

## Concepts and their implementation

### Concepts

- 2.1 Concepts such as ‘religion’, ‘religious freedom’ and ‘belief’, vital to this inquiry, can be looked at in many different ways. In a private submission, Mr Neil Ryan pointed out that there are a variety of definitions of both ‘religion’ and ‘faith’, and these words have come to mean different things to different people.<sup>1</sup>
- 2.2 Because of its complexity and sensitivity, a number of examples of attempts to summarise the concept of ‘religion’ will be provided. For example, the author Ninian Smart named six ‘dimensions’ of religious experience:
- mythical, in the sense of foundation stories, whether historical in origin or not;
  - doctrinal, that is, theoretical explanations of the myth;
  - ritual;
  - ethical;
  - social, and
  - ‘experiential’.<sup>2</sup>

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1 Submissions, p. 150.

2 In **The World’s Religions**, Second Edition (Cambridge University Press, 1998), pp. 10-24 (*passim*), these have become seven dimensions. See also Exhibit No 50, pp. 14-15, for some discussion of this matter.

2.3 Australia is not a theocratic state, nor does it have an official national religion. ‘The High Court has adopted, as a matter of legislative and public policy, an equalitarian concept’ of the status of religions and religious groups. All such groups and religions are regarded as possessing, in their character as religions and religious groups, equal legal status. To distinguish a religion from a non-religion, a religious from a non-religious purpose, and in determining what constitutes a religion for worldly purposes such as relief from taxation, the indicators may include:

- belief in a supernatural being, thing or principle;
- acceptance of conduct in order to give effect to that belief;
- ideas that relate to humanity’s nature and place in the universe, and its relation to things supernatural;
- acceptance that adherents constitute an identifiable group or groups, and
- participation by adherents in practices believed to have supernatural significance.<sup>3</sup>

2.4 The High Court has also stated that:

Freedom of religion, the paradigm freedom of conscience, is of the essence of a free society.<sup>4</sup>

In the same case, it also stated that:

Under our law, the State has no prophetic role in relation to religious belief; the State can neither declare supernatural truth nor determine the paths through which the human mind must search in a quest for supernatural truth.<sup>5</sup>

Religious belief is more than a cosmology; it is a belief in a supernatural Being, Thing or Principle. But religious belief is not by itself a religion. Religion is also concerned, at least to some extent, with a relationship between man and the supernatural order and with supernatural influence upon his life and conduct.<sup>6</sup>

2.5 The High Court was also aware of the ‘peculiar difficulties’ that endeavours to define religion caused:

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3 **Halsbury’s Laws of Australia**, Butterworths, 1994, 365-10. This definition was given by the High Court in 1983, in the so-called Scientology case. Definitions of ‘religion’ for taxation purposes are further examined in Chapter 11.

4 *Church of the New Faith v Commission of Pay-Roll Tax (Vic)* (10993) 154 CLR at p. 130

5 *ibid*, p. 134.

6 *ibid*, pp. 134-135.

It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and varied religions which exist, or have existed, in the world.<sup>7</sup>

2.6 In its submission to this inquiry, Australia's Department of Foreign Affairs and Trade (DFAT) quoted a definition of 'intolerance and discrimination based on religion or belief', taken from the 1987 report of the then Special Rapporteur of the UN Commission on Prevention of Discrimination against Minorities:

The term...encompasses not only discrimination infringing upon, or negating, the right to freedom of thought, conscience, religion and belief, but also acts which stir up hatred against, or persecution of, such persons or groups...The term refers to intolerance and discrimination between religions, within religions between beliefs, as well as between the State and religions and beliefs, and between individuals or groups of individuals having different religions or beliefs, as between nations or within nations.<sup>8</sup>

2.7 In its 1998 Report, **Article 18: Freedom of religion and belief**, the Australian Human Rights and Equal Opportunity Commission (HREOC) saw the meaning of 'religion' as a threshold question for its inquiry. In the context of its recommendation that Australia should have a Religious Freedom Act, it suggested that:

'religion and belief' should be given a wide meaning, covering the broad spectrum of personal convictions and matters of conscience. It should include theistic, non-theistic and atheistic beliefs. It should include minority and non-mainstream religions and belief systems as well as those of a more traditional or institutionalised nature. Religion or belief should be defined as a particular collection of ideas and/or practices:

- that relate to the nature and place of humanity in the universe and, where applicable, the relation of humanity to things supernatural;
- that encourage or require adherents to observe particular standards or codes of conduct or, where applicable, to participate in specific practices having supernatural significance;
- that are held by an identifiable group regardless of how loosely knit and varying in belief and practice, and

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7 *ibid*, p. 131.

