

The ACT Human Rights Act 2004 — A Year On

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The ACT Human Rights Act is an ordinary piece of legislation. It is described as a rational and principled framework to make decisions about rights.

People frequently think that a Human Rights Charter encapsulates a 'pure model' of absolute rights. Yet apart from the right to life, and the right to be free from torture, other rights are subject to reasonable limitation.

The HRA allows dialogue with Courts and the Government – that can declare legislation as being incompatible with human rights. The ACT decided that it was mature enough to allow such dialogue, although allowing the courts to criticise legislation does have its difficulties and generates political debate.

The HRA and Anti-Terrorism Laws

The Federal Government used the language and embodied the principles of human rights when announcing the safeguards in the proposed anti-terrorism legislation such as the guarantee of humane treatment for those detained, the right to legal representation and the requirement of proportionality –that any limitation must be reasonable and necessary.

Whilst the detail will only be clear when the legislation is prepared, the principles announced made it easy for the ACT to assess the proposal against the human rights framework and make the decision to support it. It was a good process for making a decision about whether to go forward with the anti-terrorism laws.

The legislature retains existing law making power but must be up front if proposed laws do not comply with the HRA and issue a statement to that effect.

What has changed since the HRA was passed?

(1) All legislation is checked for compliance with human rights principles

50 bills have been checked for compliance since the Act was passed last year and were found to be consistent with the Act. The Attorney General can intervene and there is a developing culture of human rights. Legislation is examined to check if it complies with the HRA. All options are examined and those that interfere least with human rights are chosen. This occurs very early in the policy development process so that proposals that [are consistent with human rights] can be framed early on.

This ensures that human rights are considered when developing new laws and interpreting laws.

An example of how the question of human rights has intervened in the legislative process was when tree preservation laws were recently passed. The Parliament faced the question of whether a ranger could use reasonable force to enter a private property to prevent a protected tree from being cut down – impacting on the right to privacy. This raised a dilemma about protecting trees versus privacy. This issue was resolved through the framework used to consider legislation against human rights principles in the HRA.

(2) Human rights audits are conducted

Human rights audits are extensively used overseas and audits are now performed in the ACT. Auditors use a checklist to evaluate practices and the legislative framework. Auditors write a report examining whether the processes are compliant with the obligations in the HRA. The Human Rights Commissioner conducts audits and agencies can do their own audits.

A well known audit has been conducted by the Commissioner into the ACT's juvenile detention facility. This audit raised how inconsistencies with human rights principles could arise in the area of detention of prisoners.

The ACT's juvenile detention centre is a small centre where detainees' ages range from 11 through to 16 or 17 years of age and there are different genders in the same facility. The audit recognised these issues as being human rights issues.

Additionally, the centre's behaviour management system in its use of segregation for discipline needed to be carefully circumscribed so as not to be a first resort measure. In addition, originally, strip searches of detainees attending court or off site programs and medical treatment was routine, as a safety and security measure for the detention facility, through HRA the strip searches have now been curtailed.

(3) Administrative decision making

Human rights are now a relevant consideration in administrative decision making. A recent example of human rights considerations influencing administrative decision making was when a mother with several children, on a priority list to be allocated emergency housing sought to be elevated in priority on the list.

The Human Rights Commissioner and the Attorney General may intervene in legal proceedings, although this is rare and has only occurred in 14 out of 2250 Supreme Court cases since the HRA was passed.

An example of such intervention is where the deeming provisions in Interim Apprehended Violence Orders in domestic violence cases were argued to be a justifiable restraint on the right to a fair trial because people can seek judicial review of such orders.

The HRA adds rigour to policy development extends an independent voice for vulnerable groups and provides overarching legitimacy.