

**actlaw**  
society

# An Introduction to Using the Human Rights Act

PRESENTED BY NAOMI REINER GOULD  
& JANE McCOSKER

ACT HUMAN RIGHTS COMMISSION

# ACKNOWLEDGEMENT OF COUNTRY





**THE ACT HUMAN RIGHTS COMMISSION  
WHO WE ARE? WHAT DO WE DO?**

# HUMAN RIGHTS UNDER INTERNATIONAL LAW

- The starting-point: “**recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family** is the foundation of freedom, justice and peace in the world”

(Preambles to the *Universal Declaration of Human Rights*, 1948, *International Covenant on Civil and Political Rights*, 1966 and *International Covenant on Economic, Social and Cultural Rights*, 1966)

- Human rights treaties to which Australia is party: the International Covenants and five others
- Other international human rights law and guidance

# DOMESTIC HUMAN RIGHTS LAW

- Sources of human rights protection in Australia and the ACT besides international law:
  - constitutional and federal legislative protections
  - the common law
  - in the ACT: Human Rights Act 2004; Discrimination Act 1991; protections in other Acts
- Influence of and guidance from other domestic human rights jurisdictions (e.g. UK, Victoria and Queensland)

## The Human Rights Act: the protected rights.

<b>8 – Right to equality and non-discrimination</b>	<b>15(2) – Freedom of association</b>	<b>22(2) – Minimum guarantees for those charged</b>
<b>9 – Right to life</b>	<b>16(1) – Right to hold opinions</b>	<b>22(3) – Rights of child charged</b>
<b>10 – Protection from torture and cruel, inhuman or degrading treatment etc.</b>	<b>16(2) – Freedom of expression</b>	<b>23 – Compensation for wrongful conviction</b>
<b>11(1) – Protection of family</b>	<b>17 – Taking part in public life</b>	<b>24 – Right not to be tried or punished more than once</b>
<b>11(2) – Protection of children</b>	<b>18(1)-(7) – Right to liberty and security of person</b>	<b>25 – Retrospective criminal laws</b>
<b>12 – Privacy and reputation</b>	<b>18(8) – No imprisonment for contractual obligations</b>	<b>26 – Freedom from forced work</b>
<b>13 – Freedom of movement</b>	<b>19 – Humane treatment while deprived of liberty</b>	<b>27(1) – Rights of minorities</b>
<b>14(1) – Freedom of thought, conscience and religion</b>	<b>20 – Children in the criminal process</b>	<b>27(2) – Cultural rights of Aboriginal and Torres Strait Islander peoples</b>
<b>14(2) – No coercion to limit religious freedom</b>	<b>21 – Fair trial</b>	<b>27A – Right to education</b>
<b>15(1) – Peaceful assembly</b>	<b>22(1) – Rights in criminal proceedings</b>	<b>27B – Right to work</b>

## TIPS FOR UNDERSTANDING RIGHTS

- Check for internal limitations.

Example: s12 - “everyone has the right not to have their privacy, family, home or correspondence interfered with unlawfully or arbitrarily”

- Consider ACT case law and other jurisdictions
- s 31 - consider international law and general comments
- Each right should be construed as widely as their terms permit.

# LIMITS ON HUMAN RIGHTS

Some rights are absolute

Examples: right to opinion, no torture, no slavery.

Most rights can be limited

s 28(1): “Reasonable limits set by laws that can be demonstrably justified in a free and democratic society.”

Limitations must be reasonable

s 28(2) → Lawful? Legitimate aim?  
Rational connection? Proportionate?





# PUBLIC AUTHORITY OBLIGATIONS



s 40B: ACT government agencies and those carrying out government functions must:

- act compatibly with human rights
- when making decisions, give proper consideration to relevant human rights

Unless a law expressly requires the act to be done in a way inconsistent with human rights and the law cannot be interpreted consistently with human rights.

# THE HUMAN RIGHTS ACT IN LEGAL PRACTICE

## **Interpretation of other laws – s 30**

- Courts and Tribunals must interpret ACT Laws in a way that is consistent with human rights, as far as possible.

## **Obligations on Public Authorities – s 40B**

- To act compatibly and give proper consideration.

## **Remedies – s 40C**

- Direct right of action to the Supreme Court but no damages
- Raising human rights in “other legal proceedings”
- Complaints to the Human Rights Commission

## CONSIDERING WHETHER A CASE RAISES THE HUMAN RIGHTS ACT

- The Human Rights Act only protects individuals' rights – cannot be used to protect corporate interests.
- Interpretation of all ACT legislation – when considering legislation, consider whether it is possible to interpret consistently with human rights.
- Has a decision or the actions of a public authority impacted on your client? Alternatively, is your client a public authority?
- Identify protected potential rights impacted – think beyond criminal proceedings - for example right to privacy (including rights not to have family and home arbitrarily interfered with), right to equality, children's rights, right to fair trial (for accused and for victims and in both civil and criminal proceedings), right to culture for minority groups, the distinct rights for Aboriginal and Torres Strait Islanders, right to education.
- If there were limitations on a protected human right, was that limitation in accordance with s 28 – namely: “set by laws”, reasonable, demonstrably justified – was there a less restrictive means reasonably available to achieve the purpose?
- Consider available remedies.

# PRACTICAL USES

## Use in advocacy and bringing a complaint to the Commission

- Advocacy with agencies – Education, Health, Housing, CYPS, Corrective Services.
- Complaints to Human Rights Commission for investigation and conciliation.
- Other oversight agencies may consider human rights in their oversight roles – eg OICS, ACT Ombudsman.

## Use in ACAT and the lower courts

- Administrative review
- Whenever an ACT government agency exercises a discretion (reviewable or not) that affects a person's rights.
- Interpretation of legislation – eg interpretation of words like “special circumstances”.
- Coronial processes

## Supreme Court cases

### Direct action cases:

- Davidson v DG, JACS [2022] ACTSC 83
- Williams v DG, JACS – awaiting decision
- Tenants v Commissioner for Social Housing – awaiting decision

### Other Supreme Court cases

- DPP v Alexander (a pseudonym) [2024] ACTSC 161
- R v QX (No 2) [2021] ACTSC 244

# THE INTERVENTION FUNCTION OF THE HUMAN RIGHTS COMMISSIONER

Notifying the Human Rights Commission when a case raises human rights.

- s 34 – if a question arises involving the Human Rights Act, the Supreme Court must not allow a proceeding to continue unless satisfied notice has been given to the Human Rights Commission (and the AG if Territory is not a party)
- We encourage notification where human rights has been raised in other cases.
- S36 – the human rights commissioner may intervene in a proceeding before a court (including Tribunal) that involves application of the Human Rights Act with the leave of the court.
- Information on our intervention function, including our intervention guidelines may be found at [www.hrc.act.gov.au/humanrights/court-interventions](http://www.hrc.act.gov.au/humanrights/court-interventions)

# AN INTRODUCTION TO USING THE HUMAN RIGHTS ACT



ACT Human Rights Commission

Naomi Reiner Gould  
Senior Director  
Human Rights Law & Policy

Jane McCosker  
Human Rights Legal Adviser



Law Society of the Australian Capital Territory  
Level 4, 1 Farrell Place, Canberra City ACT 2601  
Phone 02 6274 0333 | [memberconnect@actlawsociety.asn.au](mailto:memberconnect@actlawsociety.asn.au)

**[actlawsociety.asn.au](http://actlawsociety.asn.au)**