



Human Right's Act Review  
Department of Justice and Community Safety  
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October 2009

## **Submission to the Review of the ACT Human Rights Act 2004**

To the Human Rights Act Review, JACS,

On behalf of the Youth Coalition of the ACT (Youth Coalition), I would like to thank the Department of Justice and Community Safety for the opportunity to provide feedback on the operation of the *ACT Human Rights Act 2004* as part of the legislated five year review.

The introduction of the *ACT Human Rights Act 2004* (HRA) was an important step in the advancement of the human rights debate in Australia. As the first jurisdiction in Australia to enact human rights legislation, the ACT Government has positioned itself as a leader, and as such, provides an important example to the rest of Australia in the efforts undertaken to ensure human rights obligations are understood, respected and realised in the ACT.

The Youth Coalition welcomed the ACT Government's continued commitment to strengthening the HRA through amendments made this year creating a duty on public authorities to comply with the rights under the Act, and creating a direct right of action to the Supreme Court for breach of those rights.

Since the enactment of the HRA five years ago, the Youth Coalition believes that the profile of human rights has been raised in the ACT, through conversations within government and the community sector in regard to understanding and viewing the HRA as a critical platform on which to develop policy and service provision. The Youth Coalition is keen for these conversations to extend to the broader community and agrees with the findings within the ACT Human Rights Act Research Report Project that, "the task for the next five years is to increase and deepen knowledge of the HRA."<sup>1</sup>,

The Youth Coalition believes that there is a need to build community awareness of the HRA, particularly of service users, with a clear focus on including children and young people in ongoing dialogue regarding human rights. In line with the principles of participation within the *ACT Children and Young People Act 2008*, children and young people as key stakeholders need to be actively engaged to ensure their voices are heard in regard to the HRA and its operation.

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<sup>1</sup> *The Human Rights Act 2004 (ACT): The first five years of operation*, A report to the ACT Department of Justice and Community Safety, ACT Human Rights Act Research Project, Australian National University, May 2009, p7

## **About the Youth Coalition of the ACT**

The Youth Coalition is the peak body for youth affairs in the ACT. Comprised of over 90 members, programs, and individuals the Youth Coalition is responsible for representing and promoting the interests and wellbeing of people aged between 12 and 25 years and those who work with them.

The Youth Coalition is represented on many ACT Government advisory structures and provides advice to the ACT Government on youth issues as well as providing information to youth services about policy and program matters.

A key role of the Youth Coalition is the development and analysis of ACT social policy and program decisions for young people and youth services. The Youth Coalition facilitates the development of strong linkages and promotes collaboration between the community, government and private sectors to achieve better outcomes for young people in the ACT.

## **Response to Recommendations of the Independent ACT Human Rights Act Research Report Project (ACTHRA)**

The Youth Coalition has reviewed the recommendations made within the report on the first five years of the operation of the HRA by the independent ACT Human Rights Act Research Report Project (ACTHRA) (the Report)<sup>2</sup>. The Youth Coalition is in agreement with, and supports the recommendations within the Report. As such, this submission will not address each recommendation, but will suggest ways to build on the recommendations within the Report, which seek to strengthen government and community commitment to, and engagement with the HRA, with a particular focus on engaging young people.

## **Measuring Human Rights Progress Reporting Obligations under the Human Rights Act 2004**

The HRA has been developed within a solid research model, with the inclusion of a twelve-month and five year review, providing the opportunity for some community consultation. However, the Youth Coalition believes that the nature of consultation to date has limited contributions, and that this needs to be reconsidered as part of any future reviews undertaken. This issue will be dealt with further below.

The Youth Coalition supports recommendation 26 within the Report that;

*“the HRA should be amended to provide for ongoing reviews of its operation by the Attorney-General on a five yearly cycle.”<sup>3</sup>*

The Youth Coalition believes there would also be value in requiring the ACT Government to report on its fulfilment of obligations under the HRA to the Legislative Assembly, as per the Australian Government’s reporting requirements under the *United Nations Convention on the Rights of the Child* (CRC).

