

## **Amendment to ensure administration is brought to rights**

25 February 2008

[Canberra Times](#)

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Important amendments to the ACT Human Rights Act are currently being considered by the Legislative Assembly. In 2004, the ACT was a pioneer in introducing the first legislative human rights charter in Australia. The Human Rights Act offered a model for human rights protection quite different to that contained in traditional bills of rights, such as that of the United States, which have been criticised for allocating too much power to judges to override the will of democratically-elected parliaments through declaring legislation invalid.

The ACT legislation, by contrast, was built on a dialogue model of human rights protection, which left the final decision on legislation to the Legislative Assembly, but ensured that human rights were considered at each step of the political and legislative process. If the ACT Government were to enact laws that breached human rights, it would have to do so in the face of judicial and public scrutiny. In this sense, the ACT legislation followed Britain's Human Rights Act of 1998, which is credited with transforming the public administration of Britain.

The impact of the ACT Human Rights Act has not been headline news since and there have been few court cases invoking the legislation. The real effects have been largely out of the public eye, but they have been significant. All ACT laws and policies are now subject to human rights scrutiny and a number of proposals have been altered and improved as a result. For example, the ACT's Terrorism (Extraordinary Temporary Powers) Act 2006 reflects the influence of a human rights approach and includes a number of important safeguards for those subject to preventative detention, which were absent from the equivalent federal legislation.

The positive results of human rights legislation in the ACT encouraged the enactment of a Charter of Human Rights and Responsibilities in Victoria, which came into full effect on 1 January this year. Public consultations have been held in Tasmania and Western Australia and government-appointed committees have each recommended that similar legislation be passed in those jurisdictions. The ACT Human Rights Act has also paved the way for consideration of a charter of rights at the national level. This proposed amendments to the ACT Human Rights Act will introduce a greater level of accountability for government and its agencies to observe human rights.

The Human Rights Amendment Bill places a direct responsibility on public authorities to consider human rights in their decision making. Public authorities are defined to include not only all government agencies and instrumentalities but also all entities that exercise public functions. This will mean that private businesses that provide public services, such as public transport, gas or water supplies, will be required to act consistently with human rights. The amendments will allow people who have had their human rights breached by a public authority to have those decisions reviewed. The Supreme Court can make any order that it considers appropriate to remedy the violation (such as an apology) but the legislation specifically rules out the possibility of monetary compensation.

An intriguing provision in the new law is the possibility that any entity, such as a private business that does not act as a public authority in any context, may opt in to the duty to comply with human rights. Such possibilities are available at the international level, for example through the United Nations Global Compact, but unusual in national legal systems. We hope that Canberra's private sector will take up this invitation to participate in observing human rights.

Other amendments to the Human Rights Act in the Bill include clarifying the wording of the provision at the heart of the legislation, section 30. The aim of section 30 was to ensure that all ACT legislation was interpreted to be consistent with human rights as far as possible. The original wording was somewhat convoluted and has led to some misunderstandings within ACT courts and tribunals, which were cautious about interpreting legislation in light of human rights principles unless the legislation was ambiguous in its wording. The new wording of section 30 makes it clear that a human rights-consistent interpretation of legislation must prevail unless this contradicts the very purpose of the law.

Another helpful clarification to be made to the Human Rights Act is the expansion of section 28, which allows reasonable limitations on rights. A claim of human rights by one person can often be met by a claim of another right for example, the right to privacy can be met by invoking the right to freedom of speech. Decision-makers thus require a mechanism to balance contending claims of rights. The amended section now provides a list of factors which a court or tribunal can take into account in working out whether a proposed restriction on a right is reasonable and justified. These include the nature of the right, the extent of the limitation and whether there is any less restrictive way of limiting the right.

Overall, the changes to the Human Rights Act will provide a stronger incentive for government and public agencies to observe human rights. The amendments will not come into effect until 2009 in order to allow government and public authorities to prepare for greater accountability.

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