

ACTCOSS 2020 ACT Election Issue Brief

Fulfilling the Promise of the ACT as a
Human Rights Jurisdiction

# For a just and fair Canberra, the next ACT Government must:

Incorporate all Economic, Social and Cultural Rights in the *ACT Human Rights Act (2004)* including: the right to housing; the right to an adequate standard of living; the right to physical and mental health; and the right to a healthy environment

Through improved access to legal support and better funding for the ACT’s community legal services, ensure equality before the law for all ACT residents, including women and children, Aboriginal and / or Torres Strait Islander people and other Canberrans facing legal disadvantage

Improve access to the *ACT Human Rights Act (2004)* by adding a direct complaints mechanism through the ACT Human Rights Commission followed by referral to the ACT Civil and Administrative Tribunal (ACAT) if the complaint cannot be resolved

Embed human rights principles and obligations in all procurement processes and service contracts

Include a human rights reporting component in Director-General annual reports

Establish an annual evaluation and report to the ACT Legislative Assembly on human rights in the ACT

Implement and resource clear strategies to address racism, discrimination against LGBTIQ+ Canberrans, gendered discrimination and violence, and ableism

Foster an independent advocacy voice for culturally and linguistically diverse Canberrans in the ACT

Publicly commit to a Federal Human Rights Act

Commit to review police complaints handling mechanisms to ensure greater practical independence, accountability and transparency of investigations

Commit to not introducing anti-consorting laws.

# The issue

**Human rights are universal, indivisible, interdependent and interrelated**[[1]](#footnote-2); they are enjoyed by everyone regardless of gender, race, disability, and other points of difference.

The *ACT Human Rights Act (2004)* does not include all **Economic, Social and Cultural (ESC) Rights** other than the right to education and worker’s rights. Safeguarding all ESC Rights in the ACT will establish a robust human rights framework that recognises the interrelated nature of economic, social, cultural, civil and political rights. For example, how does one safeguard an individual’s right to education if their right to physical and mental health is not protected?

Poor access to legal assistance means that many Canberrans do not receive equality before the law. Unequal access to legal services drives poverty and disadvantage for Canberrans unable to enforce their legal rights in family, criminal, social security, financial, housing, employment and other matters. **We need more funding for legal services, including for the ACT’s community legal centres**, **that serve those facing legal disadvantage.**

The *ACT Human Rights Act (2004)* limits the options available to Canberrans who are aggrieved by human rights violations to coming before the Supreme Court or raising human rights in existing legal proceedings. However, the Supreme Court is complex and costly. **Creating a direct complaint handling mechanism to the ACT Human Rights Commission with referral to the ACT Civil and Administrative Appeals Tribunal if the complaint is not resolved (as in discrimination matters) will improve accessibility of the *ACT Human Rights Act (2004)* and further realise its goal to foster human rights compliance with the ACT**.

Policy design and implementation can be improved by ensuring that human rights principles and practice is a core to ACT Government work. For example, **ensuring human rights principles are included in procurement processes** protect workers from exploitation and encourage employers, who wish to win government contracts, to improve their human rights adherence.

To provide robust and transparent oversight of adherence by the ACT Government to human rights principles, there should be **regular reporting on human rights** in Director-General reports and an **annual public evaluation of the state of human rights** in the ACT to the Legislative Assembly.

An incoming ACT Government must commit to implementing and funding **strategies that can tackle overt, systemic or unconscious discrimination** in the Canberra community. This includes fostering a strong and independent advocacy voice for Canberrans from culturally and linguistically diverse backgrounds.

The ACT should **publicly call for a Federal Human Rights Act** to help ensure decisions and actions of the Commonwealth that impact Canberrans are guided by human rights values such as freedom, equity, dignity, and non-discrimination.[[2]](#footnote-3)

In line with the recommendation of the 2018 Australian Law Reform Commission, in its Pathways to Justice Inquiry into the Incarceration Rate of Aboriginal and Torre Strait Islander Peoples, **the ACT Government should commit to review its police complaints handling mechanisms** to ensure improved accountability, independence and transparency.

**Anti-consorting laws** erode human rights and have been shown to disproportionately and unjustly target Aboriginal and / or Torres Strait Islander people and people experiencing homelessness. They should not be introduced in the ACT.

