

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

---

*(As read a first time)*

**HUMAN RIGHTS COMMISSION BILL 1981**

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1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE SENATE

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(Presented pursuant to leave granted and read 1°, 10 March 1981)

(ATTORNEY-GENERAL, SENATOR DURACK)

**No. 46**

**A BILL**

**FOR**

**An Act relating to human rights**

5 WHEREAS it is desirable that the laws of the Commonwealth and the  
conduct of persons administering those laws should conform with the  
provisions of the International Covenant on Civil and Political Rights,  
the Declaration of the Rights of the Child, the Declaration on the Rights  
of Mentally Retarded Persons and the Declaration on the Rights of  
10 Disabled Persons and other international instruments relating to human  
rights and freedoms:

BE IT THEREFORE ENACTED by the Queen, and the Senate and  
the House of Representatives of the Commonwealth of Australia, as  
follows:

**PART I—PRELIMINARY**

15 **Short title**

1. This Act may be cited as the *Human Rights Commission Act 1981*.

**Commencement**

2. This Act shall come into operation on a date to be fixed by  
Proclamation.

**Interpretation**

**3. (1)** In this Act, unless the contrary intention appears—

“act or practice” means—

(a) an act done or practice engaged in—

(i) by or on behalf of the Commonwealth or an authority of the Commonwealth; or

(ii) under an enactment; or

(b) an act done or practice engaged in—

(i) wholly within a Territory other than the Northern Territory; or

(ii) partly within such a Territory, to the extent to which the act was done or the practice was or is engaged in within the Territory concerned;

“appoint” includes re-appoint;

“authority”, in relation to a State or the Northern Territory, includes—

(a) a person holding an office established by or under a law of that State or Territory;

(b) a person employed in the public service of that State or Territory; and

(c) a person employed by a body established for a purpose of that State or Territory by or under a law of that State or Territory;

“authority of the Commonwealth” means a body established for a purpose of the Commonwealth by or under an enactment;

“Chairman” means Chairman of the Commission;

“Commission” means the Human Rights Commission established by this Act;

“Covenant” means the International Covenant on Civil and Political Rights a copy of the English text of which is set out in Schedule 1;

“Declarations” means—

(a) the Declaration of the Rights of the Child proclaimed by the General Assembly of the United Nations on 20 November 1959, a copy of the English text of which is set out in Schedule 2;

(b) the Declaration on the Rights of Mentally Retarded Persons proclaimed by the General Assembly of the United Nations on 20 December 1971, a copy of the English text of which is set out in Schedule 3; and

(c) the Declaration on the Rights of Disabled Persons proclaimed by the General Assembly of the United Nations on 9 December 1975, a copy of the English text of which is set out in Schedule 4;

“ Deputy Chairman ” means Deputy Chairman of the Commission;

“ enactment ” means—

- (a) an Act;
- (b) an Ordinance of a Territory other than the Northern Territory; or
- (c) a law (including rules, regulations or by-laws) made under an Act or such an Ordinance;

“ human rights ” means the rights and freedoms recognized in the Covenant, declared by the Declarations or recognized or declared by any relevant international instrument;

“ international instrument ” includes a declaration made by an international organization;

“ Judge ” means—

- (a) a Judge of a court created by the Parliament or of a court of a State or of the Northern Territory; or
- (b) a person who has the same designation and status as a Judge of a court created by the Parliament;

“ member ” means a member of the Commission;

“ Minister ”, in relation to a State or the Northern Territory, means—

- (a) in the case of a State—a Minister of the Crown of that State; and
- (b) in the case of the Northern Territory—a person holding Ministerial office under section 36 of the *Northern Territory (Self-Government) Act 1978*;

“ Northern Territory enactment ” means an enactment within the meaning of the *Northern Territory (Self-Government) Act 1978*;

“ prescribed person ” means—

- (a) a member;
- (b) a member of the staff referred to in section 27;
- (c) if an arrangement in force under section 11 provides for a State or the Northern Territory or an authority of a State or of the Northern Territory to perform functions of the Commission referred to in paragraph 9(1)(b)—an authority of that State or Territory; or
- (d) any other person who is included in a class of persons declared by the regulations to be prescribed persons for the purposes of this Act;

“ proposed enactment ” means—

- (a) a proposed law introduced into the Parliament or into the legislature of a Territory other than the Legislative Assembly of the Northern Territory; or

- (b) a proposed law of the Commonwealth or of a Territory other than the Northern Territory prepared on behalf of—
- (i) the Government of the Commonwealth or the Administration of a Territory;
  - (ii) a Minister of State of the Commonwealth; or
  - (iii) a body established by an enactment, being a body that has the function of recommending proposed laws of the Commonwealth or of a Territory;

5

“ relevant international instrument ” means an international instrument in respect of which a declaration under section 31 is in force.

10

(2) In the definition of “ human rights ” in sub-section (1)—

(a) the reference to the rights and freedoms recognized in the Covenant shall be construed as a reference to the rights and freedoms recognized in the Covenant as it applies to Australia; and

(b) the reference to the rights and freedoms recognized or declared by any relevant international instrument shall—

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(i) in the case of an instrument (not being a declaration referred to in sub-paragraph (ii) ) that applies to Australia—be construed as a reference to the rights and freedoms recognized or declared by the instrument as it applies to Australia; or

20

(ii) in the case of an instrument being a declaration made by an international organization that was adopted by Australia—be construed as a reference to the rights and freedoms recognized or declared by the declaration as it was adopted by Australia.

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(3) A reference in this Act to the making of a declaration by an International organization shall be construed as a reference to the making or adopting of a declaration, proclamation or other statement by such an organization in any way, whether by the passing of a resolution, the issuing of an instrument or otherwise.

30

(4) A reference in this Act to the adoption by Australia of an international instrument being a declaration made by an international organization shall be construed as a reference to the casting by Australia of a vote in favour of the making of the declaration by the organization at the meeting of the organization at which the declaration was made or to the giving of some other public notification by Australia expressing its support for the declaration.

