



ACT Human Rights Office

Human Rights and Discrimination Commissioner:

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Assessing the first year of the ACT

Human Rights Act 2004

29 June 2005

Human Rights Culture

- UN int. obligations: respect, protect, fulfil & promote
- HR Approach – integrating norms, standards & principles
- Community understanding
- Shape practices of agencies
- Mainstreamed in policy, legislation & service delivery
- HRO focus: vulnerable populations (remedy) & children
- ‘Fair go’ resonates – right not charity
- *Building Our Community: the Canberra Social Plan*

Key features of HR Act

- Preamble: ‘live lives of dignity and value’
- HR Act ordinary not constitutionally entrenched: respects constitutional & democratic boundaries – courts, parliaments, & the executive
- No direct right of access to courts
- No direct application to agency acts & practices
- Supreme Court: Declaration of Incompatibility

Interpretative model

- Section 30 ‘in working out the meaning of a Territory Law, an interpretation that is consistent with human right is **as far as possible to be preferred**’.
- International law relevant (s.31)

Proportionality test

‘Dialogue’ model - ordinary Act subject to **proportionality** test in s.28 ‘Human rights may be subject only to **reasonable** limits set by Territory **laws** that can be demonstrably justified in a free and democratic society’.

1. the limitation adopted achieves the **objective** in question;
2. the **means**, even if rationally connected to the objective, should impair as little as possible the right or freedom in question; and
3. there must be a proportionality between the **effects** of the limitation & the objective.

Culture in government & LA

- Govt Bills - A-G's Compatibility Statement
- LA Standing Committee Legal Affairs
- Cabinet Submissions & Scrutiny Guidelines
- Annual Report: respect, protect, promote
- Agencies commissioned consultant's audits:
health (Casten Centre - Melbourne) &
education (Dusseldorp - Sydney)

UK Experience (1)

- insufficient training of front-line service providers: 2 years preparation higher levels
- no community education program
- BIHR ‘Something for Everyone Report’: need community training & advocacy
- Single Commission for Equalities & Human Rights Bill 2005

UK Experience (2)

- UK Audit Commission (2003) 50% awareness
- Key opinion leaders need to be well-informed eg media, and religious groups
- Specific benchmark to lobby in systemic work, eg Prisons
- NGOs casework – Liberty, Justice
- High watermark 2000-2
- Public Law Project: AD(JR) tacked on arguments
- Strasbourg oversight (no regional regime in Asia)

Human Rights Commissioner

- assist individuals & organisations with HR inquiries
- review and report to Attorney-General: conditions of detention in Quamby
- advise Attorney-General (cab subs & policy proposals)
 1. Delays in fair trials
 2. Federal Anti-terrorism Bill
 3. Indigenous shared responsibility agreements
 4. Detainees' access to media
 5. Gungahlin Drive Extension Bill
 6. Regulating change of names by prisoners

Human Rights Commissioner

- Referrals, eg seclusion in PSU
- Power to seek leave to intervene, eg MH Tribunal
- Supreme Court notifies HRC & A-G - considering issuing a declaration of incompatibility, eg s.51A
- Court of Appeal - issues more obvious
- Educate community – promote understanding, acceptance & compliance

Building HR Culture

- Art awards (primary student/school)
- Media profile
- Train the trainer : PIAC
- Community education: discrimination & HR
- Website: Humanity newsletter, case summaries
- Speeches & conferences
- Specialist Forums: Corrections and Mental Health
- HR Working Groups
- Strategic Partnerships
- Interns

HR Community Forum

10 December 2004 (education) & 1 July 2005 (review Act):

- representatives of vulnerable populations
- disadvantaged
- statutory office-holders
- ATSI
- HR advocates
- women
- Academics & legal practitioners

Emergency ECT Bill 2005

- public exposure draft – amend MH (T&C) Act
- S.10(2) No one may be subject to medical treatment without free consent
- Full Tribunal, not just President
- Proportionality test
- Same safeguards as ordinary ECT
- Second psychiatrist
- Children: no legal precedents

Quamby & Adult Corrections

- objects of new laws include rehabilitation
- loss of liberty, not dignity
- segregation of accused/convicted
- classify & separate: sex, age, seriousness of offence
- behavioural management & remissions
- inhuman & degrading treatment – isolation/seclusion
- right to life – violent cellmates
- separation of mother & infant
- privacy – strip searching, surveillance
- visits, telephone contacts & correspondence
- media access not prohibited

Judicial Scrutiny: cite HR Act

- *R v YL*
- *R v O'Neil*
- *Firestone v ANU*
- *Szuty v Smythe*
- *Robertson v ACT*
- *R v Martiniello*
- *R v Trevitt*
- *Fletcher v Harris*
- *Buzzacott v the Queen*
- *Le: bail application*
- *AAT Merritt & Commissioner for Housing*
- *Magistrates Court: Carrington v Day*

First Year Review of HR Act: (ESCR)

- Consultative Committee's Recommendations:
- CPR impact on ESCR: s.8 - all
home (privacy) - housing;
inhuman & degrading treatment – adequate standard living;
life – health;
forced work – strike, form & join TU
- UK & European cases education
- South Africa: *Grootboom* (2000) shelter; *Soobramoney v Minister of Health (Kwazulu-Natal)* (1997) & *Minister for Health v Treatment Action Campaign* (2002): health - 'reasonable measures'

The Future?

- Human Rights Commission Bill 2005
- HRO input to review of legislation: *Mental Health (Treatment & Care) Act 1994 & Children and Young People Act 1999*
- Victorian 2005 Consultation Committee
- 5 year HR Act review: model not litigation driven
- International Criminal Congress, Canberra (2004)
'HR Act beacon of hope' Julian Burnside QC