8 DFAT, Submissions, p. 243.

- that are seen by adherents as constituting a religion or system of belief.

The definition should not apply to all beliefs but only to those that clearly involve issues of personal conviction, conscience or faith.

This definition would not cover beliefs which are caused by mental illness or which are motivated by criminal intent.

2.8 HREOC recommended that these obligations should apply to individuals, corporations, public and private bodies and all other legal persons who may be subject to Commonwealth legislation.<sup>9</sup>

2.9 For ease of reference, in this Report ‘freedom’ and ‘belief’ will be used in their current, everyday contexts:

freedom: liberty of action, right to do, in the sense of Franklin Delano Roosevelt’s ‘Four Freedoms’ (1941) - of speech and expression, of belief, from fear and from want.<sup>10</sup>

belief: acceptance that a thing is true or exists.<sup>11</sup>

2.10 Each of these formulations, especially those for the concept of ‘religion’, have strong points in their favour, and all would attract critics for what has been included, or omitted. These selected examples have been put forward to demonstrate the number and variety of characteristics that have been seen to be important in attempts to explain what this idea has meant to some thinkers and organisations.

2.11 In addition, freedom of conscience is an intrinsic part of religious belief, one that is of particular importance to minority groups.

2.12 In this Report, ‘freedom of religion and belief’ will be used interchangeably with expressions such as ‘religious freedom’ and ‘religious tolerance’.

2.13 In the context of understanding what religion is, it is sobering to read a quotation included in a submission from the Rev John McNicol:

The role of religion is paradoxical. It makes prejudice and it unmakes prejudice. While the creeds of the great religions are universally the all-shining brotherhood, the practice of these creeds is frequently divisive and brutal. The sublimity of religious

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9 Exhibit No 17, R2.5 and R2.6, p. 27. See also pp. 10-13 of the HREOC Report for additional discussion of the terms, and of the scope of, ‘religion’ and ‘belief’. The proposal for a Religious Freedom Act for Australia is further considered in Chapter 4.

10 See **The World’s Religions**, Second Edition (Cambridge University Press, 1998), Exhibit No 48, p. 11.

11 These usages were adapted from **The Concise Oxford Dictionary**.

ideals is offset by the horrors of persecution in the name of these ideals. Some people say the only cure for prejudice is more religion. Churchgoers are more prejudiced than the average, they are also less prejudiced than the average.<sup>12</sup>

## Freedom not to believe

- 2.14 In his submission, Dr Max Wallace expressed the view that freedom of belief also included the freedom not to have religious beliefs.<sup>13</sup>
- 2.15 The *Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief* by the United Nations (UN) in 1981 did not include the elimination of discrimination by any nation on the grounds that a person did not hold any religious beliefs. It was also pointed out that neither the *Universal Declaration of Human Rights* (UDHR), nor the *International Convention on Civil and Political Rights* (ICCPR), included the right not to believe. These omissions have been interpreted as discrimination against non-belief and non believers.<sup>14</sup>
- 2.16 In particular situations, the right not to believe becomes an issue. In some countries, such as the Taliban's Afghanistan or in Pakistan for example, there is no tolerance for religions other than that of the State. In such countries, there should be the right not to believe in the State religion.
- 2.17 If the ICCPR only makes provision for the right to believe, it is from CERD that the right not to believe has been claimed. The text of the VDPA 1993 also supports this right.<sup>15</sup>
- 2.18 During this inquiry, such perceived discrimination against those without religious beliefs was raised in a number of submissions. It was related to matters such as the incompatibility of Christian prayers in the Parliament with Indigenous Australian/agnostic/atheistic/non-Christian religious beliefs, access to government funding for education, taxation, blasphemy and censorship laws and the national census.<sup>16</sup>

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12 Submissions, p. 17, from **The Nature of Prejudice** by G W Allport.