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### **Extension to external Territories**

**4. This Act extends to every external Territory.**

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### **Act to bind the Commonwealth**

**5. This Act binds the Crown in right of the Commonwealth and of Norfolk Island but does not bind the Crown in right of a State or of the Northern Territory.**

**PART II—THE HUMAN RIGHTS COMMISSION**

*Division 1—Establishment, Functions and Powers*

**Establishment of Commission**

5 **6. (1)** There is established by this Act a Commission by the name of the Human Rights Commission.

**(2)** The Commission—

- (a) is a body corporate, with perpetual succession;
- (b) shall have a seal;
- (c) may acquire, hold and dispose of real and personal property; and
- 10 (d) may sue and be sued in its corporate name.

**(3)** All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to a document and shall presume that it was duly affixed.

**Membership of Commission**

15 **7. (1)** The Commission shall consist of a Chairman, a Deputy Chairman and not less than 5 or more than 9 other members.

**(2)** The Chairman, the Deputy Chairman and the other members shall be appointed by the Governor-General.

20 **(3)** A member other than a member who is, and is expected to continue to be, a Judge may be appointed either as a full-time member or as a part-time member.

**(4)** If the Chairman—

- (a) is a Judge who does not devote the whole of his time to the duties of his office as Chairman; or
- 25 (b) is a part-time member,

the Deputy Chairman shall be appointed as a full-time member.

**(5)** The affairs of the Commission shall, in accordance with the decisions and subject to the directions of the Commission, be administered—

30 **(a)** if the Chairman—

- (i) is a Judge who devotes the whole of his time to the duties of his office as Chairman; or
- (ii) is a full-time member,

by the Chairman; or

35 **(b)** in any other case—by the Deputy Chairman.

**(6)** If—

**(a)** the affairs of the Commission are required by sub-section (5) to be administered by the Deputy Chairman; and

40 **(b)** the Deputy Chairman is acting as Chairman,  
the Deputy Chairman shall continue to administer the affairs of the Commission.

(7) A person shall not be appointed as Chairman unless he is or has been a Judge or is enrolled as a barrister or solicitor, as a barrister and solicitor, or as a legal practitioner, of the High Court, of another federal court or of the Supreme Court of a State or Territory.

(8) The performance of the functions or the exercise of the powers of the Commission is not affected by reason only of any vacancy in the office of Chairman or Deputy Chairman. 5

#### **Arrangement for appointment of the holder of a judicial office of a State or of the Northern Territory**

8. (1) The Governor-General may, for the purpose of appointing to the Commission a person who is the holder of a judicial office of a State or of the Northern Territory, enter into such arrangement with the Governor of that State or the Administrator of that Territory, as the case may be, as is necessary to secure that person's services. 10

(2) An arrangement under sub-section (1) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of the person to whom the arrangement relates. 15

#### **Functions of Commission**

9. (1) The functions of the Commission are—

(a) to examine enactments, and (when requested to do so by the Minister) proposed enactments, for the purpose of ascertaining whether the enactments or proposed enactments are, or would be, inconsistent with or contrary to any human rights, and to report to the Minister the results of any such examination; 20

(b) to inquire into any act or practice that may be inconsistent with or contrary to any human right, and— 25

(i) where the Commission considers it appropriate to do so—endeavour to effect a settlement of the matters that gave rise to the inquiry; and

(ii) where the Commission is of the opinion that the act or practice is inconsistent with or contrary to any human right, and the Commission has not considered it appropriate to endeavour to effect a settlement of the matters that gave rise to the inquiry or has endeavoured without success to effect a settlement of those matters—to report to the Minister the results of its inquiry and of any endeavours it has made to effect such a settlement; 30 35

(c) on its own initiative or when requested by the Minister, to report to the Minister as to the laws that should be made by the Parliament, or action that should be taken by the Commonwealth, on matters relating to human rights; 40

(d) when requested by the Minister, to report to the Minister as to the action (if any) that, in the opinion of the Commission, needs to be taken by Australia in order to comply with the provisions of the Covenant, of the Declarations or of any relevant international instrument; 45



- 5 (e) on its own initiative or when requested by the Minister, to examine any relevant international instrument for the purpose of ascertaining whether there are any inconsistencies between that instrument and the Covenant, the Declarations or any other relevant international instrument, and to report to the Minister the results of any such examination;
- (f) to promote an understanding and acceptance, and the public discussion, of human rights in Australia and the external Territories;
- 10 (g) to undertake research and educational programs, and other programs, on behalf of the Commonwealth for the purpose of promoting human rights and to co-ordinate any such programs undertaken by any other persons or authorities on behalf of the Commonwealth;
- 15 (h) to perform—
- (i) any functions conferred on the Commission by any other enactment;
  - (ii) any functions conferred on the Commission pursuant to any arrangement in force under section 11; and
  - 20 (iii) any functions conferred on the Commission by any State Act or Northern Territory enactment, being functions that are declared by the Minister, by notice published in the *Gazette*, to be complementary to other functions of the Commission; and
- 25 (j) to do anything incidental or conducive to the performance of any of the preceding functions.

**(2) The Commission shall not—**

- 30 (a) regard an enactment or proposed enactment as being inconsistent with or contrary to any human right for the purposes of paragraph (1) (a) or (b) by reason of a provision of the enactment or proposed enactment that is included solely for the purpose of securing adequate advancement of particular persons or groups of persons in order to enable them to enjoy or exercise human rights equally with other persons; or
- 35 (b) regard an act or practice as being inconsistent with or contrary to any human right for the purposes of paragraph (1) (a) or (b) where the act or practice is done or engaged in solely for the purpose referred to in paragraph (a).

40 (3) For the purpose of the performance of its functions, the Commission may work with and consult appropriate non-governmental organizations.

**Powers and duties of Commission**

45 **10. (1)** The Commission has power to do all things that are necessary or convenient to be done for or in connection with the performance of its functions.

(2) The Commission may at any time report to the Minister on any matter arising in the course of the performance of its functions and shall report to the Minister on such a matter if requested by him to do so.

