



Submission on
***Economic, Social and Cultural Rights –
A Good Idea for the ACT?***

August 2011



About ACTCOSS

ACTCOSS acknowledges that Canberra has been built on the traditional lands of the Ngunnawal people. We pay our respects to their elders and recognise the displacement and disadvantage they have suffered as a result of European settlement. We celebrate Aboriginal and Torres Strait Islander cultures and ongoing contribution to the ACT community.

The ACT Council of Social Service Inc. (ACTCOSS) is the peak representative body for not-for-profit community organisations, people living with disadvantage and low-income citizens of the Territory.

ACTCOSS is a member of the nationwide COSS network, made up of each of the state and territory Councils and the national body, the Australian Council of Social Service (ACOSS).

ACTCOSS' objectives are a community in which all people have the opportunities and resources needed to participate in and benefit from social and economic life and the development of a dynamic, collaborative and viable community sector.

The membership of the Council includes the majority of community based service providers in the social welfare area, a range of community associations and networks, self-help and consumer groups and interested individuals.

ACTCOSS receives funding from the ACT Government - Community Services Directorate.

ACTCOSS advises that this document may be publicly distributed, including by placing a copy on our website.

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About Advocacy for Inclusion

Advocacy for Inclusion acknowledges the Ngunnawal people as the traditional owners of the land on which we work.

Advocacy for Inclusion provides individual, self and systemic advocacy services for people with disabilities. We provide information, education, and representation to effectively advocate for positive and inclusive outcomes for people with disabilities.

We act with and on behalf of individuals in a supportive manner, or assist individuals to act on their own behalf, to obtain a fair and just outcome for the individual concerned.

Advocacy for Inclusion works within a human rights framework and acknowledges the *United Nations Convention on the Rights of Persons with Disabilities*, and the *ACT Human Rights Act*.

About the Alcohol Tobacco and Other Drug Association ACT (ATODA)

The Alcohol Tobacco and Other Drug Association ACT (ATODA) is the newly established peak body representing the non-government and government alcohol, tobacco and other drug (ATOD) sector in the Australian Capital Territory (ACT). ATODA seeks to promote health through the prevention and reduction of the harms associated with ATOD.

ATODA works collaboratively to provide expertise and leadership in the areas of social policy, sector and workforce development, research, coordination, partnerships, communication, information and resources. ATODA is an evidence informed organisation that is committed to the principles of public health, human rights and social justice.

For further information about this submission, ATODA or drug treatment services in the ACT, please contact Carrie Fowle, Executive Officer, on carrie@atoda.org.au or 02 6255 4070 or visit www.atoda.org.au.

About Care and the Consumer Law Centre

Care Inc Financial Counselling Service (Care) has been the main provider of financial counselling and related services to low to moderate income and vulnerable consumers in the ACT, since 1983. Care's core service activities include the provision of information, counselling and advocacy to low income and vulnerable consumers experiencing problems with credit and debt. Care also has a Community Development and Education program, makes policy and law reform comment on issues of importance to its client group and has operated a No Interest Loan Scheme since 1997.

The Consumer Law Centre (CLC) is a project of Care that offers legal assistance in the area of credit and debt, consumer protection and fair trading. In addition to casework, the CLC advocates and offer comment on behalf of the ACT's consumers on local, territory and national issues to improve legal protection, and raise awareness and understanding of consumers' rights in the ACT.

About the Mental Health Community Coalition ACT (MHCC ACT)

The Mental Health Community Coalition ACT (MHCC ACT) is the peak body representing the not-for-profit Community Mental Health sector in the Australian Capital Territory. Founded in 2004 the organisation promotes a diverse range of community agencies and local consumer and carer groups that support people recovering from a mental illness in the community.

MHCC ACT works inclusively with all stakeholders to support the development of community-based services and promote the interests of consumers, carers and not-for-profit community organisations.

About the ACT Mental Health Consumer Network

The ACT Mental Health Consumer Network is the peak advocacy body for mental health consumers in Canberra and surrounding areas. Run by consumers for consumers, our aim is to

bring about a higher standard of care in the mental health sector through representation, lobbying and active involvement in new developments in the mental health sector.

About People With Disabilities ACT

People With Disabilities ACT Inc (PWD ACT) is an advocacy organisation which is operated by people with disabilities for people with disabilities and which represents the interests of people with disabilities in the ACT. PWD ACT works to improve access to information and community activities and to promote an understanding of disability issues in the community.

