (2008) 7, available at <www.hrlrc.org.au>; See reviews on the operation of the ACT Charter (ACT Department of Justice and Community Safety, *Human Rights Act 2004: Twelfth-Month Review – Report*); Victorian Charter (Lynch P., *Victorian Charter on the Right Path – An Assessment of the First 18 Months*) and the UK Charter (Administrative Court of England and Wales, *Report for the Period April 2001 to March 2002*).
- ¹³⁵ Andrew Byrnes, Hilary Charlesworth and Gabrielle McKinnon, *Bills of Rights in Australia history, politics and law* (2009) 165.
- ¹³⁶ British Institute of Human R, *The Human Rights Act – Changing Lives* (2006).
- ¹³⁷ See, eg, Janet Albrechtsen, 'Beware, Charted waters can have murky depths', *The Australian*, 18 April 2007.
- ¹³⁸ Of course, it is possible that, as in Canada, the Australian people might choose to constitutionalise a statutory Charter, once enacted. But that would still involve following the appropriate procedure for constitutional change.
- ¹³⁹ George Williams, *A Charter of Rights for Australia* (2007) 81.
- ¹⁴⁰ George Williams, *A Charter of Rights for Australia* (2007) 52 and 81.
- ¹⁴¹ See sections 44 and 45 of the Victorian Charter requiring two reviews of its operation: after 4 and then 8 years.
- ¹⁴² As discussed in part 6.4 of this paper.
- ¹⁴³ This is based on a similar argument in Telstra's submission to the consultation: Telstra, *In Support of a Human Rights Charter for Australia* (2008) 2.
- ¹⁴⁴ As highlighted in part 6.3 of this paper.
- ¹⁴⁵ This case study is drawn from Telstra's submission to the consultation: Telstra, *In Support of a Human Rights Charter for Australia* (2008).
- ¹⁴⁶ See discussion in part 5.1 of this paper regarding 'public authorities'.
- ¹⁴⁷ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008).
- ¹⁴⁸ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 50-54.
- ¹⁴⁹ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 50.
- ¹⁵⁰ This includes ICCPR rights that are either fully or partially covered by the human rights set out in the Victorian Charter.
- ¹⁵¹ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008).
- ¹⁵² Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 3.
- ¹⁵³ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 9.
- ¹⁵⁴ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 50.
- ¹⁵⁵ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 13.
- ¹⁵⁶ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 50.
- ¹⁵⁷ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 17.
- ¹⁵⁸ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 21.
- ¹⁵⁹ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 21.
- ¹⁶⁰ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 25.

- ¹⁶¹ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 31.
- ¹⁶² Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 31.
- ¹⁶³ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 50-51.
- ¹⁶⁴ See John Wadham, Helen Mountfield, Anna Edmundson, Caoilfhionn Gallagher, *Blackstone's Guide to The Human Rights Act 1998* (4th ed, 2007) 168. For example, as discussed in this text, the right to private life may be affected by the operation of a nearby waste treatment plant (*Lopez-Ostra v Spain* (1995) 20 EHRR 27).
- ¹⁶⁵ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 51.
- ¹⁶⁶ See John Wadham, Helen Mountfield, Anna Edmundson, Caoilfhionn Gallagher, *Blackstone's Guide to The Human Rights Act 1998* (4th ed, 2007) 184-185 and Alistair Mowbray, *Cases and Materials on the European Convention on Human Rights* (2007) 609-610. For example, as discussed in these texts, in *Ahmad v United Kingdom* (1981) 22 DR 27, the European Commission of Human Rights rejected Ahmad's argument that his right to religious expression as a Muslim was breached because the Inner London Education Authority required him to move from a full-time to a part-time position if he wished to take every Friday afternoon off to attend a mosque for prayer. The Commission reached this conclusion on the basis that Ahmad had chosen to take a job that required him to work Friday afternoons. Also, in *Stedman v United Kingdom* (1997) EHRLR 545, the European Commission of Human Rights rejected Stedman's argument that her right to religious expression as a Christian was breached when her private sector employer dismissed her because she refused to sign a contract to work Sundays on a rota basis, on the basis she had not been dismissed due to her religious beliefs but because she refused to work certain hours. In both cases, contractual obligations were prioritised over the right to manifest one's religious beliefs.
