



## Proposing a Human Rights Law for New South Wales Resources Package for Media Outlets

### What is a Human Rights Act?

A NSW Human Rights Act would create a legislated framework that articulates and protects human rights for everyone in NSW. It would significantly improve the way our parliament, government and public entities develop laws, policies and make decisions. It would also create accessible pathways that everyone in NSW can use to take action for a solution if their human rights are breached. Such a framework will create a much needed culture of human rights in our state that will, in turn, work to improve wellbeing, dignity and equality in our day to day lives.

### Victoria, the ACT and Queensland have already passed their own Human Rights Acts

Human Rights Acts have already been passed in the Australian Capital Territory (2004), Victoria (2006) and Queensland (2019) These laws are ordinary acts of parliament that can be amended. They provide protection for rights based on the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights*.

### What Rights are Covered within existing state-based Human Rights Acts?

<ul style="list-style-type: none"> <li>● Recognition and equality before the law</li> <li>● Right to life</li> <li>● Protection from torture and cruel, inhuman or degrading treatment</li> <li>● Freedom from forced work</li> <li>● Freedom of movement</li> <li>● Privacy and reputation</li> <li>● Freedom of thought, conscience, religion and belief</li> <li>● Freedom of expression</li> <li>● Peaceful assembly and freedom of association</li> <li>● Protection of families and children</li> <li>● Taking part in public life</li> <li>● Cultural rights</li> <li>● Property rights</li> <li>● Right to liberty and security of person</li> </ul>	<ul style="list-style-type: none"> <li>● Humane treatment when deprived of liberty</li> <li>● Right to a fair trial/hearing</li> <li>● Rights in criminal proceedings</li> <li>● Right not to be tried or punished more than once</li> <li>● Retrospective criminal laws</li> <li>● Compensation for wrongful conviction</li> <li>● Cultural and other rights of Aboriginal and Torres Strait Islander peoples</li> <li>● Protection from experimentation and medical treatment without consent</li> <li>● Rights to education</li> <li>● Right to access health services without discrimination</li> <li>● Right to work and rights at work</li> <li>● Right to a healthy environment</li> </ul>
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## **Case studies that evidence the benefits of the Human Rights Acts operating in Queensland, the Australian Capital Territory and Victoria**

### **Improving service delivery and policy formation**

The ACT government has published guidelines to instruct government departments on how to consider the human rights protected in the ACT Human Rights Act in the development of legislation and policy. For example, the guide instructs public officials to consider the cultural rights protected by section 27 of the *Human Rights Act 2004* (ACT) when they are developing policies that have the potential to limit the ability of Indigenous or other ethnic groups to continue to take part in distinct cultural practices.

The Victorian Charter requires that whenever a public authority uses contractors or other third parties to perform public functions on their behalf, the public authority must take steps to ensure they operate in a manner that is consistent with human rights. Accordingly, the Department of Justice's Health Unit inserted a requirement into the model Health Service agreements that external service providers must comply with the human rights obligations under the Victorian Charter. Similarly, the Victoria Police have taken steps to ensure the external contractor responsible for the operation of the Melbourne Custody Centre must refrain from acting in a manner that is incompatible with human rights under the Victorian Charter.

During the initial stages of the Bushfires Royal Commission all applications made by victims for permission to appear were denied. Advocates argued that the "right to life" in the Victorian Charter of Human Rights and Responsibilities brings with it the need for a proper investigation when people have died, and that the families of victims had a right to be part of that process. They also said that the "right to life" was relevant when looking at what public services could do better in the future. Following this advocacy victims were granted permission to appear before the Royal Commission to tell their stories.

### **A place to call home**

A Victorian man suffering from physical disabilities and limited mobility continued to live in his family home after his mother had been admitted to an elderly care unit and placed under a financial administration order. In order to prevent the home being sold, the man's advocate raised the right to property under the Victorian Charter of Human Rights and Responsibilities Act. In consideration of this right an agreement was reached so that the man could continue living in the house as a tenant paying rent.

Following the death of her father and incarceration of her mother, a 23 year old woman agreed to be the guardian of her three younger siblings. She maintained their public housing tenancy and had rental payments deducted from her Youth Allowance payments. While overseas on a study tour, her Youth Allowance was cancelled due to the discontinuation of her enrolment. As a result she accrued significant arrears that she didn't receive notice of. The Department of Housing applied for a possession order after having issued a notice to vacate. The woman's advocates argued that the Department had failed to consider the rights of the young woman and her siblings protected in the Charter of Human Rights and Responsibilities Act. Instead of making

a possession order, the Victorian Civil and Administrative Tribunal made an order that the young woman pay \$10 per week towards her rental arrears in addition to her rent.

## **Protecting our Children**

A young Victorian girl had been abused. Her advocates used the Victorian Charter of Human Rights and Responsibilities Act, and in particular the right to the protection of family and children, to argue that she shouldn't be required to give evidence against the alleged perpetrators. They said that this right should be given proper consideration when determining whether a young person should be required to provide testimony. As a result the girl was not required to give evidence.

A Victorian student with a learning disability was threatened with expulsion by his school due to his behavioural issues. His advocate outlined to both the school and to the Department of Education and Early Childhood Development the student's relevant human rights as protected in the Victorian Charter of Human Rights and Responsibilities. As a result of the communication, the boy was provided with support, which reduced his behavioural issues and consequently, he was allowed to stay on at the school.