*“Reports made under the present article shall indicate factors and difficulties, if*

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<sup>2</sup> Full title of the Report: *The Human Rights Act 2004 (ACT): The first five years of operation*, A report to the ACT Department of Justice and Community Safety, ACT Human Rights Act Research Project, Australian National University, May 2009

<sup>3</sup> *The Human Rights Act 2004 (ACT): The first five years of operation*, A report to the ACT Department of Justice and Community Safety, ACT Human Rights Act Research Project, Australian National University, May 2009, p12

*any, affecting the degree of fulfilment of the obligations under the present Convention. Reports shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned.” (CRC, Article 44 (2))*

As stated previously, the Youth Coalition believes that broad community engagement and consultation is an important part of reviewing the HRA. The Youth Coalition is not aware of a consultation strategy aimed at engaging the broader community as part of this current review or in the initial debates regarding a HRA in the ACT.

The Youth Coalition believes that this is a necessary part of developing legislation, which has the potential of affecting the lives of all individuals in the ACT. The community must be given the opportunity to engage in a consultation process which is both accessible and meaningful, allowing for the views and experiences of service users, and particularly the voices of children and young people and individuals from marginalised and ‘vulnerable’<sup>4</sup> groups within our community, to be heard.

The ACT Government undertook a very successful community consultation process to inform the establishment of a Commissioner for children and young people in the ACT, which included a specific focus on engaging children and young people. A similar process could be considered to inform the ongoing development of the HRA.

#### **Recommendation**

- 1. That the HRA be amended to provide for ongoing reviews of its operation by the Attorney-General on a five (5) yearly cycle.**
- 2. That the HRA be amended to require the ACT Government report on its obligations under the HRA on regular basis (for example on a five (5) yearly cycle in step with the review of its operation).**
- 3. That the ACT Government commit to developing and resourcing a community consultation strategy as an important part of any future reviews of the HRA. This strategy should be developed in partnership with key stakeholders and include a specific focus on engaging children and young people, and a clear evaluation process.**

#### **Building a Human Rights Culture Education and Resourcing**

*“As policies and programs are formulated, the main objective should be to fulfill human rights...”*

*“A human rights-based approach identifies rights- holders and their entitlements and corresponding duty-bearers and their obligations, and works towards strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations.”<sup>5</sup>*

<sup>4</sup> Marginalised and ‘vulnerable’ groups within the community includes, but is not limited to, people engaged in the juvenile justice system, young people in the care and protection system, people with a disability, Aboriginal and Torres Strait Islander peoples, refugees, people from a non-english speaking background, people with mental health issues, people with drug and alcohol issues, young people with caring responsibilities.

<sup>5</sup> *Frequently Asked Questions on Human Rights-Based Approach to Development Cooperation*. Office of the United Nations High Commissioner for Human Rights, United Nations, New York and Geneva (2006). p15 and 16.

The Youth Coalition recognises that the HRA has already influenced key pieces of legislation and policy in the ACT regarding children and young people (namely the *ACT Children and Young People Act 2008* and policy relating to Bimberi Youth Detention Centre.). To enable this to continue, the Youth Coalition believes that ongoing education and resourcing are required to support government and also community agencies to develop policies, procedures and programs within a human rights framework. As such, the Youth Coalition is in agreement with those recommendations focussing on the increased provision of education and support with this aim.

The Youth Coalition believes that the Human Rights Commission (HRC), in its legislated role, and the Human Rights Unit (HRU), must be adequately resourced to support the enactment of the HRA through the provision of ongoing, relevant, updated and timely education and resources. Additional training and resources must be put in place to support the amendments made this year in regard to 'public authorities' (as defined under section 40 and 40A of the HRA). This is necessary to ensure 'public authorities' are aware of their status (whether they are a 'public authority' under the HRA or not) and obligations under section 40B.

Furthermore, the Youth Coalition believes that there needs for be further clarification about what is meant by the term 'public authority' within the HRA. This is required to ensure that community organisations which provide a variety of services in the ACT, and which may or may not receive funding from the ACT Government or federal government, are clear about their status and their obligations.

#### **Recommendation**

- 4. That the meaning of 'public authority' under section 40 and 40A is further clarified within the HRA.**
- 5. That 'public authorities' are notified of their status, where possible, (for example, where a community organisation is contracted by the ACT Government to provide a function of a public nature) and provided with appropriate support, education and resourcing to meet their obligations under section 40B of the HRA.**
- 6. That a staged approach within a clear timeframe is considered to support community organisations and other services to review policy and program development and delivery in the context of being a 'public authority'.**
- 7. That consideration be given to establishing and resourcing a Human Rights Network for 'public authorities' and other key stakeholders to provide formal and informal support, mentoring and feedback.**

Ensuring the HRC, the HRU and key stakeholder agencies are appropriately resourced to assist agencies (both public, private and community) in developing policies, procedures and programs within a human rights framework would also be a proactive step in encouraging organisations to take advantage of the 'opt in' provision within the HRA (section 40D 'other entities may choose to be subject to obligations of public authorities.'). Such education and resourcing is also essential if the ACT Government decides to specify the human rights obligations of service providers upfront as part of future contracting arrangements.