- ¹⁶⁷ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 52.
- ¹⁶⁸ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 52.
- ¹⁶⁹ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 52.
- ¹⁷⁰ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 52 and Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 53.
- ¹⁷¹ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 57.
- ¹⁷² Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 57.
- ¹⁷³ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 52.
- ¹⁷⁴ See John Wadham, Helen Mountfield H Anna Edmundson and Caoilfhionn Gallagher., *Blackstone's Guide to The Human Rights Act 1998* (4th ed, 2007) 205-206; Mark Janis, Richard Kay and Anthony Bradley, *European Human Rights Law Text and Materials* (3rd ed, 2007) 320-322 and Alistair Mowbray, *Cases and Materials on the European Convention on Human Rights* (2007) 756-771). For example, as discussed in these texts, in *Young, James and Webster v United Kingdom* (1982) 4 EHRR 38: British law permitting closed shop agreements requiring British rail workers to be members of a union were held by the European Court of Human Rights to violate the right to freedom of association. However, this was distinguished in *Sibson v United Kingdom* (1993) 17 EHRR 193, in which an employer exercised his contractual right to request Sibson (an employee) to transfer to a different depot, if he did not rejoin the TGWU union, as other employees refused to work with him. The European Court of Human Rights held this did not violate the right to freedom of association, as Sibson did not object in principle to trade union membership (he had resigned from the TGWU union to join a different union), there was no closed shop agreement and Sibson was not being compelled to join the TGWU or be dismissed.
- ¹⁷⁵ See John Wadham, Helen Mountfield, Anna Edmundson and Caoilfhionn Gallagher, *Blackstone's Guide to The Human Rights Act 1998* (4th ed, 2007) 205-206 and Mark Janis, Richard Kay and Anthony Bradley, *European Human Rights Law Text and Materials* (3rd ed, 2007) 320-322. For example, as discussed in these texts, a medical practitioners' association set up by the state was held to be outside the definition of an 'association' (*LeCompte, VanLeuven and Demeyere v Belgium* (1981) 4 EHRR 1); whereas, a privately organised and operated association of taxi cab drivers was held to be within that definition (*Sigurdur A. Sigurjonsson v Iceland* (1993) 16 EHRR 462).
- ¹⁷⁶ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 52.
- ¹⁷⁷ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 67.
- ¹⁷⁸ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 52.
- ¹⁷⁹ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 69.
- ¹⁸⁰ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 52.
- ¹⁸¹ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 53.
- ¹⁸² Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 73-74.
- ¹⁸³ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 77.
- ¹⁸⁴ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 77.
- ¹⁸⁵ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 53.

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- ¹⁸⁶ This includes ICESCR rights that are either fully or partially covered by the human rights set out in the Victorian Charter.
- ¹⁸⁷ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008).
- ¹⁸⁸ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 91.
- ¹⁸⁹ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 91.
- ¹⁹⁰ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 95.
- ¹⁹¹ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 101.
- ¹⁹² Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 69 and 109.
- ¹⁹³ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 52.
- ¹⁹⁴ See Castan Centre for Human Rights Law, the International Business Leaders Forum, the Office of the United Nations High Commissioner for Human Rights and the UN Global Compact Office, *Human Rights Translated: A Business Reference Guide* (2008), p118: though access to water and sanitation is not explicitly mentioned in the text to Article 11, it is considered to be a fundamental aspect of the right to an adequate standard of living.
- ¹⁹⁵ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 113.
- ¹⁹⁶ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 113.
- ¹⁹⁷ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 125.
- ¹⁹⁸ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 9 and 125.
- ¹⁹⁹ Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 50.
- ²⁰⁰ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 131.
- ²⁰¹ Castan Centre for Human Rights Law et al, *Human Rights Translated: A Business Reference Guide* (2008) 131.
- ²⁰² Victorian Equal Opportunity & Human Rights Commission, *From Principle to Practice: Implementing the Human Rights Based Approach in Community Organisations* (2008) 53.