13 Submissions, p. 367.

14 This is known as 'the (UN) Religion Declaration'. Article 18.1 of the ICCPR provides that: 'Everyone shall have the right to freedom of thought, conscience and religion.' On discrimination, see submissions from: the Rationalist Association of NSW Inc, p. 64, Mr Brian Hurlock, pp. 230-231 and Dr Max Wallace, pp. 367-368.

15 Transcripts: Mr Brian Hurlock, 22 October 1999, p. 196, ACSJC, 15 October 1999, p. 77. See paragraphs 2.36-2.37, 2.41 and 2.47.

16 See, for example, submissions from: the Rationalist Association of NSW Inc, p. 66, the Humanist Society of Queensland Inc, pp. 128-129, and the Humanist Society of Victoria Inc, p. 77.

## Implementation

### Prior to 1945

- 2.19 Since the late Eighteenth Century, in what is called the Western world, there have been declarations setting out the rights of human beings. These philosophical declarations were integral to both the French and American Revolutions. As is set out in the next Chapter, such declarations have a history that dates back to Classical and Ancient times.
- 2.20 Following the First World War, actions taken by the League of Nations saw the development of human rights in the international sphere, particularly in protecting minorities and the rights of colonial peoples in the countries defeated in that war.<sup>17</sup>

### The United Nations

- 2.21 After the terrible and widespread human rights breaches during the Second World War, there was an acceptance that the previous protections had been inadequate. This contributed to the reforming spirit that saw the establishment of the UN in June 1945. The fundamental right of all people to freedom of thought, conscience and religion was recognised in its Charter, particularly in Articles 1 and 55, dealing with the creation of conditions for peaceful and friendly relations between nations.<sup>18</sup>
- 2.22 The UN Charter can be used to measure respect for, and compliance with, international human rights standards. Since 1948, it has been the most important of all the UN's declarations and 'a basic source of national, regional and international efforts to promote and protect human rights.' It continues to set the direction for human rights work, and has provided the basic philosophy for international conventions designed to protect the rights and freedoms it proclaims.<sup>19</sup>
- 2.23 The system that the UN has developed, through its various instruments and its focus on situations around the world, has played a crucial role in the promotion and protection of human rights.<sup>20</sup>
- 2.24 The UN's General Assembly (UNGA) consists of all member states, each with one vote. It meets each year from early September to mid-December.

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17 Exhibit No 48, p. 11.

18 Exhibit No 48, p. 46.

19 Exhibit No 48, p. 37.

20 Exhibit No 48, pp. 12-13.

Human rights issues on its agenda principally originate from sections of reports from the Economic and Social Council (ECOSOC), or from decisions taken at earlier sessions.<sup>21</sup>

2.25 Human rights issues are most systematically dealt with by two key UN bodies:

- the Third Committee of UNGA, which meets between September and December each year to examine major human rights issues, including those in specific countries, thematic issues and the UN's standard-setting exercises, and
- the Human Rights Commission (UNHRC), the pre-eminent international human rights forum with a wide mandate for the promotion and protection of human rights.<sup>22</sup>

2.26 Under Article 62 of the UN Charter, ECOSOC may make recommendations to promote respect for, and observance of, human rights and freedoms for all. One of ECOSOC's functions is to receive and consider the UNHRC's annual report. This is divided into two parts:

- the main section including recommendations and resolutions, and
- a second part with a more limited number of items, such as draft decisions arising from the UNHRC's work or matters requiring a higher level of decision than the Commission. The items in this part could include the appointment of Special Rapporteurs or the mandates of particular bodies.<sup>23</sup>

2.27 The UNHRC was established in 1946 by ECOSOC as one of the UN's commissions to assist in dealing with human rights issues. The Commission meets in Geneva in March/April each year for six weeks.<sup>24</sup>

2.28 The office of the High Commissioner for Human Rights is the focal point for the UN's human rights activities. When the current occupant of the position was appointed in 1997, the UN's Centre for Human Rights was subsumed into the Office of the High Commissioner. It is the primary organisation for implementation of the UN's human rights program, based on the following objectives:

- the preparation of international standards;

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21 Exhibit No 48, p. 47.