(3) The Commission shall perform the functions referred to in paragraph 9 (1) (b)—

- (a) when the Commission is requested to do so by the Minister;
- (b) subject to sub-sections (4) and (5), when a complaint is made in writing to the Commission that the act or practice is inconsistent with or contrary to any human right; or
- (c) when it appears to the Commission to be desirable to do so.

(4) The Commission may, in its discretion, decide not to hold an inquiry as a result of a complaint if—

- (a) the complaint is frivolous or vexatious or is not made in good faith;
- (b) the subject-matter of the complaint is trivial;
- (c) the act or practice, if established, would not be inconsistent with or contrary to any human right;
- (d) some other remedy in relation to the subject-matter of the complaint is reasonably available to the complainant; or
- (e) the subject-matter of the complaint could be more effectively or conveniently dealt with by another statutory authority.

(5) The Commission may, in its discretion, decide not to hold an inquiry as a result of a complaint if a period of more than 12 months has elapsed since the act was done or since the last occasion when an act was done in pursuance of the practice.

(6) Where the Commission decides in accordance with sub-section (4) or (5) not to hold an inquiry as a result of a complaint, it shall forthwith inform the complainant in writing of its decision and the reasons for that decision.

(7) Where the Commission holds an inquiry as a result of a complaint, it shall, forthwith upon the making of its report to the Minister, furnish to the complainant a copy of its findings and of any recommendations included in its report.

#### **Inter-governmental arrangements**

11. (1) The Minister may make an arrangement with a Minister of a State or of the Northern Territory for or in relation to—

- (a) the performance on a joint basis of functions relating to the promotion of the observance of human rights in that State or Territory;
- (b) the performance by that State or Territory or by an authority of that State or Territory on behalf of the Commonwealth of functions (including functions of the Commission) relating to the promotion of the observance of human rights; or

(c) the performance by the Commission of functions on behalf of that State or Territory relating to the promotion of the observance of human rights.

5 (2) An arrangement under this section may contain such incidental or supplementary provisions as the Minister and the Minister of the State or of the Northern Territory with whom the arrangement is made think necessary.

10 (3) The Minister may arrange with the Minister of a State or of the Northern Territory with whom an arrangement is in force under this section for the variation or revocation of the arrangement.

(4) An arrangement under this section, or the variation or revocation of such an arrangement, shall be in writing and a copy of each instrument by which an arrangement under this section has been made, varied or revoked shall be published in the *Gazette*.

15 **Form of examinations or inquiries to be at discretion of Commission**

12. (1) For the purpose of the performance of its functions, the Commission may make an examination or hold an inquiry in such manner as it thinks fit and, in informing itself in the course of such an examination or inquiry, is not bound by the rules of evidence.

20 (2) Where the Commission considers that the preservation of the anonymity of a person who has made a complaint to the Commission, or has furnished or proposes to furnish information, has produced or proposes to produce a document, has given or proposes to give evidence or has made or proposes to make a submission to the Commission or to  
25 a prescribed person acting on behalf of the Commission, is necessary to protect the security of employment, the privacy or any human right of the person, the Commission may give directions prohibiting the disclosure of the identity of the person.

30 (3) A person shall not contravene or fail to comply with a direction given by the Commission under sub-section (2) that is applicable to him.

Penalty: \$1,000 or imprisonment for 3 months, or both.

**Power of Commission to authorize person to conduct inquiry or investigate matter on its behalf**

35 13. (1) Where the Commission is required or decides under sub-section 10 (3) to inquire into an act or practice, the Commission may, by resolution, authorize a prescribed person—

- (a) to inquire into that act or practice on behalf of the Commission; or
- (b) to investigate a particular aspect of that act or practice on behalf of the Commission.

40 (2) A resolution under sub-section (1) may be revoked by a further resolution of the Commission.

(3) Where a person is authorized by a resolution under paragraph (1) (a) to inquire into an act or practice on behalf of the Commission—

- (a) the person may hold the inquiry, and, where the person considers it appropriate to do so, endeavour to effect a settlement of the matters that gave rise to the inquiry, as if the Commission were constituted by the person alone and, for the purposes of so holding the inquiry and endeavouring to effect a settlement, the person may exercise all the powers of the Commission; 5
- (b) the person shall inform the Commission of the results of the inquiry and of any endeavours made by the person to effect a settlement; and 10
- (c) any report by the Commission to the Minister in relation to the inquiry and any endeavours made to effect a settlement shall be made as if the inquiry had been held, and those endeavours had been made, by the Commission itself. 15

(4) Where a person is authorized by a resolution under paragraph (1) (b) to investigate a particular aspect of an act or practice on behalf of the Commission—

- (a) the person may, for the purposes of carrying out that investigation, exercise all the powers of the Commission; and 20
- (b) the person shall inform the Commission of the results of that investigation.

(5) Where the Commission is required or decides under sub-section 10 (3) to inquire into an act or practice, a resolution by the Commission under sub-section (1) of this section in relation to that act or practice or a particular aspect of that act or practice does not prevent the Commission itself from inquiring into, or investigating that aspect of, that act or practice or endeavouring to effect a settlement of the matters that gave rise to the inquiry. 25

#### **Commission to give opportunity for making of submissions** 30

14. Where it appears to the Commission as a result of an inquiry into an act or practice that the act or practice is inconsistent with or contrary to any human right, the Commission shall not furnish a report to the Minister in relation to the act or practice until it has given a reasonable opportunity to the person who did the act or engaged in the practice, at his option, either— 35

- (a) to appear before the Commission, whether in person or by a representative, and make oral submissions in relation to the act or practice; or
- (b) to make written submissions to the Commission in relation to the act or practice, 40

or to do both of those things.

**Evidence**

15. (1) Where the Commission has reason to believe that a person is capable of furnishing information, producing documents or giving evidence relevant to a matter under examination or inquiry under this Act, a member may, by notice in writing served on that person, require that person—

(a) to furnish to the Commission or to a prescribed person, within the time and in the manner specified in the notice, any such information;

(b) to produce to the Commission or to a prescribed person, within the time specified in the notice, any such documents; or

(c) to appear before the Commission or before a prescribed person at a time and place specified in the notice to give any such evidence and to produce any such documents.

