

## Still work to be done to develop a culture of human rights

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IN 2004, the Stanhope Government took the lead in protecting human rights when it introduced Australia's first Bill of rights, the ACT Human Rights Act.

Recently, Victoria has followed the territory's example in adopting a Charter of Human Rights and Responsibilities, and other states are considering similar legislation.

Last Tuesday, ACT Attorney-General Simon Corbell issued the report of the first review of the ACT Human Rights Act.

Although the report received little fanfare, it highlights some important changes needed to ensure that the ACT remains at the forefront of human rights protection.

While the report finds that the ACT Human Rights Act has been successful in improving consideration of human rights within the Government and the Legislative Assembly, it concedes that the Act has not been used often in the courts, and there is still much work to be done to develop a culture of human rights in the ACT community.

The ACT Human Rights Act represented a significant step forward in the protection of human rights in Australia, overcoming the fears and misconceptions that had long surrounded Bills of rights.

After lengthy community consultation, the Government chose to enact a Bill of rights based on a "dialogue" model, to encourage an exchange of views on human rights between the courts, the parliament and the executive. The Act requires the Government to certify whether new laws are consistent with human rights, and allows the Supreme Court to issue a declaration of incompatibility where legislation cannot be read to comply with human rights, but does not give it the power to invalidate the law.

Unlike an American-style Bill of rights, the ACT Human Rights Act preserves the right of the Legislative Assembly to have the final say. However, the current Act is more limited than the model which was recommended by the consultative committee.

One limitation is that it does not impose any direct obligation on public officials to comply with human rights in making decisions and carrying out public functions.

This has meant that the main impact of the Act has been in the creation of new legislation, rather than changing existing policy and practice.

Further, the ACT Human Rights Act does not provide people with a direct right of access to the courts if their human rights have been breached, which goes some way to explaining why the Act has been largely ignored by the public and by the legal community.

The Victorian Government, perhaps learning from the ACT experience, has addressed these problems in its Charter of Human Rights and Responsibilities, which imposes a direct duty on public authorities to comply with human rights, and a right to bring an action to court where this duty is breached, although not to claim financial compensation.

These provisions will be phased in after the commencement of the charter in January next year.

The ACT review report recommends that the Government consider amending the ACT Human Rights Act to include similar provisions.

In our view these amendments are a key step in giving meaning to human rights for people in the community, as decision makers at the coal-face will need to respect human rights in their dealings with the public.

A further advantage of updating our Human Rights Act to be consistent with the Victorian charter is that the ACT Government will be able to learn from the cases that will be generated in that much larger jurisdiction, and to improve compliance with human rights without having to wait for issues to be tested here.

Another reform canvassed in the review was whether to include social, cultural and economic rights that are currently excluded from the Human Rights Act.

In introducing the Act in 2004, the Government noted that it was a starting point, and hinted that further rights might be included over time.

Although the majority of submissions to the review supported the inclusion of social, cultural and economic rights, the report stops short of recommending the addition of any new rights at this stage, but suggests that this issue be revisited when the Act is again reviewed after it has been in place five years.

Critics have suggested that social, cultural and economic rights would be dangerous additions to the Human Rights Act because their protection could entail unlimited financial resources.

This fear is misplaced in the context of legislation that does not allow monetary compensation for breach of human rights.

Moreover, decisions on social and economic rights in the South African courts shows that the duty on a government in this context is simply one to act reasonably to provide access to these rights. The rights do not impose a requirement to go beyond a government's available resources.

We hope that the Stanhope Government continues to show leadership in the protection of human rights by amending the Human Rights Act

to include these fundamental rights, such as the right to education, the right to health and the right to housing, which are necessary for the exercise of all other human rights.

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