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Acronyms

ACOSS	Australian Council of Social Service
ACTCOSS	ACT Council of Social Service
ICESCR	International Covenant on Economic, Social and Cultural Rights
NATSEM	National Centre for Social and Economic Modelling
UN	United Nations

Introduction

ACTCOSS and a number of its member organisations welcome the opportunity to comment on the Directorate of Justice and Community Safety Discussion Paper, *Economic, Social and Cultural Rights: A Good Idea of the ACT?* through this joint submission. The community organisations listed in this submission strongly support the inclusion of economic, social and cultural rights into the *ACT Human Rights Act*.

As stated in the *Vienna Declaration and Program for Action*, “human rights are universal, indivisible, interdependent and interrelated”¹. Without the realisation of economic, social and cultural rights, civil and political rights may not be realised. The ACT Government is commended for taking leadership around the issue of human rights at a time when other jurisdictions appear to be retreating from the conversation.

The ACT is a jurisdiction which can be described as operating within a “dual economy”. A dual economy refers to the existence of two economies within one region. It can be applied to the ACT context as there are many people in the ACT who enjoy conformable living standards, there a also number of people in the ACT who do not.

It is essential economic, social and cultural rights, including the right to housing, health, education, work and the right to culture are included in the *ACT Human Rights Act*, as it will place an important burden on policy makers to consider the needs of many people experiencing disadvantage. There is also inherent value in rights around self-determination and intellectual property. The right to self—determination and the rights surrounding intellectual property, while controversial are closely linked to rights for Aboriginal and Torres Strait Islander peoples, and in turn may assist in addressing disadvantage in Aboriginal and Torres Strait Islander communities. In addition to robust protections, there is a need to educate people living in the ACT on their human rights to enable the legislation to be most effective.

1 UN World Conference on Human Rights, *Vienna Declaration*, 1993.

Consultation

Government consultation on the inclusion of economic, social and cultural rights began on 25 July after the announcement by Minister Corbell on the release of the discussion paper. Responses were to be due by 19 August. The ACT community engagement manual firmly states:

it is important to allow sufficient time for adequate consideration of your proposal, policy or community engagement strategy. **A minimum of 6 weeks** is recommended to allow enough time for organisations to provide feedback.²

Significant time is needed to prepare a response from the community sector, especially if the response is collaborative and driven by peak bodies. Peak bodies usually have a large membership made of organisations with similar and allied interests. Collaboration and consultation with member organisations facilitates the contribution of direct information from organisations working “on the ground”. The close relationship peak bodies enjoy with agencies engaged in direct service provision places them in a unique position to undertake research in relation to client and industry needs, best practice and innovative models of service provision. However, this process requires time. Community organisations involved in direct service provision are extremely busy and often cannot respond or participate in discussions in short time frames.

The short 4 week consultation period for this engagement process made it very difficult for community organisations to adequately respond, particularly as the issue is considered one of moderate to high complexity. Policy and legislative matters require a longer period for consultation, as well as a variety of means to enable robust civic participation on the issues.

In addition, the community engagement manual contains strategies on consulting with people who are difficult to reach. The manual states:

Hard to reach communities are most effectively engaged when:

- “soft entry points” and natural gathering places are used, for example, holding information sessions in convenient and non-stigmatised locations such as libraries;
- Timing of engagement events occurs in natural gathering places on busy days;
- Engagement activities provide food and incentives;
- Engagement activities are out of business hours;
- Community leaders are involved;
- Synchronised with existing events and forums; and
- Professionals working directly with people you want to engage with are involved.³

2 ACT Government, *Engaging Canberrans – A Guide to Community Engagement*, 2011, p. 19.

3 *Ibid.*, p. 21.

The consultation process for the inclusion of economic, social and cultural rights into the *ACT Human Rights Act* did not engage a variety of consultation methods. There were no forums or seminars organised by the Directorate of Justice and Community Safety. Furthermore, the other main form of input into the conversation was through an on-line survey. Many people experiencing disadvantage are unable to access the on-line computer survey. A wider range of consultation methods would have enabled the Directorate of Justice and Community Safety to gauge a greater range of opinions.

Recommendations

- Follow the guidelines on consultation as outlined in the ACT Government's *Engaging Canberrans – A Guide to Community Engagement*.

Snapshot of the ACT

The ACT appears to be an affluent and progressive society. Canberra repeatedly reports high average incomes, high levels of education and high employment in successive censuses.

