



Fact sheet: Human rights

June 2011

Human rights

Human rights are rights inherent to all peoples, whatever the person's nationality, place of residence, sex, colour, religion or language.

The United Nations Vienna Declaration and Programme of Action states 'all human rights are universal, indivisible, interdependent and interrelated'.¹

The Universal Declaration of Human Rights (UDHR) consists of 30 articles setting out rights and fundamental freedoms which all men and women, everywhere in the world, are entitled to, without discrimination. The UDHR was adopted and proclaimed by the United Nations General Assembly:

as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among, the peoples of Member States themselves and among the peoples of territories under their jurisdiction.²

The UDHR was conceived as a 'common standard of achievement for all peoples and nations'³ and has become a measure for the degree of respect for and compliance with international human rights standards.

Australia has agreed to uphold the human rights standards set out in a number of other international treaties and declarations, including:

- The International Covenant on Civil and Political Rights (ICCPR);
- The International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The Convention on the Rights of the Child;
- The Convention on the Elimination of all forms of Discrimination against Women;
- The Convention on the Elimination of all forms of Racial Discrimination; and
- The Universal Declaration of Human Rights.

1 United Nations World Conference on Human Rights, *Vienna Declaration and Programme of Action*, adopted by the World Conference on Human Rights, Vienna, 25 June 1993, viewed 18 July 2011, <<http://www2.ohchr.org/english/law/vienna.htm>>.

2 United Nations General Assembly, *Universal Declaration of Human Rights*, adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, viewed 18 July 2011, <<http://www.un.org/en/documents/udhr/>>.

3 Ibid.

The ACT Human Rights Act

In 2004, the ACT was the first Australian jurisdiction to enact human rights legislation. The *ACT Human Rights Act* (HRA) aims to protect, promote and fulfil the rights of ACT community members. Public authorities (including government agencies) have an obligation to consider human rights when they make decisions. They must also act in compliance with human rights.

However, only civil and political rights (contained in the ICCPR) are covered by the HRA. Civil and political rights include the right to privacy, protection from torture and cruel and degrading treatment and the right to vote.

As part of the five year review of the HRA, the ACT Government has committed to reconsidering the inclusion of economic social and cultural rights. Economic, social and cultural rights (contained in the ICESCR) include the rights to food, housing, education and health.

ACTCOSS believes all human rights, including economic, social and cultural rights should be protected in the ACT. The United Nations *Vienna Declaration and Programme of Action* states 'all human rights are universal, indivisible and interdependent and interrelated.'⁴ So for example, you cannot fully realise the right to life, if you do not have access to medical treatment, nor can you enjoy your rights to family life and privacy if you are experiencing homelessness.

Impacts in social policy

Adopting a human rights approach to the analysis and development of social policy is of benefit for a number of reasons.

First, the Human Rights framework is universal, positing a set of minimum standards applicable to every person and government. Human rights provide an agreed benchmark against which government and officials can be held accountable. The United Nations Office of the High Commissioner for Human Rights has stated:

Underpinned by universally recognised moral values and reinforced by legal obligations, international human rights provide a compelling normative framework for the formulation of national and international policies.⁵

Second, the Human Rights framework focuses attention on the realisation of capabilities and basic enabling conditions which are necessary for people to live with dignity and enable meaningful participation. This principle assists in the movement from a needs based to a rights based empowerment model, that considers the individual as a person with rights and entitlements, rather than a client with multiple needs. This acts to

4 UN World Conference, op. cit.

5 UN office of the High Commissioner for Human Rights, *Human rights and poverty reduction: A conceptual framework*, UN, New York & Geneva, 2004.

encourage and build on the resilience of people, rather than viewing them as passive recipients of government services.⁶

Third, by focusing on the range of conditions which are necessary to meet the goals of living with dignity and meaningful participation in the community the human rights framework promotes holistic, multi-agency, integrated responses to problems.⁷ By recognising the interrelated nature of economic, social, cultural, civil and political rights, we are encouraging interrelated and integrated solutions.

One of the most common objections to enacting human rights protective legislation or adopting a human rights agenda is that government resources are insufficient to meet the needs of every member of the community in relation to health, education, food and housing.

ACTCOSS supports the principles of progressive realisation and non-retrogression of human rights. Rights (especially economic, social and cultural rights) are required to be implemented progressively as development proceeds and community resources grow. Non-retrogression is the principle that the realisation of human rights should not go backwards, and governments have a responsibility to ensure the past fulfilment of rights is maintained.

ACT public authorities and human rights

From 1 January 2009, the *Human Rights Act 2004 (ACT)* expressly requires public authorities to:

- act consistently with human rights; and
- when making decisions, give proper consideration to relevant human rights.

Individuals have a direct right of action to apply to the Supreme Court to seek a remedy for an alleged contravention of this obligation.

There has been confusion as to whether ACT community service agencies are considered public authorities. A public authority includes an entity whose functions are of a public nature, when it is exercising those functions for the territory. So what is a function of public nature? The criteria includes public funding and the provision of services such as public health, education, transport and housing services.

Community sector organisations provide shelter and other services outsourced by government. Our relationship with government (clearly a public authority) as set out in the *Social Compact* is a partnership aimed at achieving a more equitable and supportive community and many are reliant on public funding to deliver services.

6 H Szoke, Victorian Equal Opportunity and Human Rights Commission, 'Social inclusion and human rights – strange bedfellows on the road to an authentically Australian inclusion agenda?', paper to the Australian Social Policy Conference, 10 July 2009, viewed 4 July 2011, <http://www.humanrightscommission.vic.gov.au/index.php?option=com_k2&view=item&id=307:social-inclusion-and-human-rights-strange-bedfellows-on-the-road-to-an-authentically-australian-inclusion-agenda&Itemid=514>.

7 P Lynch, 'Human rights and social policy: Applying a human rights approach to prisoners and the right to vote,' *Just Policy*, vol. 41, 2006, p. 16.

Given the community sector endeavours to work in a fashion which recognises the inherent value of each individual, and of the community, a 'rights' based approach is agreed best practice for community services agencies.

To comply with their obligations under the HRA, public authorities should:

- review existing policies;
- expressly include human rights in new policies;
- develop practical guidance;
- conduct human rights training;
- develop a framework to manage complaints; and
- develop a strategy for contracts.