

Extract from ACT, Parliamentary Debates, 18 August 2009, 3230-3234 (Simon Corbell)

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Human Rights Act 2004 Paper

MR CORBELL (Molonglo—Attorney-General, Minister for the Environment, Climate Change and Water, Minister for Energy and Minister for Police and Emergency Services) (3.21): I present the following paper:

Human Rights Act 2004—The First Five Years of Operation—A report to the ACT Department of Justice and Community Safety, prepared by the ACT Human Rights Act Research Project, the Australian National University, dated May 2009.

I move:

That the Assembly takes note of the paper.

On 18 November 2003, the former Attorney-General, Mr Stanhope, introduced into the Assembly the Human Rights Bill 2003. In doing so, the ACT became the first Australian jurisdiction to take human rights seriously. The bill was passed in March 2004 and commenced operation on 1 July 2004 as the Human Rights Act 2004. It was the first human rights charter in Australia and a model for other Australian jurisdictions, including Victoria, whose charter of rights commenced operation more than two years later, on 1 January 2007.

The success of the territory's Human Rights Act is a demonstration to the rest of Australia that the system of government that we enjoy, including the rule of law and the separation of powers, will not collapse by enacting principles that nobody can legitimately deny, that should be, indeed, part of responsible and accountable government. This is so, even if we do not always agree on the mechanism for delivering this.

As a member of the government, I have found that the translation of our policies into law has sometimes required modification to meet the necessary human rights standards and to achieve a high level of compatibility with human rights principles. This is how it should be.

The enactment of a human rights charter has demonstrated that, even in a nation such as Australia, which is relatively alert to the protection and promotion of civil and political rights, governments should be accountable and test legislation against international human rights standards. The charter of rights, like our Human Rights Act, ensures that the actions of government do not unnecessarily or unreasonably place limitations on human rights.

Section 44 of the Human Rights Act requires that, after five years of the act's operation, a review of the act must be undertaken and a report presented to the Assembly. Today I am tabling that report.

The report that I am tabling is an assessment of the first five years of operation of the act and makes recommendations in relation to the human rights regime against the original policy

direction of the government when first implementing the act. The report is not merely a snapshot but the product of five years of research.

The research that produced this report has also contributed to many academic and learned works on the ACT's human rights regime. The research was made possible under an Australian Research Council linkage grant and the work carried out under a partnership agreement between the Australian National University and the Department of Justice and Community Safety.

The ACT Human Rights Act research project was led by Professor Hilary Charlesworth, a renowned human rights lawyer and academic, and Professor Andrew Byrnes, currently a professor of international law at the University of New South Wales and formerly of the ANU. Professor Charlesworth, as many members will know, was the chairperson of the ACT Bill of Rights Consultative Committee which was established to inquire into the question of whether the ACT should adopt a bill of rights and what form it might take. She and her colleagues are highly qualified to examine and assess where we are now as a human rights jurisdiction of five years standing.

I am particularly pleased to table this report which recognises the significant research undertaken by the ACT Human Rights Act research project team over the last five years. Most particularly, the report represents an independent but informed view on the implementation of human rights in the territory.

In general, the research findings are that the act has been successful in what it has set out to achieve. The research findings show:

One of the clearest effects of the HRA [Human Rights Act] has been to improve the quality of law-making in the Territory, to ensure that human rights concerns are given due consideration in the framing of new legislation and policy.

The report identifies, however, that the dialogue model may not always have been as successful as perhaps intended. The findings suggest that the public sector over the last five years has been slow to fully develop a culture of human rights. As acknowledged in the report, the commencement on 1 January this year of a duty on public authorities will test this.

Already there has been evidence of a marked shift in the way that departments undertake their work and many agencies, particularly those with a service delivery focus, are exploring the opportunities to better serve the community through human rights compliant and sensitive measures. I commend those public authorities on the steps they are taking.

The report also expresses disappointment in the limited extent to which the legal profession has entered into the dialogue about human rights and concluded that the legal profession has not, with some exceptions, taken up the opportunity to discuss human rights principles in court proceedings. These findings may provide additional opportunities for the identification of improvements and, again, new duties on public authorities, and a direct right of action to the courts for alleged breaches of human rights will undoubtedly change the direction of these findings over coming years.

The report highlights areas where there may be capacity to progress and advance the human rights cause, building on the successes to date. Recommendations include, for example,

increasing resourcing for training and public awareness to promote human rights work. At the heart of these recommendations is the need for government to clarify the evolving and changing role of public institutions that promote and underpin the territory's human rights regime. This includes recommendations for legislation making, for example, by extending compatibility assessments to private members bills, amendments to bills made on the floor of the Assembly and subordinate legislation.