Nevertheless, there are many people in the ACT experiencing disadvantage. This has been demonstrated through a number of reports over the years, including a 2003 report *Addressing Disadvantage in the ACT*⁴ and Tony Vison's *Dropping off the Edge*⁵. A 2007 report from the National Centre for Social and Economic Modelling (NATSEM) found 13% of ACT Households were in the bottom Australian equivalised income quintile.⁶ A 2008 report by the Chief Minister's Directorate *Social Impacts of Climate Change* found there were approximately 20,000 low income households in the ACT earning less than \$650 a week.⁷ In 2008, this equated to 17% of all households.⁸

In addition, there are a number of identified groups in the ACT who are most at risk of experiencing disadvantage and subsequently missing out on basic rights. These vulnerable groups include, but are not limited to, Aboriginal and Torres Strait Islander Peoples, Refugee and Asylum Seekers, mental health consumers, alcohol, tobaccos and other drug consumers, people with disabilities and people experiencing intergenerational disadvantage.

4 ACT Chief Minister's Department, *Addressing Disadvantage in the ACT: Summary Report on the Project Mapping of ACT Government Funded Service for the Disadvantaged*, 2003, p. 9.

5 Tony Vison, *Summary – Dropping off the Edge*, Jesuit Social Services and Catholic Social Services Australia, 2007, p.2.

6 NATSEM, *Characteristics of Low Income Households in the ACT*, 2007, p. 8.

7 ACT Chief Minister's Department, *Addressing Disadvantage in the ACT: Summary Report on the Project Mapping of ACT Government Funded Service for the Disadvantaged*, 2003, p. 9

8 *ibid.*

Impact of the Inclusion of Economic Social and Cultural Rights

Economic, social and cultural rights can provide an additional level of protection for all Canberrans, and especially for people experiencing disadvantage. Once economic, social and cultural rights are given the same weight as civil and political rights, Public Authorities may have to consider both sets of rights in decision making process.

Case law from South Africa has demonstrated the benefits economic, social and cultural rights can impart on a community. South Africa included Economic, Social and Cultural rights in their 1996 Constitution. Such rights have since been rendered justiciable which in turn has generated some important benchmarks on the rights to health and shelter. Two important cases are *Minister of Health V. Treatment Action Campaign (2002)* and *Government of the Republic of South Africa and Others V. Grootboom and Others*.

Case Study: *Minister of Health V. Treatment Action Campaign (2002)*⁹

Nevirapine, is an anti-retroviral drug which could potentially prevent children from being affected by AIDS. The drug was offered to the Government of South Africa, free of charge. However the government announced it would provide this drug only in certain pilot sites and would delay setting up the pilot project for a year. In effect, this denied most people from being able to receive the treatment.

The Treatment Action Campaign launched a constitutional challenge. It was alleged this decision violated the right to health for thousands of South Africans. The court ruled in favour for the Treatment Action Campaign ordering that Nevirapine be made available for all infected mothers.

The decision of this case, not only saved thousands of lives; it also established a remedial framework and obligation to access health care as an important social right.

Case Study 2: *Government of the Republic of South Africa and Others V. Grootboom and Others*¹⁰

Irene Grootboom initially lived in an informal squatter settlement in Oostenberg, South Africa. She lived in severe poverty, without any basic services such as water, sewage or refuse removal.

9 ESCR Net, *Minister of Health v Treatment Action Campaign (TAC) (2002) 5 SA 721 (CC)*, viewed 18 August 2011, <http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=403050>.

10 ESCR Net, *Government of the Republic of South Africa. & Ors v Grootboom & Ors 2000 (11) BCLR 1169. (CC)*, viewed 18 August 2011, <http://www.escr-net.org/caselaw/caselaw_show.htm?doc_id=401409>.

Grootboom and a group of about 900 other squatters gradually began to move on to vacant, privately owned land, previously earmarked for low cost housing. The group were shortly evicted by the private landlord.

The group moved on to erect shelters made up of plastic and other materials adjacent to a sports centre. The group also filed a case against the Government under the name *Grootboom and 900 Others* under sections of the South African Constitution on the right to housing and shelter. The court eventually found there was a violation on the right to adequate housing. This decision had a major impact on housing policy in South Africa. For example, many municipalities put in place a “Grootboom Allocation” in their budgets to address the needs of vulnerable people.