22 Exhibit No 48, pp. 3, 50.

23 Exhibit No 48, p. 49. UN Special Rapporteurs are considered later in this Chapter.

24 Exhibit No 48, pp. 49, 3.

- the implementation of those standards through monitoring and assistance, and
  - the promotion of those standards by education and information.<sup>25</sup>
- 2.29 An additional example can be given of the spread of the UN's activities. The United Nations Research Institute for Social Development (UNRISD) was formed in 1963, as part of the first UN Development Decade. It is probably one of the least well-known of the UN's autonomous agencies. It engages in multi-disciplinary research on the social dimensions of contemporary problems affecting development.<sup>26</sup>
- 2.30 UNRISD's research has been guided by two core values, that:
- every human being has a right to a decent livelihood, and
  - all people should be allowed to participate on equal terms in decisions that affect their lives.
- 2.31 UNRISD sees itself as providing both an opportunity and an obligation to question prevailing mindsets within the development community, and to encourage new thinking. It runs conferences and workshops, generally in the countries where it undertakes its research.
- 2.32 UNRISD sees the promotion of democracy and respect for human rights as a central but complex aspect of development. Despite the growing strength of the human rights movement, there is still a gulf between the articulation of global principles and their application in the majority of national settings.

## Major international instruments

- 2.33 Following from its Charter, the UN has expanded its statements of principle and adopted a range of measures intended to protect fundamental human rights. Freedom of religion and belief is one of these rights.<sup>27</sup>

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25 Exhibit No 48, p. 55.

26 Material on UNRISD was drawn from Exhibit No 59, pp. 1, 4, 6.

27 Unless specified otherwise, material in this Section was drawn from DFAT, Submissions, pp. 249-253. What follows is a brief analysis of some of the major provisions of these instruments. In general terms, a Covenant is a legally binding document in international law, whereas a Declaration is non-binding.



- 2.34 In 1948, Article 18 of the UDHR stated:
- Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.
- 2.35 Article 2 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), adopted by the UN in 1966, provides that religion is one of the guaranteed rights to be exercised without discrimination. Article 13, paragraph 1, provides that education would enable all people to participate effectively in a free society, promoting understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups.
- 2.36 Article 18 of the ICCPR, also adopted by the UN in 1966, repeats the words of Article 18 of the UDHR. This Article proscribes religious coercion, limits the freedom to manifest one's religion within the law, to protect public order and the fundamental freedoms and rights of others. Finally, this Article protects the rights of parents and legal guardians to ensure that the religious and moral education of their children conformed to their own convictions.
- 2.37 Article 4 prohibits derogation of religious freedom by nations in times of emergencies. Article 20.2 provides for the prohibition by law of any advocacy of religious hatred constituting incitement to discrimination, hostility or violence. Article 27 protects the rights of minority groups to profess and practice their religions.
- 2.38 Part IV of the ICCPR, Articles 28 to 45, established the Human Rights Committee (HRC) in 1977 and prescribed its processes. The HRC is responsible for supervising the implementation of the rights set out in the ICCPR.<sup>28</sup>
- 2.39 The (First) Optional Protocol to the ICCPR, established under Article 28, was also adopted by the UN in 1966. It enables the HRC to receive and consider communications from individuals claiming to be victims of violations of any of the rights in the ICCPR. This is a mechanism that can be used when all national remedies against discrimination have been exhausted.<sup>29</sup>

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28 Exhibit No 48, pp. 62, 41.