(2) Where the Attorney-General furnishes to the Commission a certificate certifying that the disclosure of information concerning a specified matter (including the furnishing of information in answer to a question) or the disclosure of the contents of any documents would be contrary to the public interest—

(a) by reason that it would prejudice the security, defence or international relations of Australia;

(b) by reason that it would involve the disclosure of communications between a Minister and a Minister of a State or of the Northern Territory, being a disclosure that would prejudice relations between the Commonwealth Government and the Government of a State or the Administration of the Northern Territory;

(c) by reason that it would involve the disclosure of deliberations or decisions of the Cabinet or a committee of the Cabinet; or

(d) for any other reason specified in the certificate that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information or the contents of the documents should not be disclosed,

then, subject to sub-section (3), a member is not entitled to require a person to furnish any information concerning the matter, to answer questions concerning the matter or to produce those documents.

(3) Where the Attorney-General has certified in accordance with sub-section (2) that the disclosure of information or of the contents of a document would be contrary to the public interest but the certificate does not specify a reason referred to in paragraph (2) (a), (b) or (c), the Chairman shall consider whether the information or the contents of the document should be disclosed and, if he considers that the information or the contents of the document should be so disclosed, the person on whom the notice was served shall furnish the information or produce the document accordingly.

(4) In considering whether information or the contents of a document should be disclosed as mentioned in sub-section (3), the Chairman shall take as the basis of his consideration the principle that it is desirable in the interest of securing the effective performance of the functions of the Commission that the Commission should be made aware of all relevant matters but shall pay due regard to any reason specified by the Attorney-General in the certificate as a reason why the disclosure of the information or of the contents of the document, as the case may be, would be contrary to the public interest. 5

(5) The Commission may require the evidence referred to in paragraph (1) (c) to be given on oath or affirmation, and for that purpose any prescribed person may administer an oath or affirmation. 10

(6) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the answers he will give to questions asked him will be true. 15

(7) A person shall not—

(a) without reasonable excuse, refuse or fail to comply with a notice under this section to the extent that the person is capable of complying with it;

(b) in purported compliance with such a notice, knowingly furnish information that is false or misleading; or 20

(c) when appearing before the Commission or a prescribed person, knowingly give evidence that is false or misleading.

Penalty: \$1,000.

(8) Without limiting the generality of the expression “reasonable excuse” in paragraph (7) (a), it is hereby declared for the removal of doubt that it is a reasonable excuse for a person to refuse to furnish information or produce a document that he is required to furnish or produce under this section, or to refuse to answer a question that he is asked when giving evidence under this section, that the information, the production of the document or the answer to the question might tend to incriminate him. 25 30

(9) A person who is required to appear before the Commission or before a prescribed person is entitled to be paid such fees and allowances for expenses as are prescribed. 35

(10) In relation to a time when a person is acting as Chairman, references in this section to the Chairman shall be read as references to that person.

#### **Reports to contain recommendations**

16. (1) Where, after an examination of an enactment or proposed enactment, the Commission finds that the enactment is, or the proposed enactment would be, inconsistent with or contrary to any human right, the Commission shall include in its report to the Minister relating to the 40

results of the examination any recommendations by the Commission for amendment of the enactment or proposed enactment to ensure that the enactment is not, or the proposed enactment would not be, inconsistent with or contrary to any human right.

5 (2) Where, after an inquiry into an act done or practice engaged in by a person, the Commission finds that the act or practice is inconsistent with or contrary to any human right—

- 10 (a) the Commission shall serve notice in writing on the person setting out its findings and the reasons for those findings;
- 15 (b) the Commission may include in the notice any recommendations by the Commission for the purpose of preventing a repetition of the act or a continuation of the practice;
- (c) the Commission shall include in its report to the Minister relating to the results of the inquiry particulars of any recommendations that it has made in pursuance of paragraph (b); and
- 20 (d) the Commission shall state in that report whether, to the knowledge of the Commission, the person has taken or is taking any action as a result of the findings and recommendations (if any) of the Commission and, if the person has taken or is taking any such action, the nature of that action.

### **Consultative committees**

17. (1) The Commission may, with the approval of the Minister, establish such committees as it thinks desirable for the purpose of consultation with the Commission in relation to the performance of its  
25 functions.

(2) A consultative committee shall consist of a representative of each of such non-governmental organizations as the Commission determines and such other persons (if any) as the Commission considers appropriate.

### 30 *Division 2—Administrative Provisions*

#### **Acting Chairman**

18. (1) The Minister may appoint a person to act as Chairman—

- 35 (a) during a vacancy in the office of Chairman, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Chairman is absent from duty or from Australia or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

**(2) The Minister may—**

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Chairman; and
- (b) at any time terminate such an appointment. 5

(3) Where a person is acting as Chairman in accordance with paragraph (1) (b) and the office of Chairman becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens. 10

(4) The appointment of a person to act as Chairman ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

(5) While a person is acting as Chairman, he has, and may exercise, all the powers and shall perform all the functions of the Chairman. 15

(6) At any time when a person who is not a member of the Commission is acting as Chairman, he shall be deemed to be a member of the Commission for the purposes of the definition of “prescribed person” in sub-section 3 (1) and for the purposes of sub-sections 15 (1), 28 (3) and (6), 32 (1) and 33 (1). 20

(7) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had passed. 25

**Acting Deputy Chairman**

**19. (1) The Minister may appoint a person to act as Deputy Chairman—**

- (a) during a vacancy in the office of Deputy Chairman, whether or not an appointment has previously been made to the office; or 30
- (b) during any period, or during all periods, when the Deputy Chairman is absent from duty or from Australia or is, for any reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months. 35

**(2) The Minister may—**

- (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as Deputy Chairman; and 40
- (b) at any time terminate such an appointment.



(3) Where a person is acting as Deputy Chairman in accordance with paragraph (1) (b) and the office of Deputy Chairman becomes vacant while that person is so acting, that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(4) The appointment of a person to act as Deputy Chairman ceases to have effect if he resigns the appointment by writing signed by him and delivered to the Minister.