The cases from South Africa demonstrate the government’s progressive realisation towards the right to health and housing. The *Grootboom* case demonstrated while the government did not have to provide every person in the community with a house; it did show it needed to take necessary steps to improve the housing situation for vulnerable people. The added layer of protection in the ACT will better ensure the need of people, while they are accessing public housing, health or education programs are more fairly considered.

The ACT Human Rights Act and its Limits

Concerns have been raised the inclusion of economic, social and cultural rights in *ACT Human Rights Act* may not impart rights to all vulnerable people living in the ACT, especially when it may be contrary to commonwealth policies. During an ACTCOSS consultation forum, one participant queried the impact human rights legislation may have on Asylum Seekers, who do not; under commonwealth policies have the right to work. Another ACTCOSS member raised the issue of aged care facilities which are currently being funded by the federal government. It was asked whether a person living in an aged care facility in Canberra would be able to effectively use the new Act to have their rights addressed if the facility is funded by the commonwealth and not considered a Public Authority under ACT legislation.

In the ACT, community services already provide some basic protections against the worst effects of poverty and social exclusion for many vulnerable groups. However, across Australia, community organisations are often unable to meet the growing demand and consequently have to turn many away. The latest Australian Council of Social Service (ACOSS) *Community Sector Survey* shows workloads in the ACT rose by 10% while turn away rates increased by 17% in 2009-2010.¹¹ In the ACT, the biggest shortfall was found in mental health services, with 86% of organisations surveyed in the ACT identifying that as an area of high or medium need.¹²

The ACT Government is urged to consider the reality many vulnerable people in the ACT may not be entitled to access some economic, social and cultural rights. In order to prevent vulnerable groups from falling through the gaps, the ACT Government will need to consider developing programs and may need to provide additional support to community organisations to support these groups.

Recommendations

- Develop additional programs and provide additional support to community organisations working with people experiencing disadvantage to increase realisation of human rights in the ACT.

11 ACOSS, *Australian Community Sector Survey – Vol. 2 Australian Capital Territory*, 2011, p. 11.

12 *ibid.*

The Right to Housing

Access to adequate housing is a fundamental human right and essential for a person to live with dignity. The right to housing is intended to be interpreted broadly and contains certain freedoms such as the protection against forced evictions and freedom from arbitrary interference.

The Office of the High Commissioner for Human Rights has stated there are a number of conditions which must be met before particular forms of shelter can be considered as “adequate housing”. The minimum criteria include:

- Security of tenure;
- Availability of services, materials, facilities and infrastructure;
- Affordability;
- Habitability;
- Accessibility: Housing is not considered adequate if the specific needs of disadvantaged and marginalised groups are not taken into account;
- Location: Housing is not considered adequate if it is cut off from employment opportunities, health, care services, schools, childcare centres or other social facilities, or if the dwelling is located in dangerous or polluted areas;
- Cultural adequacy: Housing is not adequate if it does not respect and take into account the expression of cultural identity.¹³

Without a right to housing other basic rights such as the right to family life, the right to freedom of movement or expression and the right to assembly and association may be compromised. Social issues including domestic violence and unemployment become more difficult to address when someone is living in insecure and unaffordable housing. The right to housing has a particular importance for children and young people. Insufficient and insecure access to housing may impede a child’s right to education, health and their ability to grow and develop socially and economically.

Access to affordable and safe housing remains a problem in the ACT, causing significant hardship. The 2011-2012 ACTCOSS Budget Submission highlighted the ACT is facing a crisis in housing affordability. While house prices around the whole of Australia has more than quadrupled in the last 20 years, house prices in the ACT continue to rise at higher rates than the rest of the nation.¹⁴ The rental market in the ACT is increasingly competitive, leading to decreasing affordability.

Housing is a primary concern for many vulnerable groups in the ACT, including Aboriginal and Torres Strait Islander communities. Aboriginal and Torres Strait Islander communities report higher levels of household overcrowding than other Canberrans due to issues around affordability. In 2006, the proportion of

¹³ UN Habitat, *The Right to Adequate Housing*, Fact Sheet 21, p. 3.

¹⁴ ACTCOSS, *Piece by Piece – Building a Connected Community*, 2010, p. 39.

Aboriginal and Torres Strait Islander peoples experiencing overcrowding was five to one compared with non Aboriginal and Torres Strait Islander peoples.¹⁵

Access to safe and affordable housing is a problem for many people exiting prison. Many people have no choice but to exit into homelessness due to a severe lack of transitional housing.