29 Exhibit No 48, p. 41.

- 2.40 The UN *Convention on the Elimination of all Forms of Racial Discrimination* (CERD) entered into force in 1969. It embodies the objectives of the original 1963 UN *Declaration on the Elimination of Racial Discrimination*.<sup>30</sup>
- 2.41 Article 5(d)(vii) of CERD provides for:
- The right to freedom of thought, conscience and religion.
- 2.42 In 1981, the UN adopted the Religion Declaration. Its preamble pledges members to universal respect for and observance of human rights and fundamental freedoms for all, without distinguishing between race, sex language or religion. In its Articles, this Declaration deals with:
- the right to practice religion and belief;
  - prohibiting intolerance and discrimination based on religion and belief, and
  - the obligations of states to take positive measures to counter intolerance and discrimination on the grounds of religion and belief.
- 2.43 In 1993, the UN adopted the *Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities*.
- 2.44 The *Declaration* notes the importance of ‘an even more effective implementation of international human rights instruments’ for the rights of all people, including those in the specific minority groups.
- 2.45 The UN urges States and the international community to promote and protect the rights in the Declaration, including the full participation of these minorities ‘in all aspects of the political, economic, social, religious and cultural life of society. It called on the HRC to examine ways and means of promoting and protecting effectively the rights of minorities, as set out in the Declaration. It also appealed to States to take all necessary legislative and other measures to give effect to the principles of the Declaration.
- 2.46 The *Vienna Declaration and Program of Action* (VDPA) was adopted at the 1993 World Conference on Human Rights. It is regarded as another milestone in the human rights field because 171 countries reaffirmed the principles of universality, indivisibility and inter-dependence of human rights.
- 2.47 The preamble emphasises:
- the responsibilities of all States, in conformity with the Charter of the United Nations, to develop and encourage respect for human
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rights and fundamental freedoms for all, without distinction as to race, sex, language or religion.

- 2.48 Paragraph 19 of Part A states that people belonging to minorities ‘have the right to enjoy their own culture, to profess and practice their own religion and to use their own language in private and in public freely and without interference or any form of discrimination.’
- 2.49 Under the sub-heading ‘Racism, racial discrimination, xenophobia and other forms of discrimination’, paragraph 22 of Part B of the VDPA calls on governments to take appropriate measures within their legal systems:
- to counter intolerance and related violence based on religion or belief, including practices of discrimination against women, and including desecration of religious sites, recognising that every individual has the right to freedom of thought, conscience, expression and religion.
- 2.50 This Declaration then calls on all States to put into practice the provisions of the UN Religion Declaration. It devotes a sub-section to the rights of Indigenous people, and a section to the equal status and rights of women.<sup>31</sup>
- 2.51 In 1998, the UN adopted the *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, known as the Declaration on Human Rights Defenders.
- 2.52 The preamble to this Declaration recognises the relationship between international peace and security and the enjoyment of human rights and fundamental freedoms. It stresses that ‘the prime responsibility and duty to promote and protect human rights and fundamental freedoms lies with the State.’ This responsibility is spelt out in Article 2.

## Other UN documents

- 2.53 Other UN documents reiterating these ideals include:
- International Labour Organisation (ILO) *Convention on Discrimination in respect of Employment and Occupation*, No 111, 1958;<sup>32</sup>
  - the United Nations Educational, Scientific and Cultural Organisation (UNESCO) *Convention Against Discrimination in Education*, 1960, and

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31 A submission asked whether the VDPA was an improvement on the 1941 ‘Four Freedoms’, referred to in paragraph 2.9: see Mr Arnold Sandell, Submissions, p. 1011.

32 The ILO was established by the League of Nations in 1919: see Exhibit No 48, p. 11.

- the *Convention on the Rights of the Child*, 1989 (CROC).
- 2.54 Negotiation of a binding legal instrument to combat religious intolerance has been under consideration since the adoption of the UN Religion Declaration, in 1981. In 1988, the then UN Special Rapporteur on Religious Intolerance noted that the mandatory nature of the provisions of such an instrument might encourage States to hold greater respect for religious rights and freedoms. The current Special Rapporteur believes that development of such a binding instrument is premature, and that more emphasis should be placed on implementing this Declaration by developing a culture of tolerance through education.<sup>33</sup>

