

Submission from Civil Liberties Australia (ACT) Inc. A04043

In its first year, the Human Rights Act has been successfully entrenched into the fabric of Canberra society, without causing rents. It is obviously a sensible piece of legislation, because it has not occasioned a flood of divisiveness or of litigation. However, with hindsight, it is also obvious that the extreme caution which shaped its introduction 12 months ago has limited the benefits to ACT citizens of what might be achieved from nation-leading legislation such as this.

CLA believes that the best approach is to re-visit the carefully-considered recommendations of the Consultative Committee, and to implement those not adopted originally. They have the overwhelming advantage of being the result of exemplary consultation with the community. They are what the community and experts believed – and still believe, presumably, because nothing deleterious has occurred to change opinions – were the most appropriate measures for the ACT.

In particular, CLA believes the option of an individual being able to seek a remedy should be introduced.

CLA would prefer a community-based first step on a ladder of remedy, through a role for the Human Rights Commissioner (HRC) and staff in considering and advising the legal, administrative and parliamentary arms of government whether or not a breach has occurred. This approach would allow quicker remedy for citizens whose rights had been overlooked or ignored. If it was not possible to resolve an issue relatively quickly, the matter would default into the ACT legal system, as occurs now. The complainant could independently still seek legal remedy if not satisfied with the ready-remedy response.

As a filtering mechanism, to prevent the HRC receiving an excessive number of complaints, any matter might require the endorsement of a specified agency before the HRC would consider it. Such agencies might be legal aid bodies, rights/liberties organisations, citizens groups, etc.

Obviously, the Human Rights Office – under whatever name or structure – would need additional staff and resources. CLA recommends an approach which involves extra full-time staff and also community representatives sitting on advisory panels, committees or boards.

There are two general issues on which CLA offers comment so that the matters may be addressed formally in the review:

Sole traders/business people:

The HR Act applies to individuals, which means it covers the business activities of sole traders. However, this in itself may introduce unfairness relative to competing businesses with formal corporate structures or trading mechanisms. CLA believes a mechanism is needed to ensure businesses operating in the ACT have the same, or similar, rights to redress Human Rights wrongs as do sole traders...or that sole traders have no additional rights to other businesses.

ACT Policing

CLA believes that it is unconscionable that the ACT's police are not clearly bound by the ACT Human Rights Act at all times in all circumstances when operating in the ACT or in ACT-related matters.

Many human rights transgressions evolve around the role and activities of police. CLA believes that the ACT Government and the Australian Federal Police must so arrange their contractual obligations that ACT Policing's police officers and administrative staff are bound absolutely, as are all ACT citizens, by the Human Rights ACT.

Further, CLA suggests that the AFP be asked to agree to be bound by the ACT Human Rights Act when AFP officers and administrative staff are acting within the boundaries of the ACT, and/or on all ACT-related matters, or matters involving ACT citizens or issues. Should the AFP be unwilling to be bound by the Act, the AFP should be asked to explain which clause(s) of the Act cause it distress or difficulty.

The following comments are provided in response to the paper *Framework for the Twelve-Month Review*:

Socio-Economic Rights

How valid the original argumenets against formal recognition?

The original arguments for not formally recognising socio-economic rights were based on the public purse, not on principle. On principle, the Government said, the ACT's Human Rights Act should recognise socio-economic rights.

The Government is elected to govern on principle, and the allocation of money and 'scarce resources' is precisely what governments are elected to manage.

The key word is 'recognise'. The rights in question exist; individuals have them. Therefore they should be 'recognised' by the Government. The Government should manage the consequences.

Consider the inverse of this: Which of the rights in question does the Government not recognise that individuals have? Perhaps the Government could explain why an individual does NOT have:

- The right to work
- The right to an adequate standard of living, including food, clothing and housing
- The right to education
- The right to take part in cultural life

As with the AFP discussion above, if the Government is unwilling to recognise these rights, perhaps it could explain which one(s) is/are causing difficulty...and omit that one, with justification.

How well is the current framework protecting socio-economic rights?

The worry is that the answer to this question is not known. If individuals are not receiving their socio-economic rights, how would they know and how would anyone else know unless the matter comes to public attention?

Without the rights being promulgated and publicised as part of a Human Rights Act, how can individual citizens know to raise an issue, or to complain?

Which is preferable? People living poorly in public ignorance, or Government and ACT residents meeting the public costs of individuals where it is right and proper that such public costs should be met?

Formally recognising socio-economic rights would not add to an individual's rights. All it would do would possibly make more people aware of the rights they already have.

No-one should be able to hide from the responsibility for public caring...least of all the Government.

What objectives would be served by formal recognition?

The main objective served would be that the ACT would be a fairer and more just society.

How would socio-economic rights be recognised?

The rights should be recognised by reference to the existing framework, with Government Departments/Agencies to be given 3-5 years to develop individual Charters of Rights which specify the individual rights (for example, housing, education, etc).

Are some socio-economic rights easier to recognise than others?

No. If a right exists, it exists independent of recognition.

It may be that, as a society, we have traditionally respected some rights in preference to others...however, that is no reason to continue in possible error.

Environmental Rights

There is no need for the environment or environmental issues to be considered separately under a human rights act. The environment and environmental issues are covered by environmental legislation.

In particular, CLA does not believe there is any common or fiscal sense in employing "an expert in environment protection" in a statutory role.

Double-dipping should be avoided, both in terms of legislation and of special interest groups in relation to the public purse.

Indigenous Rights

There is no need for Indigenes to be considered separately under a human rights act.

The act concerns humans. Indigenes are human. They have all human rights.

Proponents of separate consideration for Indigenes should seek an Indigenes Lesser/Special/Additional Rights Act, outside the framework of a Human Rights Act, if they are seeking rights different those that apply to other humans.

Should the HRA include other mechanisms?

Yes. The elements recommended by the Consultative Committee should be incorporated.

In addition, CLA believes the Human Rights Commissioner should be responsible for a 'first step on the ladder of remedy', as outlined above. Additional resources should be provided to enable this to happen, and the community should be involved through advisory panels, committees or boards.

Form of Compatibility Statements

CLA believes there should be time/more time for community groups, such as CLA, to be able to comment on upcoming legislation.

There should be public release, wherever possible, of relevant draft documentation at the same time as the matter is being considered by the Standing Committee on Legal Affairs.

The manner of this release might be by email, to a standing subscriber list.

Further Review (Five-Year Review)

In terms of the five-year review, CLA believes that the Department of Justice and Community Safety (JACS), on behalf of the Attorney-General, should convene a 'new' Consultative Committee 12 months before the 1 July 2009 reporting date (that is, from 1 January 2008). That committee should review operation of the Human Rights Act and hold public consultations from 1 July 2008 to 31 January 2009, allowing for five months of public discussion and debate before the Attorney-General's mandatory review and report on the operation of the HRA by 1 July 2009.

In recommending this mechanism, CLA believes it would not be appropriate for the Bill of Rights Unit of JACS to conduct the five-year review when it is the Bill of Rights Unit which is most involved in its day-to-day administration. This suggestion should not prevent one officer of the Bill of Rights Unit of JACS serving on the recommended consultative committee, or the unit acting as a secretariat for it.

President Dr Kristine Klugman

Secretary Bill Rowlings

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