Furthermore, there is a shortage of housing which is accessible for people with disabilities. Access is understood in terms of both physical access and accessibility in terms of proximity to services and community facilities. This is important to note, as people with disabilities are one of the largest user groups for public housing. Current human rights protections do not go far enough in clearly supporting and recognising the fundamental importance of housing for the realisation of other rights.

Under human rights legislation which recognises economic, social and cultural rights, the ACT Government is required to employ appropriate means to ensure everyone has access to housing resources adequate for well-being and security. Housing legislation which recognises every person in the ACT has a fundamental right to live with security will undoubtedly assist to empower many vulnerable people in the ACT and address significant disadvantage.

Recommendations

- Include the right to housing in the *ACT Human Rights Act*.

¹⁵ ABS, *Proportion of Moderately Overcrowded Households, by Indigenous Status, Tenure Type, and State and Territory*, 2006.

Education

The right to education promotes individual freedom and empowerment, and yields important development benefits. As well as being a right in itself, the right to education is an enabling right. Through access to education, people can develop the skills to access information detailing what other rights they are able to receive. Education is crucial to supporting a person's social inclusion.

Article 13 (1) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) states:

State parties to the present covenant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of dignity shall strengthen the respect for human rights and fundamental freedoms...education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups...¹⁶

Some community organisations feel the right to education has not always been well protected. An ACTCOSS member organisation, People with Disabilities felt the educational rights of children with disabilities were placed in jeopardy by a proposal by Education ACT to make cuts to specialist teacher positions and services for children with disabilities in 2010. The need to meet a government efficiency dividend requirement was cited to justify this proposal. The inclusion on the right to education would protect the right and the educational position of children with disabilities in a situation where rights are threatened by decisions which prioritise economics over education.

Importantly, the right to education does not limit education to the primary stages. A broad application of this right may assist to alleviate low adult literacy, which is experienced by a proportion of people living in the ACT. While the ACT generally has high levels of education compared to other states and territories, a 2009 ACTCOSS report *On the Same Page* revealed 28,000 ACT residents have only attained the lowest level of literacy at level 1 with a further 50,000 attaining level 2. Given that level 3 is regarded as the minimum level required to cope with the means of everyday life, 78,000 people in Canberra may be regarded as having inadequate levels of literacy.¹⁷

Access to education has been accepted as an important right for many years. It is noted the *Education Act* addresses some of the elements on the right to education. However including the right to education in overarching human rights legislation ensures it is considered across a range of government and organisational frameworks. The right to education will complement and strengthen the current *Education Act*, to ensure it is as equitable as possible. Additionally, the right to education should underpin adult literacy programs and projects supported and provided by the ACT Government. In turn, this will enable more inclusive and accessible programs.

¹⁶ UN, *International Covenant on Economic, Social and Cultural Rights*, 1966, Article 13 (1).

¹⁷ ACTCOSS, *On the Same Page*, 2009.

Recommendations

- Include the right to education in the *ACT Human Rights Act*.

Health

Article 12 of ICESCR states all people have the right to the highest attainable standard of mental and physical health. Understood broadly, the right extends to social determinants of health which stipulates a person's life factors such as education, employment and lifestyle can contribute to their overall health.

The right to health is particularly important for alcohol and other drug consumers. The UN Special Rapporteur on the Right to Health has raised concerns about the failure of countries to meet human rights obligations for people who misuse drugs.¹⁸ There have been negative consequences of this failure on the individual health of drug users and on broader public health. There is no doubt a greater emphasis on the right to health will deliver positive outcomes for the ACT community.

Incorporating the right to health into the *Human Rights Act* would establish a positive obligation on the ACT Government to prioritise the health needs of vulnerable groups in strategy, policy, planning and procedures, thus formalising the commitment of the government to improving the health outcomes of vulnerable groups. It would also establish an obligation to perform rights analysis with regard to this right and thus explicitly measure initiatives of the government against this right. Both of these obligations will provide further protections for vulnerable groups and provide impetus to address the current inequality in access to quality health care services for vulnerable groups.

The inclusion of the right to health would provide an effective focal point for groups promoting awareness among vulnerable people of their rights and supporting individuals to exercise those rights. Many individuals from vulnerable groups do not perceive they have inalienable rights and for some groups, such as suspected and convicted offenders and mental health consumers, specific legislation authorises the suspension of some rights in certain circumstances. The ACT *Human Rights Act* has proven to be a key tool in raising awareness of the rights of individuals in these circumstances and provides positive support for ensuring the minimum restriction and intrusion on the rights of individuals when lacking the legal and/or mental capacity to make decisions about their own care.

