

A Human Rights Act for Queensland

How could a Human Rights Act help Aboriginal and Torres Strait Islander peoples?

A Human Rights Act will help to create a fair, just and equal society for everyone. When human rights are protected by law they help to ensure that we are all treated fairly, and with dignity, equality and respect.

Protections offered by a Human Rights Act will also have relevance for particular groups of Queenslanders – such as Aboriginal and Torres Strait Islander peoples.

This factsheet provides examples of how human rights protection in other places has improved the lives of indigenous peoples.

Cultural rights

A Victorian Aboriginal woman lived in housing owned and leased by a non-Aboriginal community organisation. A condition of her tenancy was that she was required to engage with community services.

After her nephew died she went back to her country for a couple of weeks of 'sorry business'. When she returned she started receiving warnings to engage with services, however she wasn't able to do so because she was overwhelmed with family responsibilities, trauma and grief.

A possession order was made and the police came to her door with a warrant. Her advocates made an application for an urgent review and stay. They argued that the community organisation had failed to engage with her cultural rights and the rights of her grandchild and family members in their eviction process. These rights are protected in the Victorian Charter of Human Rights and Responsibilities Act 2006. As a result the community organisation withdrew their possession application and engaged an Aboriginal support service.

Source: Victorian Aboriginal Legal Service Submission to the 8 year review of the Charter, Submission 98 (Case Study 1).

Delays in the criminal justice system

An Aboriginal girl was serving a sentence in a youth justice centre in the ACT for a number of offences. While incarcerated, she was also charged with two assaults and one charge of obstructing a territory official. She was convicted of these offences and sentenced. She appealed the sentences on the basis that the sentences were excessive and that certain required factors had not been taken into account. The judge found that the sentences were inappropriate, reduced them to shorter periods and ordered that they be served concurrently with her current period of incarceration. The judge took the young person's personal circumstances into account and found that the significant delay between the offence and the sentencing was unacceptable and in violation of the ACT's Human Rights Act 2004.

Source: *TM v Karapanos and Bakes* [2011] ACTSC 74

Which rights?

The case studies above show that the rights that protect everyone have been used to protect the rights of indigenous peoples. Many of these rights originally come from the United Nations International Covenant on Civil and Political Rights.

The United Nations Declaration on the Rights of Indigenous Peoples provides a statement of human rights specific to indigenous peoples.

In order for the rights contained in the International Covenant on Civil and Political Rights and the Declaration on the Rights of Indigenous Peoples to be enforceable in Queensland they need to be protected in law – for example in a Human Rights Act for Queensland.

The preamble of the ACT's Human Rights Act and the Victorian Charter of Rights and Responsibilities both acknowledge the special relevance that human rights have for Aboriginal people. The Victorian Charter also specifically protects the cultural rights of Aboriginal people. It says:

“Aboriginal persons hold distinct cultural rights and must not be denied the right, with other members of their community to enjoy their identity and culture and to maintain and use their language; and to maintain their kinship ties; and to maintain their distinctive spiritual, material and economic relationship with the land and waters and other resources with which they have a connection under traditional laws and customs.”

As a result of the eight year review of the Victorian Charter of Human Rights and Responsibilities the Victorian Government is now considering how to better protect the right of Victorian Aboriginal people to self-determination.