In 2006, the government committed to also consider the inclusion of economic, social and cultural rights, or ESC rights, in the territory's human rights regime. Consideration of ESC rights was outside the scope of the work undertaken by the ACT Human Rights Act research project and so is not addressed in the report.

To this end, a second Australian Research Council linkage grant has been awarded to examine the possible inclusion of ESC rights in the territory's human rights system. This grant is under a partnership agreement between the ANU, the University of New South Wales and my Department of Justice and Community Safety. The project has commenced under the leadership of Professor Charlesworth and Professor Byrnes and will assess whether the ACT Human Rights Act should be amended to include economic, social and cultural rights; and, if so, what impact this is likely to have on governance in the ACT.

Undoubtedly, the arguments for protecting economic, social and cultural rights are strong. It was apparent, from submissions received in the one-year review of the act, that this is an area of wide interest. When I tabled the report of the first year of operation of the act in August 2006, I noted that there had been no serious attempt to incorporate these rights into bills of rights in New Zealand, Canada or the United Kingdom. In fact, the only other legislatively comparable country with a human rights system that includes these rights is South Africa.

Economic, social and cultural rights remain largely untried and untested when it comes to legislative human rights frameworks. The government decided to defer consideration of these rights until the five-year review, when it was thought that perhaps other jurisdictions would provide a model by having had a closer look at expanding legislative regimes beyond civil and political rights. This has not been the case. The inclusion of economic, social and cultural rights would make us exceptional amongst comparable human rights jurisdictions.

It has become apparent, in giving consideration to these rights, that there needs to be further research into the potential impact of extending the protection of the Human Rights Act. Investigation and research into the ramifications of such a course of action need to be properly considered.

Decision making in relation to economic, social and cultural rights can only be made when issues about the scope and enforceability of these rights have been adequately teased out. It is anticipated that the new project will generate the first comprehensive Australian study of the potential impact of the protection of economic, social and cultural rights in a legislated bill of rights. The research and consultation will be undertaken over the next 12 months, with a report expected in the latter half of 2010.

In relation to these rights, I was privileged to have recently met with Madam Justice Yvonne Mokgoro. Justice Mokgoro is a longstanding judge of the Constitutional Court of South Africa and chair of the South African Law Reform Commission. The focus of Justice Mokgoro's visit to Australia was to talk to interested Australians about human rights and, in

particular, the South African experience of economic, social and cultural rights. Her visit to Australia was organised by the Human Rights Law Resource Centre in Melbourne and her Canberra leg, which included speaking with a range of people, was facilitated by the new economic, social and cultural rights project team. I understand that Justice Mokgoro also met with Father Frank Brennan from the National Human Rights Consultation Committee.

The status of economic, social and cultural rights, alongside civil and political rights, is notably an item on the agenda of Australian human rights discussion and debate. I look forward to receiving a report next year on the findings of the research project, which will meet the government's commitment to consider economic, social and cultural rights in the context of the territory's Human Rights Act.

Returning to the report on the first five years of the act's operation, its recommendations require community consultation. I have asked my department to undertake a broad consultation process over the next couple of months on the recommendations that the report makes and to examine opportunities to improve the human rights regime that we have in the ACT.

To this end, I am publicly calling for written submissions which address the issues raised in the report or any other valuable contributions that people may wish to make on the further development of the Human Rights Act 2004. My department will also be consulting with human rights experts, legal practitioners, public authorities, including government departments, and others to consider the recommendations that have been made and prepare a response and possible action plan for the government's consideration.

While the government's commitment to human rights is strong, we should not rest on our laurels. I anticipate that not all of the recommendations contained in the report will have support nor be agreed to by government. In an economic downturn, recommendations such as those made by the project team will need to be considered in the context of competing priorities. I am, however, encouraged that the report is a fair and independent assessment of how we are travelling as a human rights jurisdiction.

The review work of the project has provided guidance and direction as to where the government might seek to invest its energies and resources in considering advancing the work of the Human Rights Act and improving the overall outcome for individual rights in the territory. Further consultation will ensure that the government's future work on human rights is well informed and undertaken strategically on the basis of evidence and community support.

In tabling the work of the ACT Human Rights Act research project, I wish to acknowledge the other members of the project, including Gabrielle McKinnon, the project's research fellow and director, and Renuka Thilagaratnam, who replaces Ms McKinnon in this role and will continue with the work on the ESC rights project, and the students and others who contributed to the research. I wish to also acknowledge members of the reference group who facilitated the conduct of the research. I commend the report to the Assembly.

Debate (on motion by **Mr Rattenbury**) adjourned to the next sitting.