

# Economic, Social and Cultural Rights–

A good idea for inclusion in the ACT?

The ACT Government is preparing a response to the independent research report, *Australian Capital Territory Economic, Social and Cultural Rights Research Project Report*.

The report made 15 recommendations and supported including some economic, social and cultural rights into the *Human Rights Act 2004* (ACT). You can find a copy of the report and the recommendations at <http://acthra.anu.edu.au/PESCR/Publications/>.

The Government would like to know what you think about the possible inclusion of economic, social and cultural rights in the ACT and has prepared this background paper to assist you to provide your comments.

Background paper for consultation  
July - August 2011



**ACT**  
Government

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Justice and Community Safety

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## INTRODUCTION

On 9 December 2010, the Attorney General tabled the *ACT Economic, Social and Cultural Rights Research Project Report* in the Legislative Assembly. The report's primary recommendation was that some economic, social and cultural rights be included in the *Human Rights Act 2004* (ACT). A further 14 recommendations related to the scope of rights to be included and implementation of the additional rights.

You can find a copy of the report and the recommendations at <http://acthra.anu.edu.au/PESCR/Publications/>.

The ACT Government is currently preparing its response to the recommendations in the independent research report. To inform this response, we would like to know what you think about the possible inclusion of economic, social and cultural rights in the ACT.

This paper provides information on the scope and potential application of economic, social and cultural rights. It considers the possible inclusion of the rights in the *International Covenant on Economic, Social and Cultural Rights* with the *Human Rights Act 2004*. It also details how you can get involved.

In addition to responding to the focus questions within this paper, you can also participate in the online survey. You can access the survey at <http://www.surveymonkey.com/s/JJY8366>.

To lodge your submissions please go to the Justice and Community Safety Directorate website, [www.justice.act.gov.au/review](http://www.justice.act.gov.au/review) or email [escr.consultation@act.gov.au](mailto:escr.consultation@act.gov.au).

Hard copy submissions are also welcome. Address your submission to:  
Human Rights Unit  
Legislation and Policy Branch  
Justice and Community Safety Directorate  
GPO Box 158  
Canberra ACT 2601

If you require any additional information or assistance in preparing your comments, please contact Human Rights Unit on telephone number (02) 6207 0534 or email [escr.consultation@act.gov.au](mailto:escr.consultation@act.gov.au).

**Please note that comments must be received by 19 August 2011 to be considered in the government response to the research report.**

## WHAT ARE ECONOMIC, SOCIAL AND CULTURAL RIGHTS?

Economic, social and cultural rights (ESCR) are individual human rights that include the rights to housing, health, education, work, and to take part in cultural life. These rights are found in the International Covenant on Economic, Social and Cultural Rights (ICESCR) to which Australia is a party.

Many elements of ESCR are already protected in the ACT and Australia by both ACT and Commonwealth laws. Examples include the right to form and join trade unions, the right to social security, the right of families to protection and assistance and the right to non-discrimination.

ESCR formed part of the recent National Human Rights Consultation which concluded that ‘for most Australians, the main concern is the realisation of economic and social rights such as the rights to education, housing and the highest attainable standard of health.’

## WHAT HAS HAPPENED SO FAR IN THE ACT?

The *Human Rights Act 2004* (HRA) became law on 1 July 2004. The Act protects the civil and political rights of individuals such as privacy and reputation, freedom from discrimination, being able to vote and ensuring that people get a fair trial. Since 2009 public authorities, such as government agencies and organisations providing services on behalf of the government, have been required to act in a way that is compatible with human rights. This includes having to consider human rights when making policy decisions.

The ACT Government considered including ESCR within the original HRA in 2004 and decided that it would be more appropriate to first introduce civil and political rights and assess its operation after periods of 12 months and 5 years.

In 2009 the government committed to further consider the inclusion of ESCR. To inform its considerations, the government partnered with ANU to undertake a research project to examine whether the HRA should be amended to include ESCR and, if so, what impact this would have on governance in the ACT. The independent research report, *ACT Economic, Social and Cultural Rights Research Project Report* made 15 recommendations, the primary recommendation being that ESCR be included in the HRA. You can find a copy of the report and the recommendations at <http://acthra.anu.edu.au/PESCR/Publications/>.