(5) Subject to sub-section 7 (6), while a person is acting as Deputy Chairman, he has, and may exercise, all the powers and shall perform all the functions of the Deputy Chairman.

(6) At any time when a person who is not a member of the Commission is acting as Deputy Chairman, he shall be deemed to be a member of the Commission for the purposes of the definition of "prescribed person" in sub-section 3 (1) and for the purposes of sub-sections 15 (1), 28 (3) and (6), 32 (1) and 33 (1).

(7) The validity of anything done by a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there is a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had passed.

#### **Terms and conditions of appointment**

20. (1) Subject to sub-section (2), a member holds office for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(2) A person who has attained the age of 65 years shall not be appointed as a member other than a part-time member and a person shall not be appointed as a member other than a part-time member for a period that extends beyond the date on which he will attain the age of 65 years.

(3) In relation to the appointment as a member of a Judge, other than a Judge the age for whose retirement is 65 years, sub-section (2) has effect as if a reference to the age of 70 years were substituted in that sub-section for each reference to the age of 65 years.

(4) A member, other than a member who is a Judge, holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Governor-General.

#### **Remuneration and allowances**

21. (1) Subject to this section, a member shall be paid such remuneration as is determined by the Remuneration Tribunal, but, if no determination of that remuneration by the Tribunal is in operation, he shall be paid such remuneration as is prescribed.

(2) A member shall be paid such allowances as are prescribed.

(3) Sub-sections (1) and (2) have effect subject to the *Remuneration Tribunals Act 1973*.

(4) If a person who is a Judge is appointed as a member, he is not, while he receives salary or annual allowance as a Judge, entitled to remuneration under this Act.

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#### **Appointment of Judge as member not to affect tenure, &c.**

22. (1) The appointment of the holder of a judicial office as a member, or service by the holder of a judicial office as a member, does not affect his tenure of that judicial office or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, his service as a member shall be taken to be service as the holder of that judicial office.

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(2) In this section, "judicial office" means—

- (a) an office of Judge of a court created by the Parliament; or
- (b) an office the holder of which has, by virtue of his holding that office, the same status as a Judge of a court created by the Parliament.

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#### **Leave of absence**

23. (1) The Minister may grant to a full-time member leave of absence from duty on such terms and conditions as to remuneration or otherwise as the Minister determines.

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(2) The Minister may grant to a part-time member leave of absence from a meeting of the Commission.

#### **Resignation**

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24. A member may resign his office by writing signed by him and delivered to the Governor-General.

#### **Termination of appointment**

25. (1) The Governor-General may terminate the appointment of a member by reason of misbehaviour or physical or mental incapacity.

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(2) If—

- (a) a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit;
- (b) a full-time member engages, except with the approval of the Minister, in paid employment outside the duties of his office;
- (c) a full-time member is absent from duty, except on leave granted by the Minister in accordance with sub-section 23 (1), for 14 consecutive days, or for 28 days in any period of 12 months;

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(d) a part-time member is absent, except on leave granted by the Minister in accordance with sub-section 23 (2), from 3 consecutive meetings of the Commission; or

5 (e) a member fails, without reasonable excuse, to comply with his obligations under section 26,

the Governor-General shall terminate the appointment of that member.

(3) Sub-sections (1) and (2) do not apply to a member who is a Judge, but if a member who is a Judge ceases to be a Judge, the Governor-General may terminate his appointment.

10 **Disclosure of interests**

26. (1) A member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Commission shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the  
15 Commission.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Commission and the member shall not—

(a) be present during any deliberation of the Commission with respect to that matter; or

20 (b) take part in any decision of the Commission with respect to that matter.

**Staff**

27. (1) The staff necessary to assist the Commission shall be persons appointed or employed under the *Public Service Act 1922*.

25 (2) The person administering the affairs of the Commission pursuant to section 7 has all the powers of, or exercisable by, a Permanent Head under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the staff referred to in sub-section (1) as if that branch were a separate Department of the Australian Public  
30 Service.

(3) For the purposes of sub-sections 25 (5) and (6) of the *Public Service Act 1922*, the person administering the affairs of the Commission pursuant to section 7 shall be deemed to be a Permanent Head.

**Meetings of the Commission**

35 28. (1) The Minister or the Chairman may, at any time, convene a meeting of the Commission.

(2) The Chairman shall convene such meetings of the Commission as, in his opinion, are necessary for the efficient performance of its functions.

(3) At a meeting of the Commission—

(a) if the number of members for the time being holding office pursuant to an appointment under section 7 does not exceed 7—a quorum is constituted by 4 members; or

(b) in any other case—a quorum is constituted by a number of members that is not less than one-half of the number of members for the time being holding office pursuant to an appointment under section 7.

(4) The Chairman shall preside at all meetings of the Commission at which he is present.

(5) If the Chairman is not present at a meeting of the Commission, the members present shall elect one of their number to preside at that meeting.

(6) Questions arising at a meeting of the Commission shall be determined by a majority of the votes of the members present and voting.

(7) The person presiding at a meeting of the Commission has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

(8) The Commission may regulate the conduct of proceedings at its meetings as it thinks fit and shall cause minutes of those proceedings to be kept.

(9) In relation to a time when a person is acting as Chairman, references in this section to the Chairman shall be read as references to that person.

#### **Annual report**

29. (1) The Commission shall, as soon as practicable after each 30 June, prepare and furnish to the Minister a report of its operations under this or any other Act or under any State Act or law of a Territory during the year that ended on that 30 June.

(2) The first report of the Commission shall include a report of the operations of the Commissioner for Community Relations under the *Racial Discrimination Act* 1975 for the period that commenced immediately after the end of the year to which the last report furnished by the Commissioner for Community Relations under that Act related and ended immediately before the commencement of this Act.

#### **Reports to be tabled in the Parliament**

30. The Minister shall cause a copy of every report furnished to him by the Commission under this Part to be laid before each House of the Parliament within 15 sitting days of that House after the report is received by him.

