



A Culture of Human Rights

Rights and Freedoms and an Australian Bill of Rights or Charter
GREG MCINTYRE SC



Universal Declaration of Human Rights

- Article 1.
- All human beings are born free and equal in dignity and rights....
- Article 2.
- Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- Article 19.
- Everyone has the right to freedom of opinion and expression;...



to ensure the religious and moral education of their children in conformity with their own convictions.

International Covenant on Civil and Political Rights

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Article 6

1. Every human being has the inherent right to life.

Article 7

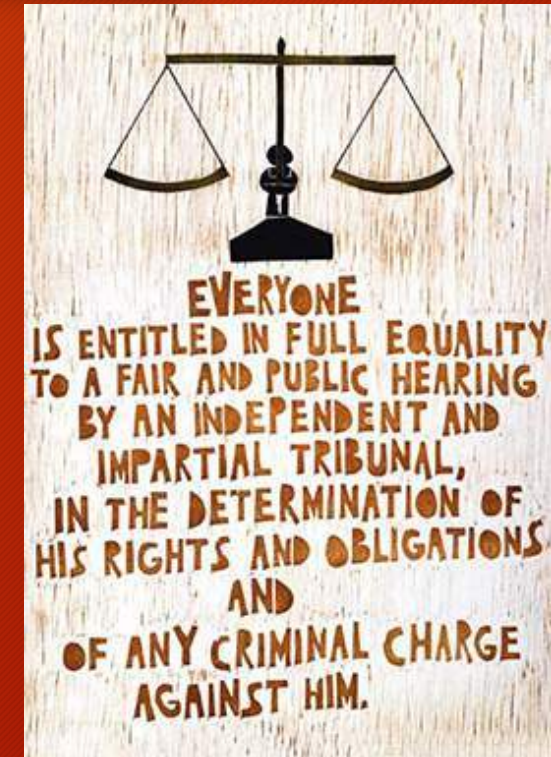
No one shall be subject to torture or to cruel, inhuman or degrading treatment...

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion.



International Covenant on Economic, Social and Cultural Rights

- Article 1
- 1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.



International Covenant on the Elimination of All Forms of Racial Discrimination

- *Article 5*
- right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:
- (a) equal treatment before the tribunals administering justice
- (b) The security of person and protection by the State against violence or bodily harm
- (c) Political rights - participate in - equal access to public service;

freedom of movement and residence
nationality
marriage and choice of spouse;
own property alone as well as in association
inherit
freedom of thought, conscience and religion
freedom of opinion and expression
freedom of peaceful assembly and association
work and join trade unions
right to housing
public health, medical care, social security and social services
education and training
cultural activities
access to any place or service



Racial Discrimination Act

- Koowarta v Bjelke Petersen



- Mabo (No 1)



Racial Discrimination Act ss 18C & 18D


- *Clark v Nationwide News [2012] FCA*
- *Sunday Times on-line readers' solicited moderated comments*
- *'not cavalier' - no exemplary damages*
- *Eatock v Bolt [2011] FCA 1103*
- *9 fair skinned Aboriginal persons identified by descent, self identification and community recognition*
- *Defence: good faith comment on a social trend*
- *Comment must be based on fact not distorted inaccurate exaggeration*



Prior v QUT

‘Where is the white supremacist computer lab’ -
- ‘nigger - reasonable victim

REPRINT No. 6



RACIAL DISCRIMINATION ACT 1975
Reprinted as at 31 October 1995

TABLE OF PROVISIONS

Section

PART I—PRELIMINARY

- 1. Short title
- 2. Commencement
- 3. Interpretation
- 4. Extension to external Territories
- 5. Additional operation of Act
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- 6A. Operation of State and Territory laws
- 7. Ratification of Convention

PART II—PROHIBITION OF RACIAL DISCRIMINATION

- 8. Exceptions
- 9. Racial discrimination to be unlawful
- 10. Rights to equality before the law
- 11. Access to places and facilities
- 12. Land, housing and other accommodation
- 13. Provision of goods and services
- 14. Right to join trade unions
- 15. Employment
- 16. Advertisements
- 17. Unlawful to incite doing of unlawful acts
- 18. Acts done for 2 or more reasons
- 18A. Vicarious liability