On 9 December 2010 the Attorney-General, Mr Simon Corbell, introduced the Report into the Legislative Assembly, noting that “the question of whether to incorporate economic, social and cultural rights into ACT law is a complex one that raises many issues for all parts of our community, not just government. These questions will need to be considered in detail by the government, in consultation with the community.”

This background paper is designed to assist you in participating in the community consultation process.

## ARE THERE EXISTING ESCR PROTECTIONS IN THE ACT?

Yes, there are many existing ESCR protections in existing ACT laws and policies. For example:

- the *Education Act 2006* provides that children's education should be free, and
- the *Residential Tenancies Act 1997* states that a person cannot be evicted without a hearing at the ACT Civil and Administrative Tribunal.

The *Canberra Social Plan* highlights that the provision of housing, health and education services are priorities and goals of the ACT Government. There are a number of individual policies that sit beneath the *Canberra Social Plan* and protect rights in relation to housing, health and access to community services. For example the *Children and Young People with a Disability and their Families* policy incorporates many of the rights found within the HRA.

Nationally, the Commonwealth government regularly supports and enforces ESCR in many ways. Examples include the Family Support Payment and non-discrimination laws.

## WHAT WOULD THE ACT'S OBLIGATIONS BE IF ESCR WERE INCLUDED IN THE HRA?

ICESCR introduces two types of obligations. The first is to *respect, protect and fulfill* ESCR and the second is to take *progressive realisation* towards their fulfillment.

The phrase 'respect, protect and fulfil' concerns the elements of individual rights that can be introduced immediately– for example, the right of a person to refuse medical treatment.

Progressive realisation refers to the elements of a right that the government can implement over time. Action must still be taken as fast as possible, but it is acknowledged that some obligations need more time to be completed than others – for example, providing ongoing public health education programs for common illnesses.

It is important to remember that the current HRA provides that rights can be limited in situations when it is reasonable and proportional. This would continue to apply if ESCR were introduced into the HRA.

## SOME ARGUMENTS THAT SUPPORT INCLUDING ESCR IN THE HRA

Although there are already protections found within ACT and Commonwealth laws, guidelines and policies a number of arguments have been put forward in support of specifically including ESCR in the HRA. These include:

- bringing ACT law in line with community expectations,
- removing any current gaps in human rights protection,
- ensuring that ESCR are protected from political manoeuvring,
- providing additional protection to the most vulnerable people in our community,
- improving accountability for human rights protections within the ACT government and courts,
- providing a legitimate voice for disadvantaged groups in the community, and
- allowing the ACT to take the national lead in human rights reform.

## SOME ARGUMENTS AGAINST INCLUDING ESCR IN THE HRA

There are also a number of arguments that have been put forward against specifically including ESCR in the HRA. These include:

- uncertainties over the possible legal implications,
- worries that enforcing ESCR is not an appropriate role for the courts,
- concerns that the courts should not be making decisions with budget implications,
- the possibility of excessive litigation in ACT courts concerning claims to ESCR,
- doubts that inclusion would bring about meaningful change,
- the legislation is unnecessary as ESCR are already adequately protected,
- legislating for rights with budget implications could divert funds from other legitimate causes,
- potential for Intergovernmental agreements not being fully implemented if some aspects breach ESCR,
- differences between services offered by Commonwealth agencies and Territory agencies, may result in ACT service providers not being able to uphold ESCR when delivering national program services, and
- introducing the belief that people have 'rights on demand' weakens public policy.

The following sections of this background paper separately address each of the ESCR that the Research Project recommended be included in the HRA.

The focus questions within each section are provided to guide your responses to the question of incorporating ESCR into the HRA.

## THE RIGHT TO EDUCATION

The right to education is found within article 13 of ICESCR. Access to education has been accepted as an important right for Australians for many years. Recently the National Human Rights Consultation confirmed that education is one of the three rights that matter most to Australians.

