

# Justice and Community Safety Directorate

## Human Rights Act

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[Review report](#) The ACT has a proud history in the protection and promotion of human rights.

The *ACT Human Rights Act 2004* was the first bill of rights in Australia. It incorporates internationally recognised civil and political rights in an Act of the Legislative Assembly and is often described as providing a 'dialogue model' of human rights law. Features of this dialogue include:

- The Attorney-General provides a statement of human rights compatibility for the Government's new laws when they are presented to the Legislative Assembly.
- If a person wants to assert that there has been a breach of human rights by a public authority, notice of the alleged breach is to be provided to the Attorney-General and the Human Rights Commission.
- When it interprets the laws, the Supreme Court can make a declaration of incompatibility if it believes a law is not compatible with human rights.
- The Assembly can debate whether and how any identified incompatibility should be altered.

For a variety of information about human rights law in the ACT and around the world visit the Australian National University's [website](#).

## Right to Education

A new section 27A of the [Human Rights Act 2004](#) - section 27A Right to education - commenced on 1 January 2013. Inclusion of the right to education was a commitment made in the [Government's response to the Report of the Economic, Social and Cultural Rights Research Project Team](#).

The right to education is an economic, social and cultural right that ensures each child living in the ACT has access to free school education appropriate to his or her needs. In this context, "school" education includes preschool, primary and secondary school.

The right also provides that every person living in the ACT has the right to access further education and vocational and continuing training.

As with all the rights in the Human Right Act, the right to education can be limited if justified in a free and democratic society. An example of an existing limitation is requiring some international students to pay primary school fees. This is reasonable as it is consistent with Australian Government policy and the practice across all Australian jurisdictions.

Further information on the right to education in the ACT can be found on the ACT Human Rights Commission's [Australian Human Rights Law Wiki](#).

For further assistance in relation to this right, please contact the Human Rights Team on 62070595 or at [JACSScrutinyteam@act.gov.au](mailto:JACSScrutinyteam@act.gov.au).

## **Addressing human rights issues in explanatory statements**

As part of the legislation process, Ministers and their directorates must ensure that any legislation for which they are responsible complies with the *Human Rights Act 2004*. An explanatory statement is one of the supporting documents that the relevant policy area must develop to accompany any bill to be presented to the Legislative Assembly.

As set out in the *Legislation Handbook*, the explanatory statement must address any human rights issues raised by the bill, including whether the bill limits any rights. To assist agencies to understand and meet this requirement, the Human Rights Unit has developed a fact sheet on *Addressing human rights in explanatory statements of bills*.

[Addressing human rights in explanatory statements of bills: Fact Sheet](#)

[Summary of rights included in the Human Rights Act 2004](#)

Contact the Human Rights Unit on 6207 0595 for further information or assistance.

## **Review of Human Rights Act**

The *Human Rights Act 2004* required that the Government review the operations of the Act one and five years after it came into effect. In 2006 the Department joined with the Australian National University under an Australian Research Council (ARC) Linkage agreement to review the operation of the Human Rights Act in the ACT. The ANU's resulting report [Human Rights Act 2004 \(ACT\): The First Five Years of Operation](#) was tabled in the Legislative Assembly in 2009.

The Report on the first five years of operation of the *Human Rights Act 2004* identified that the Human Rights Act has resulted in an improved quality of law-making in the Territory to ensure that human rights concerns are given due consideration.

It also found that, as a result of the Human Rights Act, advances have been made towards ensuring the full enjoyment of human rights in the ACT".

On 29 March 2012, the Attorney-General tabled the [Government's response](#) to the 5 year Review in the Legislative Assembly. Implementation of agreed recommendations will increase awareness of, and compliance with, human rights within the ACT public service and fortify the existing human rights culture across the ACT.

# 2014 Review of the Human Rights Act 2004

Pursuant to section 43 of the Human Rights Act 2004 (the HRA), the Justice and Community Safety Directorate has undertaken a review of the operation of the right to education in part 3A of the Human Rights Act 2004. The review also examined a range of issues regarding the inclusion of other economic, social and cultural rights (ESCR) in the Human Rights Act.

The terms of reference required that the review include consideration of whether-

- (a) other economic, social or cultural rights should be included in this Act; and
- (b) part 5A should apply to the economic, social and cultural rights in part 3A; and
- (c) the economic, social and cultural rights in part 3A should be subject to progressive realisation.

The review also considered other matters that are relevant to the operation of the Act as raised by the Human Rights Commission.

The Review report was tabled by the Attorney-General on 27 November 2014.

Economic, social and cultural rights in the [Human Rights Act 2004 Section 43 review report](#) [PDF 1.2 MB]

## National Human Rights progress

In 2009 the National Human Rights Committee reported on its nationwide consultation into human rights protections in Australia. The Committee received in excess of 35,000 submissions. Further information about the consultation is available from the [National Human Rights Consultation website](#).

- [National Human Rights Consultation Report website](#)
- ACT Government Submission to the National Human Rights Consultation Committee 2009

## Legislation

- [Human Rights Act 2004](#)
- [Explanatory Statement](#)
- [Presentation speech \(Hansard copy\) 2003](#)
- [Closing speech for debate \(Hansard copy\) 2004](#)

## International Legal Materials

- [Key Human Rights Treaties](#)
- [International Human Rights Instruments List](#)

## Publications

- [Overview of the Human Rights Act 2004](#)

- [A Plain English Guide](#)
- [Guidelines for ACT Departments: Developing Legislation and Policy](#)
- [Guide to ACT Departments on Pre-Introduction Scrutiny](#)