## UN Special Rapporteurs

- 2.55 In 1956, the UN's Sub-Commission on Prevention of Discrimination and Protection of Minorities appointed a Special Rapporteur to study the problem of religious discrimination, and to present a program of action to eradicate such discrimination. The Report, presented to the Sub-Commission in 1960, has been described as a 'landmark in the efforts of the United Nations to eradicate prejudice and discrimination based on religion or belief.'<sup>34</sup>
- 2.56 In 1984, the Sub-Commission appointed another Special Rapporteur to report on the causes and dimensions of religious intolerance and discrimination on the grounds of religion or belief, using the UN's 1981 Declaration as a term of reference.
- 2.57 The Special Rapporteur's 1987 Report concluded that, in some cases, intolerance was institutionalised and based on legislation, but that it came mostly from voluntary intolerance and conduct derived from habit, prejudice or hatred.
- 2.58 Since 1995, and following the adoption of the 1993 Declaration on Minorities, the Sub-Commission's Working Group on Minorities has been examining possible solutions to problems involving minorities, including religious minorities. It has looked at measures for promoting understanding between and among minorities and governments.
- 2.59 The Special Rapporteur on Religious Intolerance was appointed by UNHRC in 1986. Since then, the occupant of this position has been

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33 DFAT, Submissions, p. 255.

34 Material in this Section was drawn from DFAT, Submissions, pp. 253-255.

examining incidents and government actions, in all parts of the world, that are inconsistent with the UN Religion Declaration. The Special Rapporteur's mandate was renewed for three years in 1998.<sup>35</sup>

- 2.60 The Special Rapporteur is appointed by the UN High Commissioner for Human Rights, and works to a mandate agreed by UNHRC. The occupant of the position can decide which countries to visit, and which specific issues to examine, and is required to report to UNHRC each year. In addition, special rapporteurs normally report each year to the UN's General Assembly.<sup>36</sup>
- 2.61 In his report to the UN in 1996, the Special Rapporteur identified seven categories of violations of the UN Religion Declaration, and concluded that their major causes were intolerance and discrimination. Violations of freedom and religion, from nations around the world, are surveyed in Chapter 5.
- 2.62 In that report, the Special Rapporteur also noted persistent manifestations of religious intolerance and discrimination, based on religion or belief, in countries at different stages of development, and with different political, social and religious systems.

## Role of NGOs

- 2.63 Concerns for fundamental freedoms are not restricted to governments, and there are many groups and individuals around the world who express these concerns in their work for non-government organisations (NGOs). Given their independence, commitment and diversity, many NGOs play 'a legitimate, well-established and respected role', domestically and internationally, in the promotion and protection of human rights.<sup>37</sup>
- 2.64 The focus that NGOs can bring varies considerably, from Amnesty International that deals exclusively on specific human rights issues, to religious groups that have broader interests in the human rights field. Others focus on specific areas, such as the rights of women, children or Indigenous peoples.
- 2.65 NGOs are invaluable in offering governments direct evidence about issues and situations, as well as providing reflections of public concerns. In

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35 The Special Rapporteur visited Australia in February 1997, at the invitation of the Government: see DFAT, Submissions, pp. 254, 262.

36 Transcript, DFAT, 24 September 1999, p. 9.

37 Exhibit No 48, p. 81.

particular, NGOs were cited as important sources of information on religious intolerance for the Special Rapporteur, and thus to the UN itself, as well as for national governments. While they do not operate as governments do, their contributions were seen as both legitimate and an important source of dialogue.<sup>38</sup>

- 2.66 The legal provision for the involvement of NGOs in the UN's work is Article 71 of the UN Charter which directs ECOSOC to consult with bodies within its competence. A review in 1996 agreed on the following provisions for obtaining consultative status within ECOSOC and the UN.<sup>39</sup>
- General Consultative Status: Organisations concerned with most of the activities of ECOSOC and its subsidiary bodies, and able to demonstrate substantive and substantial contributions to the UN's objectives.
  - Special Consultative Status: Organisations with a special competence in, and concerned specifically with, only a few fields of activity covered by ECOSOC and its subsidiaries, and that are known within these fields.
  - Roster Status: Other organisations that do not have general or special status, but that the Council or the UN Secretary-General of the UN considers can make occasional and useful contributions to the work of ECOSOC or to its subsidiary bodies, or to other UN bodies within their competence.<sup>40</sup>
- 2.67 Over 900 NGOs are currently registered, most operating in general human rights areas and looking after refugees. If any, only a small number have concerned themselves with religious rights, and many of these are closely linked with the major religions. Most are interested in the broader human rights mandate than breaches of freedom of religion and belief.<sup>41</sup>
- 2.68 A body with NGO status with the UN expressed concern that there is a perception that various nations advocated freedom of religion and belief, but that this could be 'selective and subordinate' to their trade and defence interests.<sup>42</sup>

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38 Exhibit No 48, p. 81, Transcripts: World Vision Australia, 22 October 1999, p. 209, DFAT, 24 September 1999, p. 22.