A teenager held in remand in youth detention wanted to see his family for his birthday. However, due to restrictions imposed to prevent the spread of COVID-19, family visits were postponed at the centre. Through conciliation in the QLD Human Rights Commission, the detention centre and the young person's mother agreed on a plan to maintain family contact during the pandemic. The young person talked to his family for one hour on a video call for his birthday, and once the restrictions eased his family was able to visit him in person.

In 2017, proceedings were brought by teenagers against the Victorian government for breaches of the Victorian Charter in relation to their detention at an adult prison. The teenagers were frequently isolated for up to 23 hours a day in cells that were designed for adult men, regularly handcuffed for routine activities, capsicum sprayed during a prison disturbance, developed risks of depression, anxiety, cognitive problems, hypersensitivity and paranoia, or exacerbation of existing mental health problems. The Supreme Court of Victoria held that this conduct breached the rights of the child to protection in their best interests and rights of persons deprived of liberty to be treated with humanity and respect for the inherent dignity of the human person. The Court further held that the limitation on the human rights imposed on the teenagers was not demonstrably justified in a free and democratic society based on human dignity, equality and freedom.

## **Domestic Violence**

The Victorian Charter of Human Rights and Responsibilities Act was used in a matter relating to the payment of rent and repairs to a property. The woman involved had been forced to flee the property due to domestic violence. The advocate successfully used the Charter in arguing for the reopening of the matter after the limitation period had expired to protect the woman's rights.

The Queensland Human Rights Act was used to assist a woman who sought a review of a Department of Education's decision to decline her application to home school one of her children

because she had not provided her address. The woman and her children had moved to a new location to escape domestic violence and the woman did not disclose her address in order to keep her family safe. Queensland's Civil and Administrative Tribunal determined that the Education Act should be interpreted in a way that least infringes the child's right to education, the family's right to privacy, their right to protection of children and family and their right to equal protection of the law without discrimination. Accordingly, the Tribunal set aside the Department's decision and substituted it with a decision to grant the application to home school.

### **Helping People with Disability**

A woman who had mobility issues made a complaint to the QLD Human Rights Commission about the limited number of accessible parking spots at a bus terminal, and being issued with a number of fines for parking in other places. She said that on two occasions the bus driver refused to engage the ramp, requiring her to struggle up and down the bus stairs. The complaint was resolved on the basis that the transport service agreed to conduct an internal review of its policies and procedures about the use of ramps, and to provide a copy to all bus drivers employed by it. Employees were also required to attend training on the Anti-Discrimination Act and the Human Rights Act, and an internal training module on human rights and improving services to people with disability was introduced.

A single mother living with cerebral palsy was at risk of having her one year old daughter taken from her by the Victorian Child Protection Service. The mother sought to demonstrate that, with the appropriate assistance of carers and the use of aids, she was both emotionally and physically competent to care for her daughter. An advocate was able to use the Victorian Charter principles to explain the woman's human rights to the Child Protection Service, through mediation in the Children's Court. These rights included recognition and equality before the law and protection of families and children. The Child Protection Service accepted that the mother had demonstrated her daughter was safe in her care and is no longer involved in their lives.

A man living in an ACT residential aged care facility relied on a wheelchair to move around. Staff at the facility became concerned the man was a danger to himself and others when using his chair so they removed the batteries so the chair would not work. The man's advocate asserted that this breached his right to freedom of movement protected by the ACT's Human Rights Act. In response, and in recognition of the man's rights, the facility worked with the man and his advocate to find other, less restrictive, ways to ensure he was able to move about freely but safely. This included support for him to use the footpaths safely so he could travel from his home to the nearby shops when he wanted to.

### **Cultural Rights**

In Queensland, an Indigenous community leader and his family asserted their distinct cultural rights in a complaint against the Queensland Police Service (QPS). The cultural rights of Aboriginal and Torres Strait Islanders are expressly protected by Queensland's Human Rights Act, including the right to maintain distinctive spiritual, material, and economic relationship with the land and waters with which they hold a connection. Adrian Burragubba and his family were camping, practising their culture, and performing traditional ceremonies on a pastoral lease area when police officers claimed they were 'trespassing'. The police required them to pack up their

equipment and leave within an hour. A complaint conciliated in the QLD Human Rights Commission resulted in the QPS agreeing to provide a statement of regret which was able to be shared publicly and which acknowledged that the events had caused embarrassment, hurt and humiliation for Mr Burragubba and his extended family. The QPS also committed to take cultural sensitivities into account in the future.

## **LGBTIQA+ Rights**

Amendments to the law in Victoria allowed same sex couples to access superannuation death benefits from one another. Because the amendments operated prospectively, they discriminated against older people in same sex relationships. An older woman and her advocate wrote to the Human Rights Unit at the Department of Justice advocating for an amendment to the law based on the claim that the amendments should be consistent with the Charter of Human Rights and Responsibilities Act. As a result an amendment to the law was made so that same sex couples could access superannuation death benefits both retrospectively and prospectively.

## **Who Are we?**

The Human Rights Act for NSW Alliance (HRA4NSW) is an alliance of more than 46 civil society and community organisations serving the people of NSW. HRA4NSW is co-convened by Australian Lawyers for Human Rights and the New South Wales Council for Civil Liberties.

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