

1. Who is "*human*" in the concept of modern human rights?

In Australian law, human rights are primarily identified with reference to international law. In my own view, 'human' has its natural meaning, referring to all living persons. Human rights are shared with and common to all human beings, by virtue of their character as human beings.

2. How is carried out of the protection of a right which is not regulated in the Constitution in your legal system? What kind of balancing is done when a right uncounted in the Constitution is conflicted with a constitutional right?

The Australian Constitution does not include provisions specifically identified as 'human rights'. Australia, however, has multiple pieces of legislation that give effect to international law, prohibiting discrimination. These include: the Racial Discrimination Act (1975); Sex Discrimination Act (1984); Disability Discrimination Act (1992); Age Discrimination Act (2004). These are federal Acts. There are State counterparts, also. There is a federal Human Rights Commission, established in 1986. This body investigates human rights and receives complaints from individuals about human rights breaches. There is a Human Rights (Parliamentary Scrutiny) Act (2011), which establishes the federal Parliamentary Committee on Human Rights. The Committee has the function of reviewing Bills before they are passed by parliament, for conformity with international human rights law. All Bills must include a 'statement of compatibility' with international human rights law, and must identify and explain any exemptions from international human rights law. As human rights legislation in Australia is passed by parliament drawing upon constitutional powers, direct clashes between legislation and constitutional powers do not arise. As the Constitution itself does not include reference to human rights, no balancing is required. Judicial review may occur where legislation is challenged for restricting implied constitutional limitations on power (the main implied limitation is the implied freedom of political communication. It is not a personal right); the courts will use a 'proportionality' test, which involves asking where the legislation in question is sufficient, necessary, and adequate in balance, with regard to the legislation's purpose.

3. Do International Human Rights Documents applied in your country represent minimum standards that are already provided or the must-reach aims? Are there any regulations in your legal system above international human rights standards? If there are, would you please explain?

Australian human rights (anti-discrimination) law (as in previous answer) attempts to give effect to international law standards. It does not directly include aspirational goals.

4. In your legal system, is the jurisdiction an actor itself to move forward human rights standards? If it is, would you please explain?

Do you mean the judiciary? The judiciary plays a role in Victoria (an Australian State) in reviewing Victorian State legislation (but only where a challenge arises) under the Victorian Charter of Human Rights and Responsibilities (2006). The Victorian courts are empowered under this Act to make a declaration of incompatibility between a law and a right or rights that are protected under the Act. A declaration of incompatibility does not overturn the law, however. The State of Queensland has a similar Human Rights Act (2019), with similar judicial powers; the Australian Commonwealth Territory (ACT) also has a similar Act – the Human Rights Act (2004) - which gives similar power to the ACT courts. In other Australian States, and at the federal level, there is no ‘Human Rights Act’ (although there are anti-discrimination Acts, as described above); the courts at the federal level and in States without a human rights Act exercise judicial review (as in my answer above) but do not test laws against human rights.

5. Are there values and issues in your country that are not covered by human rights documents but need to be protected under the concept of human rights? If your answer is yes, would you please explain?

Australia is a signatory to the UN Convention on the Rights of the Child; the UN Convention on the Rights of Indigenous Peoples; the UN Convention Relating to the Status of Refugees. These Conventions have not yet been incorporated in Australian law. The status of Australia’s Indigenous people (the Aboriginal and Torres Strait Islanders) is an ongoing issue: there are many laws (including Native Title Acts) governing their status and conditions, but no direct constitutional recognition or protection. This is a major current issue in Australia, with a campaign at present to change the Constitution to include recognition of the Indigenous people (constitutional change requires a popular referendum). The treatment of people seeking refugee status in Australia is also a major issue in current Australian political debate. There is also a debate, currently, about whether Australia should adopt a Religious Freedom Act. The country is very divided on all of these issues.

6. Are there such human right regulations in the legal system of your country that is protected by the constitution but contradicts social reality and justice?

There are no direct human rights provisions in the Australian Constitution.

7. Are there any social realities contradicting international human rights concept based on individualism?

I don't feel equipped to answer this question.

8. In your legal system, are there legal mechanisms to protect human rights if fundamental rights are violated by private persons? Are these mechanisms effective?

Some of the anti-discrimination Acts bind individual persons, but only in their public capacity – for example, schools may not discriminate against individuals (for example, with disability), but this is because schools receive public funding. Employers may not discriminate against potential employees, for example, on ground of gender – but this is because employment is governed by employment law. The Australian Human Rights Commission (mentioned above) can investigate complaints of human rights breaches.

9. Are there groups in your country who have their own national, ethnical, religious and linguistic identities? Could you please give some information about them (especially if you feel yourself one of them)?

There are religious groups in Australia, as in other countries. They do not, however, have separate identities with respect to the law. There are no separately recognized linguistic groups. Aboriginal and Torres Strait Islander peoples sometimes claim to have their own legal system, and their laws are sometimes (although rarely) recognized in the context of criminal sentencing, but only within a mainstream legal process. That is to say, Indigenous law does not operate as a separate legal system.

10. What is the definition of the notion “minority” according to your constitutional system? What is your opinion on this concept? Do you think that minority rights should be protected broadly by the constitutional level? Do you think that constitutional regulations that would broaden the rights of

minorities will solve the conflicts between majorities and minorities?

Minorities are not recognized in Australia's Constitution (except in a regional sense: the numerically small States get equal representation in the Australian Senate with the numerically larger States). Social and cultural minorities (eg persons with disability) are recognized in the anti-discrimination law, described above. The proposal for constitutional recognition of Aboriginal and Torres Strait Islanders is a major, controversial issue at present. It is too early to say whether such recognition would help relations between this minority and the Australian non-Indigenous majority.

11. What do you think on the notion and the concept of minority rights in international law? Could the international regulations/treatments be a response to the reality and problems of the peoples in your country? In other words, do they cover the reality in your country from the view of the state and the view of peoples?

Minorities must be protected against discrimination that they experience on the ground of their minority status. This protection needs to be offered both internationally and domestically. But not all minorities have or need a claim to special rights. The distinction is very difficult to draw, and the question about the balance between minority and majority rights is extremely complex. The disadvantaged position of the Aboriginal and Torres Strait Islander peoples in Australia is well understood in a generalized sense from the perspective of international human rights law, but the specific means of addressing this discrimination involves detailed practical measures that international law cannot provide.

12. What you think is the most current human rights problem in your country?

The position of the Aboriginal and Torres Strait Islander people is one of the most pressing current problems. The treatment of persons seeking refugee status is another.