## Recommendation

**8. That the Human Rights Commission, the Human Rights Unit and key stakeholder agencies be adequately resourced to provide ongoing education and resources to the public, private and community sectors to assist in the development of policies, procedures and programs within a human rights framework.**

**9. That the ACT Government and key stakeholders develop and resource strategies to target both private and community sector service providers to raise awareness of the 'opt in' provision (section 40D).**

## Community Awareness and Education

The Youth Coalition understands that initial efforts to build a human rights culture in the ACT with the introduction of the HRA required and continues to require dialogue between the government and the Assembly. The Youth Coalition agrees that focus should remain on this dialogue, and believes that it is now time to place more emphasis on building community awareness and engaging the broader community with the HRA.

In the Australian Government's *Fourth Report under the Convention on the Rights of the Child*, the Australian Government considers that the best way to protect human rights is by ensuring existing mechanisms work effectively and in educating the community about human rights and responsibilities.<sup>6</sup>

*Furthermore, the HRA "encourages individuals to see themselves, and each other, as the holders of rights, and as responsible for upholding the human rights of others."(HRA, preamble, pt5)*

In order to embrace human rights and create a human rights culture, individuals need to develop an awareness and understanding of these rights. Once again, engagement and education is a key issue.

The Youth Coalition believes that there is a need to communicate human rights to those members of the community who are most vulnerable and who are at most risk of having their rights breached, with specific attention to children and young people. This engagement must occur through a variety of mechanisms. Such engagement is imperative if we are to measure the impact of the HRA at the 'ground' level.

The Youth Coalition believes that it is timely that a strategic plan be developed and resourced to provide human rights education to the broader community. Such a plan should be developed in partnership with key stakeholders and include education and resources to specifically target young people and also marginalised and 'vulnerable' groups within our community.

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<sup>6</sup> As set out in Australia's *National Framework for Human Rights—National Action Plan* <http://www.ag.gov.au/nap>

## Recommendation

**10. That a strategic plan be developed to raise community awareness and provide human rights education to the broader community. That appropriate resourcing be allocated to ensure the strategic plan can be actioned.**

**11. That the strategic plan for community awareness and education on the HRA include young people and other 'vulnerable' groups within the community as specific target groups.**

**12. That the strategic plan for community awareness and education on the HRA be developed in partnership with key stakeholder groups.**

**13. That the strategic plan for community awareness and education on the HRA include appropriate evaluation mechanisms.**

The Youth Coalition envisages that part of this plan would include the provision of joint funding to the HRC and key stakeholders groups (for example the CREATE Foundation<sup>7</sup> to target young people engaged in the care and protection system) for jointly controlled education and resources to be developed in partnership to target young people and 'vulnerable' groups in the community.

The Youth Coalition believes a broad variety of strategies should be utilised to actively target different groups within the community. Furthermore, an important part of a community education plan would be the inclusion of strategies to build on the current training capacity of the HRC and the HRU. Consideration should be given to utilising train the trainer and peer education models. As well as building capacity, such models of training have also been successful in providing education and awareness raising programs to both youth workers and young people. Furthermore, the Youth Coalition would be keen for the strategic plan to include steps towards embedding human rights education within the ACT school curriculum.

The Youth Coalition is supportive of the benefits of utilising independently run public surveys to establish a baseline level of human rights awareness in the ACT, as suggested within the Report<sup>8</sup> (to assist in targeting human rights awareness programs and in establishing a baseline level of human rights awareness as the basis for a longitudinal study of human rights awareness over time, and to inform a strategic plan for community awareness and education). The Youth Coalition also believes that consideration should be given to prioritising education and awareness program to individuals whose human rights are at greatest risk (for example young people involved in the juvenile justice system and/or the care and protection system).

## Legislation and Policy to Practise - Assessing the Impact of the HRA

The Youth Coalition is supportive of the indicators and tools suggested in the Report as ways to measure the level of human rights progress in the ACT.<sup>9</sup> However, the Youth Coalition is keen to look further at the impact of the HRA at the 'coalface' of

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<sup>7</sup> The CREATE Foundation (Australia) connects and empowers children and young people in care and improves the care system through activities, programs, training and policy advice.