The inclusion of the right to health into the *Human Rights Act* also complements the soon to be completed *ACT Charter of Rights for Mental Health Consumers*, the *Australian Charter of Healthcare Rights* and other instruments focused on promoting awareness and supporting vulnerable groups. Furthermore, the right to health would bring together rights in existing legislation and regulation in one place and create a powerful tool for awareness raising, promotion and advocacy around the ongoing issue of equitable access to quality health services for vulnerable groups in the community.

The primary importance of the inclusion of the right to health into the *Human Rights Act*, however, is the vital role it plays as a driver of cultural change. Incorporating the right to health would promote a rights based service framework across the government and community health service sectors and

¹⁸ IHRA, *Global State of Harm Reduction*, 2008, viewed 17 August 2011, <<http://www.ihra.net/contents/551>>.

put an emphasis on rights within the service delivery environment. This in turn would drive a change of culture towards service delivery which is sensitive to and respects the needs and rights of individuals, including those from vulnerable groups.

Recommendations

- Include the right to health in the *ACT Human Rights Act*.

Work

As noted in the background consultation paper, the right to work is based on the premise decent work allows a person, and their family, to live with dignity. For many people in our society, identity is intricately linked to work. Earning a living through work provides people with more opportunities to participate in social and community activities, to access goods and services and to build wealth. This in turn can have an enormous impact on a person's self esteem. On the contrary people in our community who are not able to participate in the workforce are often excluded from access to goods and services, thus further marginalizing and exacerbating their disadvantage.

For many of the most vulnerable members of our community, the right to work would necessarily include the provision of appropriate support services to assist them to gain and maintain employment. This is particularly relevant to people who have been out of work for long periods or who have health or disability needs that make finding and maintaining regular employment challenging. It is essential the labour market operates on non discriminatory policies and practices so suitable employment becomes open to all people. We support equal access to work and the opportunity for all people to be assisted to find meaningful employment.

The right to work must include the right to adequate wages and fair and safe work conditions. Many of these rights are already protected through the federal *Fair Work Act*. The addition of the right to work should serve to support and strengthen this legislation. Ensuring this right can be met would involve implementation of effective internal and external dispute resolution processes to deal with breaches or matters of concern in relation to appropriate work practices.

For some people experiencing disadvantage, participation in the paid workforce may not be possible at all or for periods of time. This may be as a result of physical or mental health issues, children's needs, lack of education or lack of suitable housing. A right to work should include the corresponding right to access some income support, in the form of concessions and rebates for those unable to participate in the paid workforce. This is in conformity with Article 9 of ICESCR:

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.¹⁹

The right to work should in no way diminish the value of participation in unpaid work. Unpaid household, caring and volunteer work provides significant economic and social benefit to our community. The enormous contribution of our unpaid workforce is often undervalued and neglected.

Recommendations

- Include the right to work in the *ACT Human Rights Act*.

19 UN, *International Covenant on Economic, Social and Cultural Rights*, 1966, Article 9.

Cultural Rights for Aboriginal and Torres Strait Islander Peoples

Recognition of cultural rights is essential to the enjoyment of individual rights. The importance of cultural rights is specified in a number of international declarations and conventions. In addition to being a right under ICESCR the *UN Universal Declaration on Human Rights* recognises “everyone has a right to freely participate in the cultural life of the community, to enjoy the arts and to share scientific advancement and its benefits”²⁰.

Cultural rights have a special significance for the world’s Indigenous peoples, including for Aboriginal and Torres Strait Islander peoples in Australia. The *UN Declaration on the Rights of Indigenous Peoples* mentions rights to practice and restore cultural traditions. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sights, artefacts, ceremonies, technologies and visual and performing arts and literature. Cultural rights also cover spiritual and religious traditions, ceremonies and sacred sites as well as histories, languages, oral traditions, philosophies and systems of knowledge. Cultural rights are inextricably linked to land rights as land, sea and waters contain areas and places of deep significance to Aboriginal and Torres Strait Islander peoples. Some land and spiritual sights are central to the religious and spiritual belief systems of Aboriginal and Torres Strait Islander Australians.