The belief that education is essential to the full development of a person's personality and sense of dignity is the underlying principle behind this right. The essential requirement for governments is to provide free, high quality, primary school education to all children. International law provides that the right to education has the following elements:

Element	Meaning
Availability	<ul style="list-style-type: none"><li>- Primary school education should be compulsory and free,</li><li>- Secondary education should include technical and vocational options, and</li><li>- Higher education should be equally accessible to every person.</li></ul>
Accessibility	Education should be provided in a non-discriminatory way.
Acceptability	Education provided by the government will be high quality, and parents' views on what is acceptable education are considered within individual schools and in government policies and legislation.
Quality	Educational institutions are flexible, open to review, and tailored to the needs of individual students who may have different needs.

**This right does not mean that the government has to:**

- provide free education to every person in the ACT, or
- provide free books, uniforms and excursions for every student in government schools.

**What are the obligations under this right?**

- the ACT government, and its agencies, would have to continue providing education for all people living in the Territory, and
- maintaining the high quality of education currently provided.

**Are there existing protections to the right to education already in the ACT?**

Yes. The *Education Act 2004* already addresses all of the elements of the right to education.

### Availability

The Education Act provides that every child has the right to receive a high-quality education and that education in government schools is free. In this respect the ACT does more than is required by ICESCR, as it provides free education for children in primary and high school.

### Accessibility

The Education Act requires the government to provide reasonable access to public education for every person. This includes all forms of education such as vocational training and facilities such as the Canberra Institute of Technology. Additionally schools must recognise the individual needs of children with disabilities and respond to those needs, unless it would impose unjustifiable hardship on the school.

The *Discrimination Act 1991* also makes it unlawful for an educational authority to discriminate against a person in relation to admission to educational institutions and the enjoyment of educational opportunities once admitted.

### Acceptability

The Education Act clearly defines the criteria for high-quality education. It states that education should:

- aim to develop every child's potential,
- promote a child's enthusiasm for lifelong learning,
- promote respect for and tolerance of others,
- recognise the social, religious, physical, intellectual and emotional needs of all students
- aim over time to improve the learning outcomes of students so that the outcomes are free from disadvantage because of economic, social, cultural or other causes,
- encourage all students to complete their senior secondary education,
- provide access to a broad education, and
- recognise the needs of Indigenous students.

The Education Act also highlights the role of parents in two ways. Firstly it encourages them to take part in the education of their children and secondly, recognises their right to choose a suitable educational environment for their child.

### Adaptability

The Education Act encourages diversity within and among schools and highlights that the partnership between home, the community and schools is important. It highlights that communities should be given information about the operation of their schools.

### **What would the ACT's legal obligations be if the right to education were to be included in the Human Rights Act?**

As for all ESCR, the ACT government would be under an *immediate obligation* to take 'deliberate, concrete and targeted' steps towards *progressively realising* the elements of the right within the limits of *available resources*. In practical terms this would include ensuring that:

- primary school education remains free and compulsory,
- access to public educational institutions and facilities continues to be provided on a non-discriminatory basis,
- parents remain free to educate their children in private schools,
- educational standards continue to be monitored, and
- the government continues to make progress in relation to providing access to secondary and tertiary education.

Limits can be placed on the right, provided they can be justified as reasonable and proportionate. An example of this may be maintaining entry requirements to particular education facilities.

**What would including the right to education in the Human Rights Act mean to you?**

## THE RIGHT TO ADEQUATE HOUSING

Article 11(1) of ICESCR states that every person has a right to an 'adequate standard of living, including adequate food, clothing and housing'. In general, the right to adequate housing is viewed as a 'right to live somewhere in security, peace and dignity'. This right to has been considered an important right for Australians for many years and recently the National Human Rights Consultation confirmed that housing is one of the three rights that matter most to Australians. International law provides that the right to housing has a number of elements, listed below:

Element	Meaning
Availability	<ul style="list-style-type: none"> <li>- Housing costs do not threaten the satisfaction of your other basic needs such as food and education.</li> <li>- Legal protections against forced eviction exist and are enforced.</li> </ul>
Accessibility	<ul style="list-style-type: none"> <li>- Public housing is in a location that allows access to public transport, employment, healthcare, education and social facilities.</li> </ul>
Acceptability	<ul style="list-style-type: none"> <li>- Your home is safe for you to live in.</li> <li>- Essential facilities such as safe water, heating, lighting and sanitation are available in your home.</li> <li>- Disadvantaged groups are given priority in Government housing policies and laws.</li> </ul>
Quality	Housing construction, building materials and supporting policies enable the expression of cultural identity and diversity of housing.