PART III—MISCELLANEOUS

**Declaration of international instruments**

5 **31. (1)** The Minister may, after consulting with the appropriate Minister of each State and of the Northern Territory, by writing under his hand, declare an international instrument, being—

- (a) an instrument ratified or acceded to by Australia; or
- (b) a declaration that has been adopted by Australia,

to be an international instrument relating to human rights and freedoms for the purposes of this Act.

10 **(2)** Where the Minister makes a declaration under sub-section (1)—

(a) there shall be published in the *Gazette*—

- 15 (i) a copy of the international instrument;
- (ii) a copy of Australia's instrument of ratification of or accession to the international instrument or of the terms of any explanation given by Australia of its vote in respect of the international instrument; and

(iii) a copy of the instrument of declaration under sub-section (1); and

20 (b) the declaration under sub-section (1) has effect on and from the date on which the copies referred to in paragraph (a) were published in the *Gazette* or, if those copies were published in the *Gazette* on different dates, on the later or latest of those dates.

25 **(3)** The provisions of section 48 (except paragraphs (1) (a) and (b) and sub-section (2)) and section 49 of the *Acts Interpretation Act 1901* apply, by force of this section, to a declaration made under sub-section (1) of this section in like manner as those provisions apply to regulations.

**(4)** Nothing in the provisions applied by sub-section (3) affects the operation of a declaration made under sub-section (1) at any time before it becomes void, or is disallowed, in accordance with those provisions.

30 **Offences**

**32. (1)** A person shall not insult, hinder, obstruct, molest or interfere with—

- 35 (a) a member participating in an inquiry or examination by the Commission; or
- (b) a prescribed person holding an inquiry or carrying out an investigation on behalf of the Commission.

**(2)** A person shall not—

- 40 (a) refuse to employ another person;
- (b) dismiss, or threaten to dismiss, another person from his employment;
- (c) prejudice, or threaten to prejudice, another person in his employment; or

- (d) intimidate or coerce, or impose any pecuniary or other penalty upon, another person,

by reason that the other person—

- (e) has made, or proposes to make, a complaint to the Commission;  
 (f) has furnished or produced, or proposes to furnish or produce, any information or documents to the Commission or to a prescribed person; or  
 (g) has given or proposes to give evidence before the Commission or before a prescribed person.

Penalty: \$500.

### **Protection from civil actions**

33. (1) The Commission, a member or a person acting under the direction or authority of the Commission is not liable to an action or other proceeding for damages for or in relation to an act done or omitted to be done in good faith in performance or purported performance of any function, or in exercise or purported exercise of any power or authority, conferred on the Commission.

(2) Where—

- (a) a complaint has been made to the Commission; or  
 (b) a submission has been made, a document or information has been furnished, or evidence has been given, to the Commission,

a person is not liable to an action, suit or proceeding in respect of loss, damage or injury of any kind suffered by another person by reason only that the complaint or submission was made, the document or information was furnished or the evidence was given.

### **Non-disclosure of private information**

34. (1) A person who is, or has at any time been, a member of the Commission or a member of the staff referred to in section 27 or is, or has at any time been, authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission shall not, either directly or indirectly, except in the performance of a duty under or in connection with this Act or in the performance or exercise of such a function or power—

- (a) make a record of, or divulge or communicate to any person, any information relating to the affairs of another person acquired by him by reason of his office or employment under or for the purposes of this Act or by reason of his being or having been so authorized;  
 (b) make use of any such information as is mentioned in paragraph (a); or  
 (c) produce to any person a document relating to the affairs of another person furnished for the purposes of this Act.

5 (2) A person who is, or has at any time been, a member of the Commission or a member of the staff referred to in section 27 or is, or has at any time been, authorized to perform or exercise any function or power of the Commission or any function or power on behalf of the Commission shall not be required—

(a) to divulge or communicate to a court any information relating to the affairs of another person acquired by him by reason of his office or employment under or for the purposes of this Act or by reason of his being or having been so authorized; or

10 (b) to produce in a court a document relating to the affairs of another person of which he has custody, or to which he has access, by reason of his office or employment under or for the purposes of this Act or by reason of his being or having been so authorized,

except where it is necessary to do so for the purposes of this Act.

15 (3) Nothing in this section prohibits a person from—

(a) divulging or communicating information, or producing a document, to an authority of a State or of the Northern Territory in accordance with an arrangement in force under section 11; or

20 (b) divulging or communicating information, or producing a document, that is, or is included in a class of information that is or class of documents that are, required or permitted by an Act to be produced, divulged or communicated, as the case may be.

(4) In this section—

25 “court” includes any tribunal, authority or person having power to require the production of documents or the answering of questions;

“produce” includes permit access to.

Penalty: \$1,000 or imprisonment for 3 months, or both.

### Regulations

30 35. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters that are required or permitted by this Act to be prescribed or are necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### Cessation of operation of Act

35 36. (1) This Act, unless sooner repealed, shall cease to be in force at the expiration of 5 years after the date of commencement of this Act.

(2) For the purposes of section 8 of the *Acts Interpretation Act* 1901, when this Act ceases to be in force by virtue of sub-section (1), it shall thereupon be deemed to have been repealed by an Act other than this Act.

## SCHEDULE 1

Section 3

## INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

*The States Parties to the present Covenant,*

*Considering* that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recognizing* that these rights derive from the inherent dignity of the human person,

*Recognizing* that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

*Considering* the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

*Realizing* that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

*Agree* upon the following articles:

## PART I

*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.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

## PART II

*Article 2*

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, 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.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
  - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
  - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
  - (c) To ensure that the competent authorities shall enforce such remedies when granted.



**SCHEDULE 1—continued**

*Article 3*

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

*Article 4*

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

*Article 5*

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

**PART III**

*Article 6*

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

*Article 7*

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

**SCHEDULE 1—continued***Article 8*

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3. (a) No one shall be required to perform forced or compulsory labour;
  - (b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;
  - (c) For the purpose of this paragraph the term “ forced or compulsory labour ” shall not include:
    - (i) Any work or service, not referred to in sub-paragraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;
    - (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;
    - (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;
    - (iv) Any work or service which forms part of normal civil obligations.