<sup>8</sup> *The Human Rights Act 2004 (ACT): The first five years of operation*, A report to the ACT Department of Justice and Community Safety, ACT Human Rights Act Research Project, Australian National University, May 2009, p44-45

<sup>9</sup> *The Human Rights Act 2004 (ACT): The first five years of operation*, A report to the ACT Department of Justice and Community Safety, ACT Human Rights Act Research Project, Australian National University, May 2009, p44-46

service delivery, particularly for children and young people who are particularly vulnerable.

To understand and measure the impact of the HRA at the 'coalface', a coordinated effort must be made to capture the experiences of individuals engaging with services, with a specific focus on children and young people. For example, whilst we may be able to recognise the impact of the HRA on the development of legislation and policy for the Bimberi Youth Detention Centre, and understand the obligations on 'public authorities', how do we plan to assess the impact of the HRA on service delivery and the experiences of children and young people at Bimberi?

*"Accountability requires 'ensuring that there is a systematic process to assess the impact of law, policy and practice on children - in advance, during and after implementation.'"<sup>10</sup>*

Furthermore;

*Child Friendly Cities<sup>11</sup> require child impact assessment and evaluation: ensuring that there is a systematic process to assess the impact of law, policy and practice on children - in advance, during and after implementation.<sup>12</sup>*

The Youth Coalition would be keen to work in partnership with the HRC and the HRU to engage with children and young people as part of reviewing the operation of the HRA.

#### **Recommendation**

**14. That the ACT Government, the HRC and the HRU work in partnership with the Youth Coalition and other key stakeholders to develop tools to assess the impact of the HRA on the experience of service users, particularly that of children and young people.**

**15. That the ACT Government considers that assessment of the impact of the HRA on the experience of service users to be an essential part of any future review of the operation of the HRA.**

#### **Recognising and Supporting the Participation of Children and Young People in the ACT Community**

All people have the right to participate in and access information relating to the decision-making processes that affect their lives and well-being. Rights-based approaches require a high degree of participation by communities, civil society, minorities, women, young people, Indigenous peoples and other identified groups.<sup>13</sup> The *United Nations Convention on the Rights of the Child* (CRC), to which Australia is a signatory, recognises participation by children and young people as a fundamental right.

*1. States Parties shall assure to the child who is capable of forming his or her*

<sup>10</sup> *What is good policy?* Department of Education and Children's Services, SA, Government of SA (2009)

<sup>11</sup> see page 8 of this submission

<sup>12</sup> UN Child friendly City: <http://www.childfriendlycities.org/about/index.html>

<sup>13</sup> *The Rights Based Approach*, United Nations Population Fund, United Nations <http://www.unfpa.org>, as at 17 July 2009.

*own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child. (CRC, Article 12)*

*2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law. (CRC, Article 12)*

The provision of 'real' opportunities for youth participation requires genuine commitment and support, however it is often placed in the 'too hard basket' and not valued or viewed as a priority. This is despite its inclusion of the principle of participation in the *ACT Children and Young People Act 2008*.

Youth participation "requires a commitment from organisations to financially support the process and to build a culture where young people are able to contribute in valuable and meaningful ways. Without adequate support and commitment to the implementation of youth participation policies and practices, organisations are at risk of engaging young people in tokenistic ways. Participation should be meaningful and this can only occur when young people are adequately informed and supported in their involvement, and their contributions are valued and purposeful."<sup>14</sup>

*"Informing and involving children and respecting their views and experiences; recognising children as partners and as individual human beings, rights-holders and equal, active citizens. It is not enough, of course, to open up government information and structures and meetings to children. Engaging with children will mean substantial and ongoing change: changes in the form and dissemination of information, in the structures for debate and consultation, and in the organisation, timing and agendas of meetings."<sup>15</sup>*

The Youth Coalition believes that this fundamental right of children and young people should be further supported through its inclusion in the HRA. Inclusion in the HRA would ensure a greater commitment to enabling the participation of children and young people, and demonstrate a firm commitment by the ACT Government to building a Child Friendly City, an aspiration of the Draft Young People's Plan 2009–2014.