PART IIIA—PROHIBITION OF OFFENSIVE BEHAVIOUR BASED ON RACIAL HATRED

- 18B. Reason for doing an act
- 18C. Offensive behaviour because of race, colour or national or ethnic origin
- 18D. Exemptions
- 18E. Vicarious liability
- 18F. State and Territory laws not affected



President
AHRC



UN Declaration on the Rights of Indigenous Peoples

- **Article 1**
- full enjoyment, as a collective or as individuals
- all human rights and fundamental freedoms
 - Charter of the United Nations
 - Universal Declaration of Human Rights
 - international human rights law.
- **Article 2**
- free from any kind of discrimination
- particular that based on their indigenous origin or identity.
- **Article 3**
- self-determination.
- freely determine their political status
- freely pursue their economic, social and cultural development.



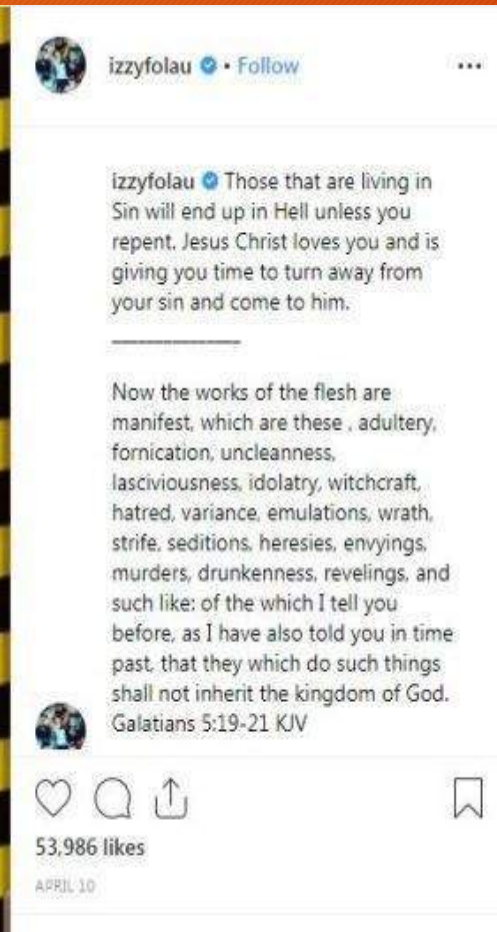
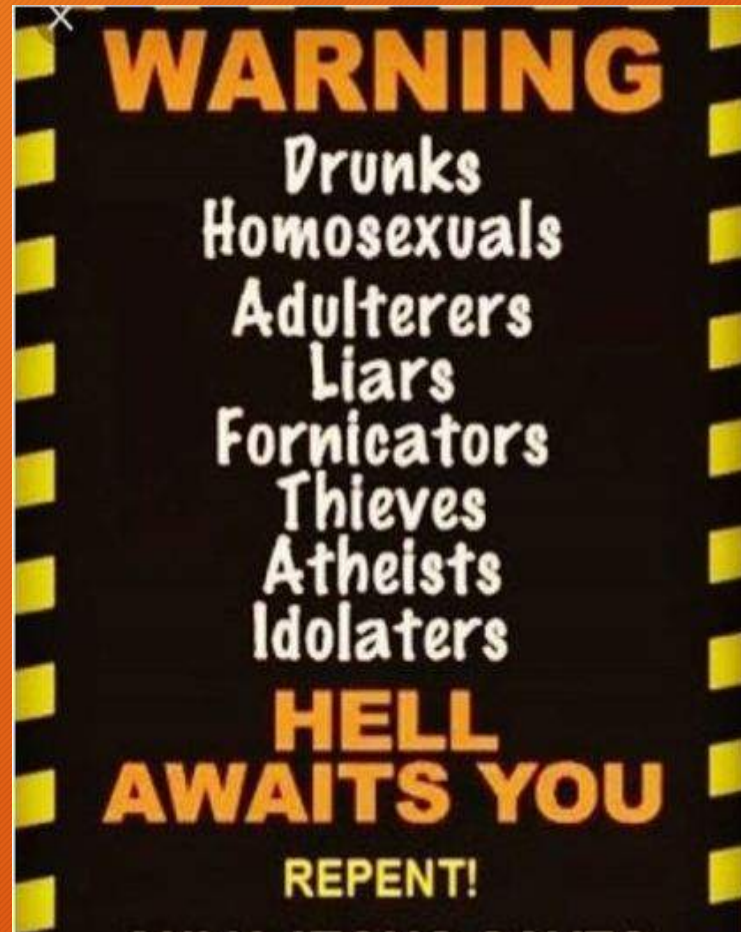
Freedom of Religion