# The evidence

* Realising the human rights of ACT Aboriginal and / or Torres Strait Islander peoples: the distinct cultural rights of Aboriginal and / or Torres Strait Islander peoples are specifically recognised in s. 27(2) of the ACT Human Rights Act and public authorities must support the exercise of those rights by ACT Aboriginal and / or Torres Strait Islander communities.[[3]](#footnote-4)
* In 2019, the ACT Auditor-General published its report, [*Recognition and implementation of obligations under the Human Rights Act 2004*](https://www.audit.act.gov.au/__data/assets/pdf_file/0018/1322460/Report-No-2-of-2019-Recognition-and-implementation-of-obligations-under-the-HRA-2004.pdf). It found that:
	+ Although proposed legislation requires a completed ‘Human Rights Scrutiny Assessment’, information for ACT agencies that provides guidance and explanation on the Human Rights Act is dated and mostly limited to legislation
	+ There is varied commitment to embedding a human rights culture across ACT Government Directorates
	+ Agencies should amend annual reports of Directorates to include minimum standards for format for human rights activities to be reported
	+ Agencies should identify additional, meaningful information to be reported that will allow for assessments of the development of human rights culture.
* In the [ACT Human Rights Commission’s snapshot](https://hrc.act.gov.au/wp-content/uploads/2015/03/HRA-10-yr-snapshot-HRDC-webversion.pdf) of 10 years of the ACT Human Rights Act 2004, the Commissioner noted:
	+ A continued lack of systemic education on the Human Rights Act inside the bureaucracy
	+ The Justice and Community Safety Directorate should play a role in disseminating knowledge about the operation of the Human Rights Act more broadly
	+ The ACT Government Solicitor could share its expertise by providing short updates on legal developments that may impact ACT Government program or policy planning.
* Over recent years, [Canberra Community Law has developed and expanded human rights advocacy practice](https://www.canberracommunitylaw.org.au/sites/default/files/submissions/Overcrowding%20-%20a%20human%20rights%20issue.pdf), becoming the first legal body to regularly use the Act in routine litigation. Canberra Community Law’s Dhurrawang Aboriginal Human Rights Program has successfully used the ACT Human Rights Act and the protections it affords to children, families and Aboriginal and / or Torres Strait Islander people, to advocate for clients to be approved for larger properties on the priority housing waiting list (the most urgent category) with Housing ACT.

# Testimonials

*“The ACT has a proud history of being the first jurisdiction in Australia to enact a Human Rights Act. COVID-19 has brought into sharp focus human rights requiring urgent attention. ACT residents, including women and children, people with disability, and Aboriginal and/or Torres Strait Islander people, continue to be impacted. The extension of the ACT Human Rights Act (2004) to incorporate all Economic, Social and Cultural rights, including the right to housing, the right to an adequate standard of living and the right to physical and mental health has never been more important to ensuring a fairer and more inclusive and compassionate community. A human rights approach is critical to addressing intersectional challenges facing the most disadvantage in our community.”* – Genevieve Bolton OAM, Canberra Community Law

*“The Women’s Legal Centre believes all women in Canberra deserve to be able to use the law to protect their safety and security, not just those who can afford it. By providing specialist legal assistance to the most vulnerable and at-risk women in Canberra we are working to protect their right to safe arrangements for the care of their kids and a fair separation of any assets if relationships breakdown. We are working to keep women attached to paid work and to ensure they receive basic workplace entitlements. While this is critical at any time in a jurisdiction committed to human rights and gender equality, the increase of domestic and family violence and the disproportionate effects of COVID-19 on women’s employment means this is now urgent.”* – Elena Roseman, Women’s Legal Centre

*“All human rights are universal, indivisible, interdependent and interrelated’. Just as workers’ rights are not divisible from civil and political rights, there are a range of conditions that are necessary to living a full life with dignity and freedom... Safeguarding all ESC Rights in the ACT will establish a robust human rights framework that recognises the interrelated nature of Economic, Social, Cultural, civil and political rights.”* – Universal Declaration of Human Rights (UDHR)

*“ACTCOSS’s work has consistently highlighted that there are a variety of ESC [Economic, Social and Cultural] Rights in the ACT that need to be explicitly safeguarded. Our advocacy on hidden disadvantage has noted that policy in the ACT must consider the Canberrans whose disadvantage is masked by high averages and a picture of Canberra as an affluent city. ACTCOSS contends that by including ESC Rights in the Human Rights Act, those experiencing disadvantage in the ACT will be better protected against inequitable policy and unjust actions.”* – ACTCOSS Submission to the Inquiry into Worker’s Rights (Human Rights), 2019

1. As noted in the Universal Declaration of Human Rights. [↑](#footnote-ref-2)
2. Human Rights Law Centre, Kingsford Legal Center and Caxton Legal Centre, *#ausUPR: Australia’s Human Rights Scorecard*, 3rd Universal Periodic Review, Joint NGO Submission on behalf of the Australian NGO Coalition, 2020, <https://media.business-humanrights.org/media/documents/75c8b6a39b17ffc78ee72f5c796b406d3f679714.pdf>. [↑](#footnote-ref-3)
3. ACT Government and ACT Aboriginal and Torres Strait Islander Elected Body (ACT ATSIEB), *ACT Aboriginal and Torres Strait Islander Agreement 2019-2028*, ACT Government and ATSIEB, n.d., <https://www.communityservices.act.gov.au/__data/assets/pdf_file/0015/1323132/ACT-Aboriginal-and-Torres-Strait-Islander-Agreement-2019-2028.pdf>. [↑](#footnote-ref-4)