39 Exhibit No 48, p. 82.

40 Exhibit No 48, pp. 82-83.

41 Humanist Society of Queensland Inc, Submissions, p. 965; Transcript, HREOC, 6 March 2000, p. 275.

42 Religious Liberty Commission of the Australian Evangelical Alliance Inc, Submissions, p. 571.

## Australia's position

- 2.69 According to the DFAT submission, the human rights policies of the Australian Government are based on the principle of universality and indivisibility of all human rights enshrined in the UDHR, and reaffirmed in the 1993 VDPA. In promoting human rights in the world, the Government does not seek to separate, compartmentalise or categorise violations, but views all violations equally.<sup>43</sup>
- 2.70 The Australian Government sees the improvement in the overall observance of human rights as a key factor in improving religious freedom within a country. Positive changes in legislation and structural measures in areas such as good governance, with the development of human rights institutions and national action plans, all create a culture of tolerance and acceptance which have contributory effects on the religious freedom of individuals.<sup>44</sup>
- 2.71 The Committee acknowledges this approach, also taking the view that any violations of freedom of religion and belief are violations of fundamental human rights.

## Issues

- 2.72 To protect human rights, members of the UN adopted its Charter in 1945, and the UDHR in 1948. Since then, it has been necessary for the UN to adopt additional measures and erect a structure within the world body to monitor, promote and protect human rights on a continuing basis. Adopted as recently as 1993, the VDPA represents another re-statement of the fundamental principles framed nearly 50 years earlier. The Committee considers that it should surely be a matter of concern that the members of the UN believed that it was necessary to restate principles already set out in such covenants as, for example, the ICCPR in 1966.
- 2.73 It has also been necessary for the UN to widen continually the areas covered by its Covenants and Declarations. That the international community has seen this to be necessary is shown by the adoption of a number of significant instruments in the 1990s, and by the adoption of the Declaration on Human Rights Defenders in 1998 in particular.

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43 DFAT, Submissions, p. 243.

44 DFAT, Submissions, pp. 1042-1043.

- 2.74 The UN has also seen a need to appoint Special Rapporteurs to report to it on particular issues. Although the activities of bodies such as UNRISD are not strictly related to freedom of religion and belief, the span of its work could be of value in programs in developing countries. The gulf it has noted between global principles and their application in most national settings is particularly relevant to the many violations of religion and belief that are set out in Chapter 5.
- 2.75 In its evidence, DFAT was doubtful that a new instrument would generate international obligations and improve religious freedom. It believed that obligations relating to religious freedom in the existing covenants are already 'quite strong'. The UN's Religion Declaration, although not binding on members, provides some further explanation of what these obligations mean in practice. There is at present no strong international movement for negotiation of a binding instrument dealing specifically with religious freedom.<sup>45</sup>
- 2.76 There are difficulties in defining what 'religion' is, and what is the scope of 'religion and belief'. Other important terms, such as 'spiritual' and 'sacred', have been used in legal contexts in Australia in connection with Indigenous religious traditions since the mid 1980s, but they have not been defined. These traditions are considered in Chapter 9.<sup>46</sup>
- 2.77 Submissions from bodies such as the Rationalist Association of NSW Inc and the Humanist Society of Queensland Inc, as well as individuals such as Mr Brian Hurlock, raised the right not to believe in a religion, or not to have any religious beliefs, as a serious matter of principle for some people and organisations. The Committee was told that this right is not adequately protected in existing international instruments, and that there is discrimination of various kinds against people who hold those views.<sup>47</sup>
- 2.78 Although it was not discussed in the text, this important issue was included in a central recommendation in the HREOC report, **Article 18: Freedom of religion and belief**. The right not to have a religion or religious beliefs is considered further in Chapter 7 of this Report.<sup>48</sup>

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45 Transcript, DFAT, 24 September 1999, p. 10.

46 Exhibit No 50, pp. 5-6.

47 Submissions, p. 64.

48 Exhibit No 17, R2.3, p. 26.