Article 18

1. freedom of thought, conscience and religion - freedom to have or to adopt a religion or belief of his choice - freedom, either individually or in community with others and in public or private to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs - subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. respect for the liberty of parents and guardians



Folau's Law



Fair Work Act

Unlawful adverse action because of race, colour, sex, sexual orientation, age, physical or mental disability, marital status, family or carer's responsibilities, pregnancy, religion, political opinion, national extraction or social origin

Israel Folau



Folau v Rugby Australia

Rugby Australia Code of Conduct

(1) A player must treat everyone equally, fairly and with dignity regardless of gender or gender identity, sexual orientation and religious background....any form of bullying, harassment has no place in rugby.

(2) not make any public comment likely to be detrimental to the best interests of rugby

Fair Work Act

Unlawful to terminate for reasons including a protected characteristic -

- Religion
- Sexual preference

Exemptions

- Inherent requirements of particular position

Burden on employer to prove not because of protected characteristic

Religion

Australian Christian Churches

Scientology case

- Belief in a supernatural Being, Thing or Principle
- Canons of conduct



Siracusa Principles: Derogation of ICCPR rights

The Siracusa Principles

- Provided for and carried out in accordance with the law;
- In the interest of a legitimate objective of general interest;
- Strictly necessary in a democratic society to achieve the objective;
- There are no less intrusive and restrictive means available to reach the same goal; and
- The restriction is not imposed arbitrarily

UNECOSOC, 1985

- Public emergency which threatens the life of a Nation
- Non-derogable rights:
 - right to life;
 - freedom from torture, cruel, inhuman or degrading treatment or punishment;
 - freedom from medical or scientific experimentation without free consent;
 - freedom from slavery or involuntary servitude;
 - right not to be imprisoned for contractual debt;
 - right not to be convicted or sentenced to a heavier penalty by virtue of retroactive criminal legislation
 - right to recognition as a person before the law; and
 - freedom of thought, conscience and religion.

Religious expression

Freedom to hold a religious belief is absolute

Freedom to manifest a religious belief limited

Limitations - necessary, proportionate

legitimate aim:

public safety

health

order

morals

fundamental rights

- UNHRC:
- Worship
- Observance & practise
- Teaching
- No coercion
- Prosletising

Conflict between rights

Human rights are inter-related, interdependent and indivisible

Fundamental rights are not protected at the expense of other rights and freedoms

Principle of proportionality

- Interference proportionate to a legitimate aim
- Competing individual and public interests balanced

Manifestation of a belief can

interfere with the rights of others

Be destructive

- *JP v Canada* - refusal to pay taxes
- *Ross v Canada* - Judaism threatened Christianity
- *Eweida v UK* - psychosexual counselling to same-sex couples
- *Sessa v Italy* - court case on Jewish holiday
- *Christian Youth Camps* - refusing to hire to gay suicide prevention group

Progress towards National Human Rights Law

Racial Discrimination Act 1975

Sex Discrimination Act 1984

Disability Discrimination Act 1992

Age Discrimination Act 2004

Australian Human Rights Commission
Act 1986

ICCPR

CORC

CORPD

DEAF Intolerance & Discr Rel

ACT: Disc Act - HRA

NSW: Anti-Disc

NT: Anti-Disc

Qld: HRA - Anti-Disc

SA: EOA

Tas: Anti-Disc

Vic: Chart HR & Resp Act - EOA - Racial &
Relig Tolerance Act

WA: EOA

A Neimoller moment?

Aborigines

Homosexuals

Refugees

Elderly

Children

Centrelink recipients

Prisoners

Homeless

Trafficked and exploited

CHRISTIANS



First they came for the Jews, but I did nothing because I'm not a Jew. Then they came for the socialists, but I did nothing because I'm not a socialist. Then they came for the Catholics, but I did nothing because I'm not a Catholic. Finally, they came for me, but by then there was no one left to help me.

— Martin Niemöller —

AZ QUOTES

Why have a Human Rights Charter

Universal values

A standard by which to create and judge new laws - impact on human rights

A hook on which to hang arguments of inequality and injustice

Kirby: Diversity Council of Australia Anna McPhee Memorial Oration