### The right **does not** mean that the government has to:

- build housing for everyone in the ACT,
- provide housing free of charge to all who request it,
- fulfil all aspects of this right immediately, or
- implement this right in exactly the same way in all circumstances and locations.

### What are the obligations under this right?

- maintaining a coordinated and comprehensive housing strategy that prioritises the needs of the most vulnerable groups in the community,
- ensuring that progress towards securing the right to adequate housing can be monitored effectively, and
- ensuring that vulnerable groups are able to effectively participate in decision and policy making processes that affect them.

### Are there existing protections to the right to housing already in the ACT?

Yes. There are laws already operating in the ACT that guide planning and development, and establish strict eviction procedures and non-discrimination measures.

The *Territory Plan* highlights the importance of planning and identifies privacy and adequate facilities within individual properties and within suburbs as fundamental requirements. The *Planning and Development Act 2007* specifically mentions that development in the ACT should be consistent with 'social, environmental and economic aspirations of the people of the ACT; and in accordance with sound financial principles.' Additionally, the *Affordable Housing Action Plan* sets out the ACT Government's plan to assist every person in the ACT to secure housing that is safe, affordable, appropriate and accessible. This is compatible with the aims of the *National Affordable Housing Agreement*.

The *Residential Tenancies Act 1997* provides that a person can only be evicted by an order of the ACT Civil and Administrative Tribunal (ACAT) and only police can carry out the eviction. It also provides for minimum living standards in the ACT. The *Discrimination Act 1991* also prohibits discrimination on an extensive number of grounds in the area of housing, and the *Housing Assistance Act 1997* provides housing assistance for those most in need.

The ACT Civil and Administrative Tribunal (ACAT) is an independent body, which has exclusive jurisdiction to hear and determine all matters arising from private and public residential tenancy and occupancy agreements under the Residential Tenancies Act. ACAT's objective is to ensure that access to the tribunal is simple and inexpensive and to ensure that applications to the tribunal are resolved as quickly as possible. The ACAT may make a variety of orders. Common orders include those that:

- terminate a tenancy agreement,
- facilitate the payment of owing rent,
- stay an eviction,
- order payment of compensation for illegal evictions,
- accept, decline or partly accept a rental rate increase
- limit antisocial and disruptive behaviour of tenants, and
- reduce the rental rate payable.

The HRA currently provides some protection in relation to this right. For example, public authorities are required to comply with the HRA when they make decisions about community housing. Additionally, several of the rights already protected in the HRA have been interpreted to give indirect effect to the right to adequate housing. In the case of *Peters v ACT Housing* [2006]ACTRRT 6 the right to equality was used to argue that public tenants should be compensated to the same extent as private tenants. The Tribunal ordered that the tenant was entitled to the same amount of compensation as a private tenant would be.

The right to protection of family and children has also been connected to the right of housing. In *Commissioner for Housing for the ACT v Allan* [2007] ACTRRT 21 the Commissioner noted that 'government tenants are people with human rights, which the Commissioner is obliged to respect.'

In *Commissioner for Housing in the ACT v Y* [2007]ACTSC 84 a single mother with two young children had been removed from a priority housing list because of a strict application of the income and assets test. The ACT Supreme Court found that the right to a fair trial meant the Commissioner should have given the applicant the benefit of an available exemption when assessing her income.

**What would the ACT's legal obligations be if the right to housing were to be included in the HRA?**

As for all ESCR, the ACT government would be under an *immediate obligation* to take 'deliberate, concrete and targeted' steps towards *progressively realising* the elements of the right within the limits of *available resources*. This would include working towards meeting demand for social housing considering economic conditions of the ACT.

Limits may be placed on the right to housing if it is justified as reasonable and proportionate. An example would include maintaining eligibility criteria to access community housing assistance.

**What would including the right to housing in the Human Rights Act mean to you?**

## THE RIGHT TO HEALTH

The phrase 'right to health' is slightly misleading as the complete name for the right is 'the highest attainable standard of physical and mental health.' The difference is important, as it means that the government is not responsible for the individual health of every person, but instead needs to make sure that there are policies and procedures in place that mean the general population receives the highest standard of health care available. The right is found in article 12 of ICESCR and in many other international human rights treaties that Australia has signed.