Access to cultural rights enables peoples to maintain identity. In the Australian context, the disadvantage suffered by Aboriginal and Torres Strait Islander peoples can be traced back to dispossession and the continuous loss of identity. Greater protection of cultural rights, especially for Aboriginal and Torres Strait Islander peoples in the ACT may enable Aboriginal and Torres Strait Islander peoples to maintain and strengthen identity and therefore assist in reducing disadvantage.

Recommendations

- Include cultural rights in the *ACT Human Rights Act*.

²⁰ UN, *Universal Declaration of Human Rights*, Article 27, 1948.

Self-Determination and Intellectual Property Rights

The parties to this submission note the right to self-determination and rights relating to intellectual property were not recommended for inclusion in the ACT Human Rights Act. While there are a number of national and international factors which need to be considered in relation to the inclusion of such rights, there is a need to highlight the benefit they can bring to vulnerable people in the ACT, especially Aboriginal and Torres Strait Islander peoples.

Article 1 of ICESCR states:

All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.²¹

The *UN Declaration on the Rights of Indigenous Peoples* not only includes the same wording for this right, it aims to strengthen it. Article 4 and 5 of the Declaration states:

Indigenous peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions.²²

Indigenous peoples have the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.²³

The right to self-determination is a complex right which includes an external and internal connotation. Internal self-determination implies the exercise of group autonomy within the borders of an existing state. Internal self-determination allows Aboriginal and Torres Strait Islander communities to have broader control over their political, economic and social development. It also enables Aboriginal and Torres Strait Islander peoples to make their own decisions around culture and day to day life. Rather than pose a threat to Australian sovereignty, self-determination demands recognition of the distinct status of Aboriginal and Torres Strait Islander peoples and their entitlement to determine relationships with government. It has been argued self-determination is of special significance to Aboriginal and Torres Strait Islander peoples due to experience of dispossession and marginalisation by successive Government policies.

The ACT Government has in many respects demonstrated leadership on the issue of self-determination. The ACT was the first jurisdiction to introduce an Aboriginal and Torres Strait Islander Elected Body, shortly following the demise of the national body, the Aboriginal and Torres Strait Islander Commission (ATSIC). Further leadership can be demonstrated in this area. While self-

21 UN, *International Covenant on Economic, Social and Cultural Rights*, 1966, Article 1.

22 UN, *Declaration on the Rights of Indigenous Peoples*, Article 4.

23 *ibid.*, Article 5.

determination and its corollary provisions are usually a national conversation, the ACT can add value to the discussion.

Intellectual property rights were left out of the recommendations put forth by the report *Australian Capital Territory Economic, Social and Cultural Rights Research Project*, as there is a lack of consensus internationally in its precise scope and content. Intellectual property refers to a number of intangible assets. Under intellectual property law, owners are granted certain exclusive rights to musical, literary and artistic works, discoveries and inventions, words, phrases, symbols and designs.

Article 15 (3) of ICESCR states people are entitled to:

Benefit from the protection of the moral and material interests resulting from any scientific literary or artistic production of which he is the author.²⁴

The *Declaration on the Rights of Indigenous Peoples* has a more explicit clause protecting intellectual property rights. Article 11 states:

Indigenous peoples have the right to practice and revitalise their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.²⁵

Article 31 states:

Indigenous peoples have the right to maintain, control, protect and develop their cultural heritage, traditional knowledge and traditional cultural expressions as well as manifestations of their sciences, technologies and cultures, including human and genetic resources, seeds, medicines, knowledge, properties of flora and fauna, oral traditions, literatures, designs, sports and traditional games and visual and performing arts. They also have the rights to maintain, control, protect and develop their intellectual property over such cultural heritage, traditional knowledge and traditional cultural expressions.²⁶

The knowledge and beliefs of Aboriginal and Torres Strait Islander peoples are fundamental to their culture. Aboriginal and Torres Strait Islander peoples have long considered it desirable they gain greater control of their intellectual property so it can continue to provide a base for cultural practice and allow opportunities for economic sustainability. In recent years, there has continued to be a growth in the commercial value of Aboriginal and Torres Strait Islander art. There is a need to regulate the exploitation of cultural property, to ensure the use of the property is authorised and the benefits are evenly shared.

While it is acknowledged intellectual property rights were not recommended for inclusion in the new human rights legislation, ACTCOSS would welcome further conversations about how this can be implemented in the ACT to protect the cultural and economic interests of Aboriginal and Torres Strait Islander peoples.