UNICEF's Eight Building Blocks of a Child Friendly City defines children and young people's participation as;

*"Promoting children and young people's active involvement in issues that affect them; listening to their views and taking them into consideration in decision-making processes."<sup>16</sup>*

## **Recommendation**

**16. That the HRA be amended to include a provision in accordance with Article 12 of the United Nations Convention on the Rights of the Child.**

<sup>14</sup> 'Youth Coalition Submission to the ACT Young People's Plan 2009 – 2014 Discussion Paper', Youth Coalition of the ACT, July 2009, p19

<sup>15</sup> 'Building child friendly cities – A framework for action', UNICEF Innocenti Research Centre, March 2004

<sup>16</sup> 'Building child friendly cities – A framework for action', UNICEF Innocenti Research Centre, March 2004

## Recommendation

**17. That the enactment of child and youth participation principles in the HRA will need to be enabled by providing the public, community and private sectors with support and mentoring to ensure that youth participation models, policies and practices are identified and utilised.**

**18. That consideration be given to resourcing a Children and Youth Participation Taskforce to engage key stakeholders, including children and young people, to advance participation by children and young people in all aspects of community life in the ACT.**

The enactment of participation principles in the HRA will need to be enabled by providing the public, community and private sectors with support (ie in the form of train the trainer and peer education) and mentoring to ensure that youth participation models, policies and practices are identified and utilised. This could include a process of organisations assessing current commitment and mechanisms to achieve participation by children and young people (ie through use of the youth participation audit developed by the NSW Commission for Children and Young People).

## Inclusion of Economic, Social and Cultural Rights

The Youth Coalition notes that the five year review would examine whether other human rights, namely economic, social and cultural rights, should be included within the HRA, as recommended by the Bill of Rights Consultative Committee during the initial twelve (12) month review of the operation of the HRA. The Youth Coalition understands that the ACT Government accepted 'in principle' that economic, social and cultural rights should be given the same status as civil and political rights<sup>17</sup> but decided not to incorporate them into law due to constitutional and service delivery arrangements in our jurisdiction.

The Youth Coalition understands the concerns expressed by Government, however believes that there is a need for the inclusion of economic, social and cultural rights as articulated within the International Covenant on Economic, Social and Cultural Rights (1966)(ICESCR). The Youth Coalition remains in agreement with the initial recommendation of the Consultative Committee that the rights set out in the two major human rights treaties to which Australia is a party, both the ICESCR and ICCPR, should be protected by the HRA.<sup>18</sup> As stated by the United Nations, human rights are universal, inalienable, indivisible, interdependent and interrelated<sup>19</sup>. People's rights are indivisible and interdependent because all rights – political, civil, social, cultural and economic – are equal in importance and none can be fully enjoyed without the others. The Youth Coalition reiterates this last point and believes that individuals cannot fully enjoy their civil and political rights if economic, social and cultural rights are not realised - in essence if essential needs such as housing, healthcare and education are not first met.

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<sup>17</sup> 'Human Rights Act 2004 -Twelve-Month Review Report', Department of Justice and Community Safety, June 2006.

<sup>18</sup> 'Towards an ACT Human Rights Act', Report, Bill of Rights Consultative Committee, May 2003, p 109

<sup>19</sup> 'The core international human rights instruments and their monitoring bodies', Office of the United Nations Commissioner for Human Rights, as at October 2009 (<http://www2.ohchr.org/english/law/index.htm>)

The Youth Coalition believes that as a 'dialogue model' of human rights legislation has been adopted in the ACT, the concerns expressed by the ACT Government in response to the Committee's recommendation to adopt the ICESCR into the HRA would be outweighed by the benefits, particularly for those who are most disadvantaged.<sup>20</sup>

#### **Recommendation**

**19. That the ACT Government reconsiders the inclusion of human rights articulated within the ICESCR into the HRA.**

The Youth Coalition wishes to thank the Department of Justice and Community Safety for the opportunity to contribute to the review of the first five years of operation of the Human Rights Act 2004. Once again, the Youth Coalition commends the ACT Government for being a leader in the human rights debate in Australia and for continuing to take actions to ensure that the HRA is a living piece of legislation. The Youth Coalition looks forward to working with government in engaging young people and the community youth sector in ongoing dialogue regarding human rights in the ACT.

Please do not hesitate to contact me on (02) 6247 3540 or at [director@youthcoalition.net](mailto:director@youthcoalition.net) if you wish to discuss this letter further.

Yours truly,

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<sup>20</sup> 'Human rights and the courts', Cultural and Religious Freedom under a Bill of Rights Conference Address by the Hon Sir Anthony Mason AC KBE, August 2009, p7