The right to the highest attainable standard of physical and mental health is broad and there is some overlap with other rights as it extends to 'underlying determinants of health.' This means that access to the basic requirements on which good health depend are protected. Examples include access to safe food, water, sanitation, social security and a healthy environment. Two key protections within the right include access to emergency treatment and the ability to refuse medical treatment. The main elements of the right are listed below.

Factor	Meaning
Availability	Public health services must be available to the general population. This includes: <ul style="list-style-type: none"><li>- health care facilities,</li><li>- health care goods and services, and</li><li>- policies that plan and budget for ongoing health resources.</li></ul>
Accessibility	Access to health care facilities, goods and services must be provided to the population equally. This has four aspects: <ul style="list-style-type: none"><li>- non-discrimination,</li><li>- physical accessibility,</li><li>- affordability, and</li><li>- available services are known to the community.</li></ul>
Acceptability	Medical ethics and culturally appropriate practices must always be considered when providing health services.
Quality	Health services provided to the public must be scientifically and medically appropriate and of good quality.

### The right **does not** mean that:

- the government has an immediate obligation to provide comprehensive health services, other than emergency life saving care for every person in the ACT, or
- the government has to pay for, or subsidise the cost of, health services for every person in the ACT immediately. This aspect of the right is subject to progressive realisation.

### What are the obligations under this right?

#### Services

- The government must continue to provide accessible, quality, public health services.
- The government must not interfere directly or indirectly with a person's health unless it is an emergency or the person is unable to make decisions regarding their own health care.
- Laws must protect a person's right to access health care without discrimination. This includes services provided by private or community organisations.

#### Policies

- The government must take steps to promote a healthy society. This includes taking measures to restrict access to unsafe drugs and regulating professional standards for the provision of health services.

- Policies and procedures must be developed to address and prioritise the needs of the most vulnerable groups in the community to access the right to health in addition to health services provision policies and procedures.
- The government must continue to monitor progress made in regards to the right.

**Are there existing protections to the right to health already in the ACT?**

Yes. Many aspects of the right to health are already incorporated in the ACT.

Under the *National Health Care Agreement*, the ACT is responsible for the provision of public hospital services and ensuring that Australian residents and eligible people from overseas are able to access public health services, free of charge, as public patients. The *Health Act 1993* (ACT) includes a number of objectives and principles for Territory-provided health services.

The *Public Health Act 1997* (ACT) seeks to protect and promote health in the ACT. This includes protecting the public from risks, including rapid responses to emerging risks where required and monitoring health indicators to provide information for the maintenance and improvement of the population’s health. In undertaking these functions, the Act requires the avoidance of any undue infringement of individual liberty and privacy. The *Mental Health (Treatment and Care) Act 1994* (ACT) also seeks to provide treatment, care, rehabilitation and protection for mentally dysfunctional or mentally ill people in a manner that is least restrictive of their human rights.

The *Health Practitioner Regulation National Law Act 2010* (ACT) establishes a national framework for regulating and accrediting health professionals and the *Human Rights Commission Act 2005* (ACT) gives the Health Services Commissioner the ability to work with Health Professions Boards to maintain minimum standards in service provision and to ensure that health service providers meet suitability to practice requirements.

Laws such as the *Work Safety Act 2008* (ACT) and *Workers Compensation Act 1951* (ACT) recognise the right to a healthy work environment. The *Discrimination Act 1991* (ACT) also provides protections.

The ACT provides and funds a range of community based health services that complement primary health services. Dental, management of chronic illness, BreastScreen and nutrition services are examples of the allied health services available.

**What would the ACT government’s legal obligations be if the right to health was implemented in the Human Rights Act?**

As for all ESCR, the ACT government would be under an *immediate obligation* to take ‘deliberate, concrete and targeted steps’ towards *progressively realising* the elements of the right within the limits of *available resources*. This obligation relates to receive the highest standard of health care available not the right to be healthy. The ACT government would not be responsible for every aspect of good health of people within the territory.

Limits can be placed on the right, if it can be justified as reasonable and proportionate. For example, to have a waiting list for some services whilst working towards increasing access.