*Article 9*

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons of his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

*Article 10*

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;
  - (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
3. The penitentiary system shall comprise treatment of prisoners the essential aim of which all be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

*Article 11*

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

## SCHEDULE 1—continued

## Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant
4. No one shall be arbitrarily deprived of the right to enter his own country.

## Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

## Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The Press and the public may be excluded from all or part of a trial for reasons of morals, public order (*ordre public*) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
  - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
  - (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;
  - (c) To be tried without undue delay;
  - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;
  - (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
  - (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;
  - (g) Not to be compelled to testify against himself or to confess guilt.
4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

**SCHEDULE 1—continued**

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

*Article 15*

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

*Article 16*

Everyone shall have the right to recognition everywhere as a person before the law.

*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.

2. Everyone has the right to the protection of the law against such interference or attacks.

*Article 18*

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and 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 may be 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. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

*Article 19*

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (*ordre public*), or of public health or morals.

*Article 20*

1. Any propaganda for war shall be prohibited by law.

2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

## SCHEDULE 1—continued

### Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

### Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

### Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.

3. No marriage shall be entered into without the free and full consent of the intending spouses.

4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

### Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.

2. Every child shall be registered immediately after birth and shall have a name.

3. Every child has the right to acquire a nationality.

### Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

### Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

**SCHEDULE 1—continued***Article 27*

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

**PART IV***Article 28*

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.

2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.

3. The members of the Committee shall be elected and shall serve in their personal capacity.

*Article 29*

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.

2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.

3. A person shall be eligible for renomination.

*Article 30*

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.

2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.

3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.

4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary-General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two-thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

*Article 31*

1. The Committee may not include more than one national of the same State.

2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

*Article 32*

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.

2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

**SCHEDULE 1—continued**

*Article 33*

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

*Article 34*

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.

2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.

3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

*Article 35*

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

*Article 36*

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

*Article 37*

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.

2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

*Article 38*

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

*Article 39*

1. The Committee shall elect its officers for a term of two years. They may be re-elected.

2. The Committee shall establish its own rules of procedure, but these rules shall provide, *inter alia*, that:

- (a) Twelve members shall constitute a quorum;
- (b) Decisions of the Committee shall be made by a majority vote of the members present.

*Article 40*

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:

- (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
- (b) Thereafter whenever the Committee so requests.

**SCHEDULE 1—continued**

2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.

3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

*Article 41*

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

- (a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication, the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter.
- (b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State.
- (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged.
- (d) The Committee shall hold closed meetings when examining communications under this article.
- (e) Subject to the provisions of sub-paragraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant.
- (f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in sub-paragraph (b), to supply any relevant information.
- (g) The States Parties concerned, referred to in sub-paragraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing.
- (h) The Committee shall, within twelve months after the date of receipt of notice under sub-paragraph (b), submit a report:
  - (i) If a solution within the terms of sub-paragraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
  - (ii) If a solution within the terms of sub-paragraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

**In every matter, the report shall be communicated to the States Parties concerned.**



## SCHEDULE 1—continued

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph 1 of this article.

Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

*Article 42*

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an *ad hoc* Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned.

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached.

(c) If a solution within the terms of sub-paragraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned.

(d) If the Commission's report is submitted under sub-paragraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

## SCHEDULE 1—continued

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

*Article 43*

The members of the Committee, and of the *ad hoc* conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

*Article 44*

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

*Article 45*

The Committee shall submit to the General Assembly of the United Nations through the Economic and Social Council, an annual report on its activities.

## PART V

*Article 46*

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

*Article 47*

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

## PART VI

*Article 48*

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a party to the present Covenant.

2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

*Article 49*

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

*Article 50*

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

**SCHEDULE 1—continued**

*Article 51*

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.

2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

*Article 52*

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph 1 of the same article of the following particulars:

- (a) Signatures, ratifications and accession under article 48;
- (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

*Article 53*

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

IN FAITH WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed the present Covenant, opened for signature at New York, on the nineteenth day of December, one thousand nine hundred and sixty-six.

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**SCHEDULE 2**

Section 3

**DECLARATION OF THE RIGHTS OF THE CHILD**

*Whereas* the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

*Whereas* the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, 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,

*Whereas* the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth,

*Whereas* the need for such special safeguards has been stated in the Geneva Declaration of the Rights of the Child of 1924, and recognized in the Universal Declaration of Human Rights and in the statutes of specialized agencies and international organizations concerned with the welfare of children,

*Whereas* mankind owes to the child the best it has to give,

*Now therefore,*

*The General Assembly*

## SCHEDULE 2—continued

*Proclaims* this Declaration of the Rights of the Child to the end that he may have a happy childhood and enjoy for his own good and for the good of society the rights and freedoms herein set forth, and calls upon parents, upon men and women as individuals, and upon voluntary organizations, local authorities and national Governments to recognize these rights and strive for their observance by legislative and other measures progressively taken in accordance with the following principles:

*Principle 1*

The child shall enjoy all the rights set forth in this Declaration. Every child, without any exception whatsoever, shall be entitled to these rights, without distinction or discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, whether of himself or of his family.

*Principle 2*

The child shall enjoy special protection, and shall be given opportunities and facilities, by law and by other means, to enable him to develop physically, mentally, morally, spiritually and socially in a healthy and normal manner and in conditions of freedom and dignity. In the enactment of laws for this purpose, the best interests of the child shall be the paramount consideration.

*Principle 3*

The child shall be entitled from his birth to a name and a nationality.

*Principle 4*

The child shall enjoy the benefits of social security. He shall be entitled to grow and develop in health; to this end, special care and protection shall be provided both to him and to his mother, including adequate pre-natal and post-natal care. The child shall have the right to adequate nutrition, housing, recreation and medical services.

*Principle 5*

The child who is physically, mentally or socially handicapped shall be given the special treatment, education and care required by his particular condition.

*Principle 6*

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

*Principle 7*

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgment, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavour to promote the enjoyment of this right.

*Principle 8*

The child shall in all circumstances be among the first to receive protection and relief.

*Principle 9*

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

## SCHEDULE 2—continued

## Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.