²⁴ UN, *International Covenant on Economic, Social and Cultural Rights*, 1966, Article 15 (3).

²⁵ UN, *Declaration on the Rights of Indigenous Peoples*, Article 11, 2009.

²⁶ *ibid.*, Article 31.

Recommendations

- Consider the benefits of the right to self-determination and intellectual property rights and undertake further consultation with Aboriginal and Torres Strait Islander communities.

Human Rights Education and Awareness

Human rights education is defined by Amnesty International as:

...a deliberate, participatory practice aimed at empowering individuals, groups and communities through fostering knowledge, skills and attitudes consistent with internationally recognized human rights principles.²⁷

Human rights education is a powerful tool for building inclusive societies respectful of human dignity. Knowledge of human rights empowers individuals to better advocate on addressing underlying causes of human rights violations, and enhances citizen participation in decision making processes.

There is a great need to create a culture where human rights are better understood, respected, protected and promoted. This was a central theme which emerged during the National Human Rights Consultations in 2009. Many people who participated in the consultation considered improved education was fundamental to enhance community understanding of and commitment to human rights. The UN Youth Association of Australia noted:

While there is general support for the notion of human rights in Australia, a thriving culture of human rights is lacking. There is limited understanding and awareness of human rights among young people and the broader community, existing human rights protection mechanisms are rarely accessed and human rights do not form a large part of the Australian political discourse except in particular issue areas.²⁸

During the national consultations, the Australian Centre for Human Rights submission stated one of the better ways of protecting and promoting human rights in Australia is by:

Making sure that those who are most marginalised and most vulnerable are seen, their voices heard and that they participate in decisions about their own future.²⁹

The centre further noted:

The development of a human rights culture in wider society will contribute substantially over time to addressing the recalcitrant features of social inequality and injustice by bringing into light 'invisible victims' whose life quality does not presently amount to a fair go.³⁰

Consultations during the 2011-2012 ACTCOSS Budget submission reiterated a need for community education on human rights.³¹ Many ACT residents are not aware of what human rights are and what they entail. To ensure all people in our community are aware of their rights, more and innovative training sessions on human rights should be made available. Greater funding for human rights education would enable the ACT Human Rights Commission, and community

27 Amnesty International, *Human Rights Education*, viewed 15 August 2011, <<http://www.amnesty.org/en/human-rights-education>>.

28 National Human Rights Consultation, *Creating a Human Rights Culture*, 2010, p. 131.

29 *ibid.*

30 *ibid.*

31 ACTCOSS, *Piece by Piece*, 2010, p. 22.

advocacy organisations to develop additional training sessions on human rights. Materials and information booklets should be written in a manner which is easy to read for all people and translated into different languages.

In addition, there should be greater support and training provided for Public Authorities outside of government. This was identified as a need during the consultations for the ACTCOSS 2011-2012 Budget Submission.³² The training should cover what the Human Rights Act entails and how to incorporate elements of the Act into the work of organisations. There should also be separate training and information provided for organisations considering opting in to become a Public Authority under the Act and how they can become human rights compliant.

Recommendations

- Provide greater funding for community education on human rights;
- Disseminate information on human rights in a variety of means and languages and;
- Provide more training for Public Authorities outside of the ACT Government.

³² *ibid.*

Conclusion

While the release of the ACT Government's discussion paper on the inclusion of economic, social and cultural rights is welcomed, the parties to the submission are disappointed by the consultation process. The period for consultation was short, and the government did not seek to engage the community in a range of ways, as recommended in the ACT Government's community engagement manual.

Economic, social and cultural rights would impart an additional level of protection for vulnerable people in the ACT. Casework from South Africa demonstrates economic, social and cultural rights are justiciable. In the South African context, it has held the government accountable when it has not ensured adequate access to health and shelter.

While it may be argued the inclusion of economic, social and cultural rights may have its limits; it will still yield significant benefits. There will be a burden on policy makers to consider the human rights legislation, and in turn assist people experiencing disadvantage access housing, education, meet health needs and employment. Cultural rights, especially for Aboriginal and Torres Strait Islander peoples will strengthen the identity for people in these communities. Furthermore, while it is acknowledged the rights to self-determination and intellectual property were not recommended for inclusion in the ACT Human Rights Act, the government is urged to consider the inherent value of these rights, especially for empowering Aboriginal and Torres Strait Islander peoples. Finally, to be effective there needs to be Human Rights training for individuals, communities and Public Authorities outside of the government.

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