**What would including the right to the highest attainable standard of physical and mental health in the Human Rights Act mean to you?**

## THE RIGHT TO WORK

The right to work is found in article 6 of ICESCR and is based on the premise that decent work allows a person, and their family, to live with dignity. Decent work includes being able to choose the work that you do and ensuring that the work takes place in an environment that is safe. The right contains three core aspects. Firstly, it protects a person from forced work, secondly, it protects and promotes access to employment and thirdly, unfair termination from employment is illegal. Article 7 of ICESCR, guarantees protection for people at work. It includes fair work for fair pay, safe and healthy working conditions, equal opportunity for advancement and training, the reasonable limitation of working hours and periodic holidays with pay.

Factor	Meaning
Availability	Services must be available to assist and support people who are seeking employment.
Accessibility	The labour market must be open to everyone. This includes: <ul style="list-style-type: none"><li>- non discrimination legislation and practices,</li><li>- minimum physical accessibility standards, and</li><li>- the ability to obtain information regarding access to employment.</li></ul>
Acceptability	Minimum standards for acceptable practices include: <ul style="list-style-type: none"><li>- fair conditions of work,</li><li>- safe working conditions,</li><li>- the right to form trade unions, and</li><li>- the right to choose and accept work freely</li></ul>
Quality	Governments must abolish all forms of forced labour.

The right **does not** mean that the government has to:

- provide employment opportunities to every person living in the ACT.

**What are the obligations under this right?**

- measures designed to achieve full employment are implemented,
- law banning forced labour are enforced,
- equal access to work and training must be available,
- non-discrimination practices are enforced in both the private and public sectors and
- a victim of a right to work breach should have access to effective remedies.

**Are there existing protections to the right to work already in the ACT?**

The elements of both rights are largely addressed by a mix of ACT and Commonwealth legislation. For example, section 26 of the HRA prohibits forced labour and the *Work Safety Act 2008* establishes minimum workplace safety practices. The *Discrimination Act 1991* (ACT) also provides protections for those seeking and currently in employment.

**What would including the right to work and the right to the enjoyment on just and favourable conditions of work in the Human Rights Act mean to you?**

## THE RIGHT TO TAKE PART IN CULTURAL LIFE

There are two parts to this right. The first concerns the right to take part in cultural life and the second is the right to enjoy the benefits of scientific progress.

‘Culture’ has been defined broadly in international law. It involves giving expression to the culture of humanity and extends to ways of life, oral and written literature, music, religion, rites and ceremonies, sport, food, clothing and the arts. It does not include actions that are primarily of an industrial and commercial nature. Participating in cultural life is protected under article 15 (1) (a) of ICESCR as a right that may be exercised individually or in association with others. It includes the ability to participate, access and contribute to cultural life.

Element	Meaning
Availability	The presence of both physical and non-physical cultural goods and services can be enjoyed by people equally. This includes museums, libraries, theatres, literature, shared spaces such as parks and streets, nature, languages, and history.
Accessibility	<ul style="list-style-type: none"><li>- Opportunities for individuals and communities to enjoy culture are physically and financially available, in urban and rural areas.</li><li>- access to information in a chosen language</li><li>- the ability to express and disseminate culture is respected</li></ul>
Acceptability	Laws, policies, programs and measures adopted by the government must be acceptable to affected individuals and communities.
Quality	Non-discrimination measures must be place.

**The right does not mean that the government has to:**

- excuse behaviour that may be harmful on the basis that it is a cultural practice.

**What are the obligations under this right?**

- guarantee non-discrimination,
- ensure the freedom of choice for people to identify with one or more communities and the right to change their choice,
- ensure that there is balance between the respect and protection of cultural rights, and other human rights,
- eliminate barriers and obstacles to access culture, and
- encourage the participation of people belonging to minority groups and indigenous peoples, in the design and implementation of laws and policies affecting them.

**Are there existing protections to the right to take part in cultural life already in the ACT?**

Yes. There are a number of existing protections to elements of the right. The HRA currently protects freedom of thought, conscience, religion and belief, peaceful assembly and freedom of association, freedom of expression, taking part in public life and the rights of minorities. The *Discrimination Act 1991* aims to promote recognition and acceptance within the community of the principle of equality of opportunity for all people and specifically references many aspects that contribute to culture.