## SCHEDULE 3

## Section 3

## DECLARATION ON THE RIGHTS OF MENTALLY RETARDED PERSONS

*The General Assembly,*

*Mindful* of the pledge of the States Members of the United Nations under the Charter to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

*Reaffirming* faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

*Recalling* the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

*Emphasizing* that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

*Bearing in mind* the necessity of assisting mentally retarded persons to develop their abilities in various fields of activities and of promoting their integration as far as possible in normal life,

*Aware* that certain countries, at their present stage of development, can devote only limited efforts to this end,

*Proclaims* this Declaration on the Rights of Mentally Retarded Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

1. The mentally retarded person has, to the maximum degree of feasibility, the same rights as other human beings.
2. The mentally retarded person has a right to proper medical care and physical therapy and to such education, training, rehabilitation and guidance as will enable him to develop his ability and maximum potential.
3. The mentally retarded person has a right to economic security and to a decent standard of living. He has a right to perform productive work or to engage in any other meaningful occupation to the fullest possible extent of his capabilities.
4. Whenever possible, the mentally retarded person should live with his own family or with foster parents and participate in different forms of community life. The family with which he lives should receive assistance. If care in an institution becomes necessary, it should be provided in surroundings and other circumstances as close as possible to those of normal life.
5. The mentally retarded person has a right to a qualified guardian when this is required to protect his personal well-being and interests.
6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a right to due process of law with full recognition being given to his degree of mental responsibility.
7. Whenever mentally retarded persons are unable, because of the severity of their handicap, to exercise all their rights in a meaningful way or it should become necessary to restrict or deny some or all of these rights, the procedure used for that restriction or denial of rights

### SCHEDULE 3—continued

must contain proper legal safeguards against every form of abuse. This procedure must be based on an evaluation of the social capability of the mentally retarded person by qualified experts and must be subject to periodic review and to the right of appeal to higher authorities.

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### SCHEDULE 4

Section 3

#### DECLARATION ON THE RIGHTS OF DISABLED PERSONS

*The General Assembly,*

*Mindful* of the pledge made by Member States, under the Charter of the United Nations; to take joint and separate action in co-operation with the Organization to promote higher standards of living, full employment and conditions of economic and social progress and development,

*Reaffirming* its faith in human rights and fundamental freedoms and in the principles of peace, of the dignity and worth of the human person and of social justice proclaimed in the Charter,

*Recalling* the principles of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Declaration of the Rights of the Child and the Declaration on the Rights of Mentally Retarded Persons, as well as the standards already set for social progress in the constitutions, conventions, recommendations and resolutions of the International Labour Organisation, the United Nations Educational, Scientific and Cultural Organization, the World Health Organization, the United Nations Children's Fund and other organizations concerned,

*Recalling also* Economic and Social Council resolution 1921 (LVIII) of 6 May 1975 on the prevention of disability and the rehabilitation of disabled persons,

*Emphasizing* that the Declaration on Social Progress and Development has proclaimed the necessity of protecting the rights and assuring the welfare and rehabilitation of the physically and mentally disadvantaged,

*Bearing in mind* the necessity of preventing physical and mental disabilities and of assisting disabled persons to develop their abilities in the most varied fields of activities and of promoting their integration as far as possible in normal life,

*Aware* that certain countries, at their present stage of development, can devote only limited efforts to this end,

*Proclaims* this Declaration on the Rights of Disabled Persons and calls for national and international action to ensure that it will be used as a common basis and frame of reference for the protection of these rights:

1. The term "disabled person" means any person unable to ensure by himself or herself, wholly or partly, the necessities of a normal individual and/or social life, as a result of a deficiency, either congenital or not, in his or her physical or mental capabilities.
2. Disabled persons shall enjoy all the rights set forth in this Declaration. These rights shall be granted to all disabled persons without any exception whatsoever and without distinction or discrimination on the basis of race, colour, sex, language, religion, political or other opinions, national or social origin, state of wealth, birth or any other situation applying either to the disabled person himself or herself or to his or her family.
3. Disabled persons have the inherent right to respect for their human dignity. Disabled persons, whatever the origin, nature and seriousness of their handicaps and disabilities, have the same fundamental rights as their fellow-citizens of the same age, which implies first and foremost the right to enjoy a decent life, as normal and full as possible.
4. Disabled persons have the same civil and political rights as other human beings; paragraph 7 of the Declaration on the Rights of Mentally Retarded Persons applies to any possible limitation or suppression of those rights for mentally disabled persons.
5. Disabled persons are entitled to the measures designed to enable them to become as self-reliant as possible.

**SCHEDULE 4—continued**

6. Disabled persons have the right to medical, psychological and functional treatment, including prosthetic and orthetic appliances, to medical and social rehabilitation, education, vocational training and rehabilitation, aid, counselling, placement services and other services which will enable them to develop their capabilities and skills to the maximum and will hasten the process of their social integration or reintegration.

7. Disabled persons have the right to economic and social security and to a decent level of living. They have the right, according to their capabilities, to secure and retain employment or to engage in a useful, productive and remunerative occupation and to join trade unions.

8. Disabled persons are entitled to have their special needs taken into consideration at all stages of economic and social planning.

9. Disabled persons have the right to live with their families or with foster parents and to participate in all social, creative or recreational activities. No disabled person shall be subjected, as far as his or her residence is concerned, to differential treatment other than that required by his or her condition or by the improvement which he or she may derive therefrom. If the stay of a disabled person in a specialized establishment is indispensable, the environment and living conditions therein shall be as close as possible to those of the normal life of a person of his or her age.

10. Disabled persons shall be protected against all exploitation, all regulations and all treatment of a discriminatory, abusive or degrading nature.

11. Disabled persons shall be able to avail themselves of qualified legal aid when such aid proves indispensable for the protection of their persons and property. If judicial proceedings are instituted against them, the legal procedure applied shall take their physical and mental condition fully into account.

12. Organizations of disabled persons may be usefully consulted in all matters regarding the rights of disabled persons.

13. Disabled persons, their families and communities shall be fully informed, by all appropriate means, of the rights contained in this Declaration.