The ACT government recently launched a new *ACT Multicultural Strategy 2010–2013*, building on the *ACT Multicultural Strategy 2006–2009*. The focus areas of the ACT Strategy are languages, children and young people, older people and aged care, women, refugees, asylum seekers and humanitarian entrants, intercultural harmony and religious acceptance. The ACT Strategy makes specific reference to the ACT's Indigenous heritage and affirms the government's commitment to the implementation of the Aboriginal and Torres Strait Islander service delivery framework.

**What would the ACT government’s legal obligations be if the right to take part in cultural life was implemented in the Human Rights Act?**

As for all ESCR, the ACT government would be under an *immediate obligation* to take ‘deliberate, concrete and targeted’ steps towards *progressively realising* the elements of the right within the limits of *available resources*. In this regard, the ACT government would work towards greater recognition of and peaceful interaction between people from different cultures.

Limits can be placed on the right, if they can be justified as reasonable and proportionate. For example, when the government considers an application for a street parade, it must be considered against the right of freedom of movement for residents of the street.

**The right to enjoy the benefits of scientific progress and its applications**

Article 15 (1) (b) of ICESCR recognises the right to enjoy the benefits of scientific progress and its applications. This requires the government to balance the right of individuals or companies to profit with the right of communities and individuals to enjoy and share in the benefits of technology.

Element	Meaning
Availability	There must be an environment that supports the development and application of science and technology.
Accessibility	Access to the benefits of scientific progress must be affordable so that everyone can fully enjoy the benefits of scientific progress. There must be non-discrimination in access and particular attention must be given to access by disadvantaged or marginalised groups
Acceptability	There must be the right to access and participate in science and technology development.
Quality	There must be protection from the negative effects of science.

**The right does not mean:**

- that the government must pay for technologies that aid scientific advancement

**What are the obligations under this right?**

- promote the development of science and technology,
- promote access to the benefits of science and of scientific progress on a non-discriminatory basis, and
- promote strong science programs at all levels of the educational system.

**What would including the right to take part in cultural life and the right to enjoy the benefits of scientific progress in the Human Rights Act mean to you?**

## GLOSSARY

### ***Available resources***

Available resources include any assets that the government can use to fulfil their obligations in relation to ESCR. This includes both financial and human resources.

### ***Immediate obligation***

Governments must take deliberate, concrete and targeted steps to satisfy the fundamental elements of ESCR. This means ensuring that every person is free from discrimination when accessing the protection of a right.

### ***Progressive realisation***

This concept acknowledges that governments will need to take steps over time to fulfil their obligations in relation to ESCR. Therefore, the government must develop a plan of action and continue to work towards achieving the full realisation of the right, within its available resources.

### ***Reasonable limitations***

When rights compete with each other, or when the government has limited resources or strong policy reasons, it is allowed to limit the scope or application of a right.

### ***Respect, Protect, Fulfil***

The government must take steps to respect, protect and fulfil the elements of ESCR. These obligations are subject to the government's available resources.

The obligation to respect rights requires that the government stop any action that interferes with a person's ESCR.

The obligation to protect rights requires the government to take action to prevent violations of human rights by others.

The obligation to fulfil rights requires the government to take actions that work towards fulfilling ESCR.

## RESOURCES

Australian Capital Territory Economic, Social, Cultural Rights Research Project, *ACT ESCR Research Project Report*, September 2010. The discussion papers for health, housing and education contain detailed information in relation to each topic and are available at the end of the Report.

The International Network on Economic, Social and Cultural Rights at <http://www.escr-net.org/>.

Human Rights Internet, 'State Obligations to Implement International Human Rights' in *For the Record: A Focus on Canada – Bringing Economic, Social and Cultural Rights Home – Guide*, vol 1, Part 6, available at <[http://www.hri.ca/fortherecordcanada/vol1/guide-part\\_6.htm](http://www.hri.ca/fortherecordcanada/vol1/guide-part_6.htm)>.

Human Rights Law Resource Centre, *Protecting the Right to Housing in Law and Practice; Submission to the Family and Community Development Committee Inquiry into the Adequacy and Future Directions of Public Housing in Victoria*, 29 January, 2010.

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